

SUMMARY

This paper deals with the subject of civil liability for damage suffered before birth. It is a multi-threaded and interdisciplinary issue as it combines legal matters with medical sciences and bioethics. The possibility of pursuing claims for injuries at the pre-birth stage is provided for in Art. 446¹ of the Act of April 23, 1964, the Civil Code¹. The legislator explicitly indicated there that a child who has already been born may apply for compensation due to the damage suffered, which was caused to him before birth. Thus, the issues discussed in this paper cover not only the issues of tort liability, but also contract liability, although the pursuit of claims - as it results from the judicature - in most cases is based on the ex delicto liability regime.

The title of the work applies the concept of liability "for damage suffered before birth". The aim of this procedure was to emphasize the fact that this issue is related not only to the damage that occurs in the period from the implantation of the embryo in the woman's body until the delivery, but it also covers a wider intertemporal criterion. For the analysis of liability for damage suffered before one's birth, it is important to examine the provisions of the Civil Code. In particular the terms which are included in the third (liabilities) and fourth (inheritance) books, which will be relevant to civil liability for the indicated damage. The considerations have been carried out on the basis of the dogmatic and legal method. Primarily Polish regulations, relating to the issues here discussed, were examined and interpreted. As a supplement to the analysis, the normative regulations of international nature were explored as well. The achievements of the jurisprudence in the Court of Justice of the European Union and the European Court of Human Rights were taken into account. The rulings of the Constitutional Tribunal, the Supreme Court and common Polish courts have

¹ Ustawa z dnia 23 kwietnia 1964 roku kodeks cywilny (Dz. U. z 2020 r., poz. 1740).

not been ignored. Similarly, the subject literature related to this specific topic was important.

The dissertation includes an introduction, six proper chapters and summary conclusions, which constitute a comprehensive legal analysis of the civil liability for damages suffered before one's birth. The first chapter discusses the issues related to the legal status of the nunciatures. Issues and doubts linked with the understanding of the possible legal capacity of the nunciatures were also highlighted. The second chapter of this dissertation focuses on the detailed analysis of insight into the concept of harm suffered before one's birth. The third chapter deals with the issue of an adequate cause-and-effect relationship in the case of civil liability for damage suffered before one's birth. One of the key issues in the discussion of causation is referred here - namely the theory of equivalence. Chapter four presents some examples of causative events that may result in some prenatal injury. Considerations were also made regarding the responsibility for damages related to the indicated method, prenatal diagnostics (PGS) and perinatal care. An attempt was similarly made to present the possibility of causing harm in connection with the use of medically assisted human procreation (MAP) methods. Chapter five distinguishes a kind of additional category for causative events related to termination of pregnancy. Chapter six deals with the problem of wrongful conception, wrongful birth and wrongful life claims. An analysis of the justifications for making the indicated claims was presented from the point of view of the premises of liability for damages.