



VOLONTARY TESTIMONY OF DR. BOGDAN CHAZAN

(Témoignage du Docteur Bogdan Chazan dans l'affaire)

in the case

B.B. v. Poland
(Application N° 67171/17)

Appendices to the ECLJ's Written Observations

17 September 2020

This testimony is based on a document describing the facts as early as 2014, together with reflections taken from an article published in a medical journal in the autumn of 2015 (Issues in Law & Medicine, vol. 30, no. 2).

FACTS

Facts about my patient “B.B.”

- A mother applied to the hospital, in writing, to have an abortion carried out after a conversation I had with her. After a long conversation, instead of an abortion, I offered the mother care during the pregnancy and birth in our hospital, as well as psychological assistance at a perinatal hospice. Because the mother did not change her mind, the next day I gave her a negative answer. During her pregnancy, an ultrasound examination performed at our hospital and at a center of the highest referral (Institute of Mother and Child, Warsaw) and an MRI examination suggested hydrocephalus and craniofacial defects. After delivery it turned out that part of the skull is missing and there are severe craniofacial defects. Prenatal examinations had given the boy chances for survival, which was confirmed by a child surgeon.
- I did not direct the patient to another doctor, as I do not know a list of doctors performing abortions. I would have to be calling them using a telephone book. Moreover, directing the woman there I would actually participate in organizing that abortion, which for moral reasons I could not consider. I did not administer any additional tests. We were awaiting the results of the cytogenetic test of umbilical blood that was carried out at the Institute of Mother and Child. According to the Polish law, abortion for eugenic reasons may be carried out until the child is able to survive outside the mother’s womb, which is individually assessed by a doctor. The World Health Organization (WHO) determined that the viability of the child is usually from 20 weeks of pregnancy.
- It was obvious for me that damage that abortion could cause to the mother especially within this age of pregnancy was more dangerous to her than carrying the baby to term. The mother already had pregnancy losses in the past and abortion. According to the statement of the *American Association of Pro Life obstetricians and Gynecologists*, abortion at this gestational age are associated with the higher risk of immediate death for the mother as well as a higher risk of damage to her womb, causing premature birth in subsequent pregnancies. In addition, abortions this late in the pregnancy are associated with higher risk of deep regret, including higher risk of suicide and depression requiring hospitalization than living birth. So, for the sake of the health of the mother; I made the correct clinical judgment and we stand behind his clinical judgment.
- The child was born in another hospital, by Caesarean section, with head defects more serious than had been expected (anencephaly). One professor described his appearance after birth in detail on television and called him a “monster” or “Chazan’s child”. The baby died within a couple of weeks.

Facts about abortion in my hospital

- Before I became the director, abortions were carried out at the hospital – a dozen or over 20 a year, mainly due to the diagnosed diseases or developmental disorders in the fetus. When I became the director, we stopped performing abortions, which the patients accepted.

- I employed new, well-educated and experienced personnel; the hospital was completely modernized and expanded. In a year's time, it was going to be transformed into a complete Family Health Center. The high standard of medical care in the hospital attracted many patients. The number of deliveries tripled, to 4,500 per year, and the perinatal mortality rate lowered to 4 per mille. We were successful at obtaining funds from the European Union, as well as received prizes and awards. We rarely had patients turn to our hospital with the intention of carrying out an abortion. It was a few times during the 10-year period of my work. I usually convinced them to keep the baby.

Facts about my unfair dismissal

- The Mayor of Warsaw, Ms Hanna Gronkiewicz-Waltz dismissed me from the function of the director at the Holy Family Hospital (Szpital im. Św. Rodziny) with a three-month period of notice (however, not under disciplinary, immediate procedure, so it seems that she did not find a sufficient reason). Within the period of notice I will be released from the obligation to work. I was a director of this Hospital for 10 years.
- Although I am formally the director until 31 October 2014, and at the moment I am on a 2-week vacation, I am already hurried to leave the office room where I have been working for 10 years. I also work once a week at a private outpatient clinic, and I am a lecturer at one of the universities. A liberal paper, "Gazeta Wyborcza," has traced me and published in dismay that I educate university students and I am on the list of reviewers of school textbooks at the Ministry of Education, concerning the school subject "Preparation for family life".
- I have submitted a claim to the labor court for the annulment of my dismissal from work. The justification of this decision is in my opinion very questionable. Moreover, the Mayor of Warsaw had officially announced the intention to dismiss me from work even before I was presented allegations. My comprehensive answer to these charges was rejected with a one-sentence letter.

Facts about my conscientious objection

- I decided that, if doing the abortion, I would be guilty of killing a human being, finishing off an ill child. The value of human life is the same, regardless of its size, place of living (in the mother's womb or outside it), the body shape and physical appearance.
- Twelve years ago, I was dismissed from the position of National Consultant in the Field of Obstetrics and Gynecology in Poland and from the position of head of the clinical department of obstetrics and gynecology at the Institute of Mother and Child in Warsaw for defending the life of an unborn child. As National Consultant, I expressed publicly the opinion that Down's syndrome does not meet the criteria of a severe disease threatening the fetus's life, which would justify, according to law, performing an abortion. Feminist organizations filed a complaint with the Public Prosecutor's Office, accusing me of disrespecting women's so called "reproductive rights". After the hearing, the Public Prosecutor's Office dismissed the case, but I was removed from clinical practice in the Institute.
- The Polish provisions concerning the conscience clause stipulate that a doctor or a midwife who, due to their conflict of conscience, cannot participate in performing a procedure is obliged to refer the patient to another doctor or another midwife who will perform it. It is a very strange and impractical provision. A person who wants to

exercise the right to the conscience clause is obliged to help in the performance of such acts by other persons – thus, he or she has to indirectly participate in them. As a doctor and director, I did not want to and could not fulfill this obligation. In Poland, there is no list of doctors who perform abortions and have no moral objections. I would have had to phone doctors one by one, possibly risking an allegation of obtrusiveness. Imposing such an obligation proves inadequate protection of a doctor's conscience in Poland. It is contradictory to the principle of freedom of conscience.

- I hope my example will encourage doctors to protect the life of unborn children, to reveal their opinions in this matter and to use the conscience clause (the right to refuse to carry out a medical service invoking their objections on the ground of conscience) with more confidence. I am convinced that it will awaken the conscience of many people and encourage them to care for the dignity of any human life. The Ombudsman already took the initiative to change the law regarding the necessity to direct the patient to another doctor.
- I cannot imagine the conscience clause to be withdrawn from the legal system. Such demand was presented by marginal leftist groups. This initiative has no chances in the Sejm (Polish Parliament).

ADDITIONAL THOUGHTS

The case B.B. illustrates a struggle between the civilization of life and the civilization of death. I was involved in it and would like to present some commentary about it.

A management by fear to force doctors to perform abortions

A few weeks after I refused to perform the abortion, the patient filed a complaint with the City Hall in Warsaw, which is the founding institution of the Holy Family Hospital. Immediately after, five simultaneous inspections were ordered and carried out in the hospital by various institutions, including the National Health Fund, Patient's Rights Office, the Screener for Professional Liability of the Supreme Board of Physicians and from the Public Prosecutor's Office. However, such a number of inspections performed simultaneously is contradictory to the law. The National Health Fund fined the hospital with an equivalent of about 30,000 dollars. Boards of Physicians are threatening me with revoking my license to practice my profession. The patient is demanding about 300,000 dollars from the hospital for the suffering inflicted and is threatening me with a civil lawsuit. The Public Prosecutor's Office's investigation of my case is underway. One left-wing politician announced that I will certainly go to prison.

The case was highly publicized in the media, where it became soon a leading topic. The uproar begun. I was ruthlessly attacked by politicians and journalists. The media published articles with false information, malicious comments and even assaults. It is in this atmosphere of hot social debate that the Mayor of Warsaw dismissed me from my position. The day after my dismissal from the position of the hospital director, a woman – pregnant mother – came with a referral for an abortion due to the child's illness. She was accompanied by television cameras. In the hospital, where no abortion had been performed for eight years, an atmosphere of intimidating the personnel, fear and crying set in. The midwives were told by the new director of the hospital that it was a "disciplinary requirement", "a woman's decision", "an employee's duty". The abortion did take place. After I was dismissed, emotions grew even more intense. Some people accused me of disobeying the law, causing

the suffering of the mother, who had to accompany her dying child, and causing the child's suffering. In their opinion, abortion could have shortened that suffering. They did not care about the suffering of the child during possible abortion.

Those in power have achieved their aim by using a method which can be called management by fear. It is a well-known fact that fear kills the dignity of man, who is then more susceptible to manipulation. Recently, in one Polish city, an abortion was performed by Caesarean section, in fear that performing this procedure too far into the pregnancy could involve professional or criminal liability. The mother was thus exposed to the risk involved in a surgical procedure.

In another Polish city, the court prohibited the defendant to say that in the local hospital, where eugenic abortions are performed, children are killed. It is a shame that the court did not suggest another term – one more politically correct, such as annihilation or neutralization of children. But in spite of the management by fear we should remember the phrase “Be not afraid” which John Paul II uttered at the election to the papacy. It should alleviate our apprehensions.

The government's prime minister, Mr Tusk, considered appropriate to express his opinion on my case. He said that doctors have to put their obligation to the patient and the law above their religious beliefs. He said also that regardless of what his conscience is telling him, a doctor must carry out the law. He did not take into consideration the rights of the unborn baby as a patient. I cannot say I feel distinguished by this fact. However, it proves the importance that the ruling circles attach to bioethical issues and their determination to deal – not in a liberal way, but just the opposite: ruthlessly – with those who want to practice their profession and follow their vocation in agreement with their conscience and, at the same time, with the views of 70% of the country's population.

The support received from the civil society in favor of life

The conservative media began to defend me. Statements emphasizing the necessity to defend human life were published by the Polish Episcopate and, independently from that, by many bishops. Supportive people, patients and their families organized a rally of support for me in front of the hospital, with a few hundred participants, and a Club of Hospital Friends was created. Some professors of law interpreted my point of view as a justified civil protest.

Many people expressed their support for my decision to refuse to perform an abortion and showed their compassion for my situation after I was dismissed from work. I received tens of thousands of letters and postcards, almost 200,000 declarations of support on the Internet from Poland and abroad. According to these people, who I agree with, the life and human dignity of an ill child are even more worthy of protection than those of a healthy child. A disease, suffering, and physical weakness must not deprive human life of value. Human life should be respected as it is; its value should not be graded according to its subjectively assessed quality. A belief was expressed that the mother, sometime after or perhaps soon after having spent a few weeks with her ill child, will be happy that she did not kill as she planned, but she let the child peacefully die under the care of the medical personnel of the neonatal intensive care unit (NICU). An abortion would have caused much greater suffering to the child. Demonstrations took place in front of the Polish embassies in London and Budapest.

In Poland and abroad, in the second half of the year 2014, about 35 conferences on bioethical issues, the conscience clause, abortion, euthanasia, and dignity of life took place, to which I

was invited. Television programs and press materials in Great Britain, Ireland, Australia, Germany, France, Holland, Denmark, the Czech Republic, Romania and Ukraine also appeared. I was invited to give a lecture at the conference of the International Federation of Catholic Medical Associations (FIAMC) in Manila in the Philippines.

The profession of doctor in the service of health for unborn children

In the justified criticism of paternalism in the doctor – patient relations, the doctor’s autonomy is often eliminated. Now, the doctor is expected to fulfill all of the patient’s wishes, even those not justified by his or her health-related needs. Nowadays, a model of morally and religiously neutral doctor is preferred, a doctor without a system of values and conscience, someone like a service agency carrying out orders: conceiving a child, selection, abortion, relieving pain, doing away with discomfort, shortening life.

Doctors are also used to control the demographic development, „create” people, give and execute death sentences, carry out a patient’s preferences, and as a tool of ideology. The conscience clause is most often cited in the above-mentioned medical procedures, which exceed the doctor’s vocation and the essence of the profession.

It needs to be said categorically that a doctor is not for hire for any work. The doctor is in the service of life, not death. Doctor is one of the last lines of defense against the strident anti life forces. Interrupting human life is not in keeping with the essence of the doctor’s profession. By acting against his or her conscience, the doctor loses the appropriate relationship with the patient and the appropriate relationship with himself or herself. Perhaps, for performing abortions, new specialists should be hired, and medical executioners – anthologists – trained. And doctors should be left in peace. We should also remember the words of St. John Paul II: “a nation that kills its own children is a nation without future”.



Dr Bogdan Chazan