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RESEARCH ARTICLE

HI-TECH ABORTION: A LEGAL PERSPECTIVE.

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The World Health Organization (WHO) defines unsafe abortion as a procedure for terminating a pregnancy that is performed by an individual lacking the necessary skills. An estimated 50 million abortions are carried out throughout the world every year (including 19-20 million abortions that are done by individuals without the requisite skills). There are many different reasons (e.g. small number of specialists or large distance to medical center) when the patient during this procedure can't receive medical care 'face to face'. High technologies abortion is one of the ideas to solve this problem. In June of 2008 Planned Parenthood of the Heartland first began offering pharmacological abortions via telemedicine in Iowa. This article carries out a comparative analysis of legal regulations of the United States of America and chosen countries of the European Union (esp. Poland and France) in the context of 'hi-tech abortion'. The aim of this article is to examine: a) general regulations on abortion in circled jurisdictions b) the legal admissibility of medical abortion at a distance.

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Introduction:-

The issue of acceptability and executing abortions is highly controversial among societies of the world [Bonin, 2003; Pietrzykowski, 2010]. A differentiated approach towards the issue of abortion on both medical and legal grounds is a result of the aforementioned status.

From a medical point of view, pharmacological method is one of the ways of terminating pregnancy. It consists of supplying medicine (mifepristone – RU 486 or methotrexate) that damages the embryo and then therapeutics (a prostaglandin - misoprostol) that cause uterine contraction and result in miscarriage [Bracken et al., 2014; WHO, 2012; Gomperts et al., 2008; Jones R.K., 2002]. The process of medical abortion may be supplemented by telemedical tools - 'hi-tech abortion'. The general definition of telemedicine is 'the use of medical information exchanged from one site to another via electronic communications to improve a patient's clinical health status' [ATA, 2016]. The procedure of telemedicine abortion provided by Planned Parenthood of the Heartland is based on teleconsultation by the video conferencing system [Boonstra, 2013]. First of all, if a pregnancy test comes back to the clinic with a positive result, then the patient has ultrasound. The images are sent electronically to the doctor in a different geographic location. Secondly, if a woman consents to the telemedical abortion, she is seated at a desk in front of a computer monitor with a camera where she can teleconference with the doctor. Thirdly, after a discussion on the abortion procedure (instructional video and reliable information about treatment), the doctor enters a command on a computer keyboard and a special drawer in the desk where the woman is seated opens to reveal bottles of pills. Finally, when the patient returns home she can at any time contact the Planned Parenthoods 24-hour hotline [O'Bannon, 2010].

In the discussion on the legal status of abortion, the issue of legal admissibility of using telemedicine in the process of pharmacological pregnancy termination has become one of the main multifaceted problems in recent years [Caplan, 2011]. Comparison of legal regulations of the United States of America and chosen countries of the European Union is an interesting research area in the aforementioned matter.



Fig 1:-Patient during telemedicine abortion.

Material and Methods

Legal methodology:-

- a. International Public Law
- b. Domestic Law (comperative approach)
- c. Publications (Westlaw Database, update 5 June 2016)
- d. Judicial decisions (esp. a state supreme courts in the USA)

Theoretical approach: analysis of the notion of abortion in the context of sources national law and international solutions (including legal acceptability of support of medical abortion through the use of telemedicine tools).

Empirical approach: analysis of the influence of abortion in practice. For instance, I compare the influence of pharmacological abortion on the case law of the courts.

Other approaches to the study of abortion in relation to telemedicine:-

- a. Medical science and social relations/Publications (PubMed Database, update 5 June 2016)

Result and Discussion:-

The United States Supreme Court legalized abortion in the well-known *Roe v Wade* decision in 1973. The Court found that a woman's right to make her own decisions about her pregnancy deserves the highest level of constitutional protection. Women have full freedom of decision to terminate a pregnancy at least until such time as the nasciturus ability to live independently [Bitler and Zavodny, 2002].

In 2000, the U.S. Food and Drug Administration (FDA) approved the distribution and use of mifepristone for early nonsurgical abortion. Since then, states have introduced legislations targeting medication abortion. Currently, in 37 states a medical abortion must be provided by a licensed physician. However, webcam abortions are prohibited by law in 18 states of the USA (e.g. Alabama, Idaho or Wisconsin) [Guttmacher Institute, 2016]. Iowa is the first state which struck down a ban on the use of telemedicine for abortions. In August 2013, the Iowa Board of Medicine passed rule 653: Standards of Practice – Physicians who prescribe or administer abortion - Inducing drugs. This rule requires a physical examination of the patient by the physician, requires the physician to be physically present when the drug is provided, and requires the physician to make a follow up appointment at the same facility where the drug was provided. In September 2013, Planned Parenthood of the Heartland sued the Iowa Board of Medicine claiming that the board had acted out of an improper political motive. In June 2015, the Iowa Supreme Court argued that ‘rule 653 places an undue burden on a woman’s right to terminate her pregnancy’ and has rejected a state rule requiring doctors to see abortion patients in person.

On the other hand, the right to abortion, according to the treaties doesn't belong to the competence of the European Union and is regulated at the level of domestic laws. Malta is the only European country that bans abortion in all cases, and doesn't have an exception for situations where the woman's life is in danger. In Poland, abortion is regulated by the Act on Family Planning, Protection of the Human Fetus, and Conditions for Pregnancy Termination. Article 4a of the Act determines that the termination of a pregnancy performed by a physician is allowed only in cases of risk to the life or health of the woman, when the pregnancy is a result of a criminal act (the criminal act has to be confirmed by a prosecutor), or when the fetus is seriously malformed. Abortion is permitted only during the first twelve weeks from the day of the conception. In France, abortion was legalized in 1975 by Law Regarding Voluntary Interruption of Pregnancy. A large part of the existing legislation on these issues was included in the Public Health Code. French law requires that all abortions are carried out by a doctor and it is possible up to the twelfth week of pregnancy. After this period of time, it is acceptable only if two doctors from a multidisciplinary team confirm that pregnancy is a risk to the health of the women, or when the child will have serious health problems.

As regards admissibility of the use of RU 486 in France and Poland, in the first case mifepristone was invented by researchers at the French pharmaceutical company Roussel Uclaf and approved for use in 1988 [Cullen-DuPont, 2000]. In Poland, the application of this drug has never been legalized. My considerations narrowed only to the use of mifepristone as a dedicated to abortion. However, It should be noted that for example in Poland the second of the aforementioned drug - a misoprostol is available as Cytotec and is used to treat gastric ulcers.

Generally speaking, partial and vague legal regulations related to the use of telemedical systems as a treatment process in the European Union cause a number of problems, including ones related to performing remote abortions [Carlise, 2013]. Both of these analyzed countries have already legalized the possibility of using telemedicine instruments. France introduced the provisions on the treatment distance in the act entitled – 'Hospital, patient, health, territory' in 2009. The definition of telemedicine regulating this issue placed in two acts - in art. 78 of the Act and the Code of Public Health (art. L.63116.1). In Poland in 2015 it amended the Act of the Information System in Health Care, which introduces key changes to selected provisions concerning health professions. The fundamental change concerns the possibility of providing health services through information and communications technology by health professionals such as doctors, dentists or nurses.

The first time, a study by Ibis Reproductive Health - a non-profit abortion rights research organization based in Oakland - shows that they are as safe and successful as medical abortions with a doctor physically present. Only 1 percent of the women have a complication related to the medical abortions, but adverse events were not more prevalent when using remote instruments than without them. The research also shows that women chose medical abortion because of their privacy and the ability to remotely overcome the distance between doctor and patient (e.g. rural areas) [Grossman, 2013].

Conclusions:-

To sum up, analysis of the legislation and court decisions found that a large number of states of the USA prohibit the use of telemedicine tools in medical abortion. The physician must be present when the procedure is provided. Iowa is the first state which struck down a ban on the use of telemedicine for abortions. On the other hand, in the European Union there are no explicit legal provisions relating to the admissibility of the 'robot abortion' but what is worth noting, in practice, there are also no clinics supporting webcam abortions. In fact, it can't be excluded that in the future this form of expulsion of a fetus will be practiced. In France, pharmacological abortion is permissible, such as the healthcare services at a distance. In contrast to the Polish legal regulations, where medical abortion hasn't been legalized.

Current research indicates that telemedicine is a method of guaranteeing equivalent standards of patient safety, as in the case of a physician physically present with a patient. Although abortifacient pills are prescription medication, they are reducing the possibility of medical consultations and could affect the increase in the number of independent trials of medical abortion by women, thus causing a threat to their life and health.

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