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Rationale for legality of aesthetic procedures

Summary

Currently, there are no legal regulations in Poland that would comprehensively regulate aesthetic procedures, and at the same time, aesthetic procedures as such have become the common phenomenon. This dynamic development of the market of aesthetic services in Poland and in other countries has justified the undertaking of scientific research projects towards the legality of conducting aesthetic procedures. The dissertation contains a number of arguments that justify the thesis of primary legality of aesthetic procedures. The problem of legality of performing aesthetic procedures includes also the issue of personal relationship (the contractor - the patient [client]), an analysis of the goals of aesthetic procedures, the subjective and objective scope of consent, the acceptable risk and the legal nature of contracts for the performance of aesthetic procedures.

The work is divided into six chapters, which contributes to the presentation of theses and the realization of research objectives.

In accordance with the structural concept, the first chapter gives insight into the history of aesthetic procedures, which results from the fact that it is generally acknowledged that aesthetic treatments as such were nonexistent in human history, allegedly constituting the phenomenon of modern times. It turns out, however, that over the centuries, dating back to prehistoric times, we can find examples of actions aimed at aestheticizing the body, which with time lead to the development of complicated techniques of beautifying appearance, including surgical procedures, as well as the use of specialized equipment and devices. Presenting this issue shows the correct temporal perspective, which nowadays is an additional justification for arguments supporting the legality of performing aesthetic procedures.

The second chapter attempts to systematize concepts associated with aesthetic procedures. The main objective is achieved by defining terms such as aesthetic treatments, aesthetic medicine, cosmetology and cosmetics. In the fifth subchapter of the second chapter, plastic surgery has been distinguished, which is related to the fact that not only reconstructive procedures, but also aesthetic procedures with no therapeutic purpose, have been performed within this surgical sub-specialization.

The third chapter is devoted to the issue of the admissibility of aesthetic procedures under Polish law, concerning the personal aspect, where the division into procedures performed for therapeutic and non-therapeutic purpose has been adopted. The issues of medical procedures as aesthetic procedures are also presented here. A legal analysis of the notion of health has been also made. In terms of personal aspect, the paper presents issues concerning legal status of the person interested in undergoing an aesthetic surgery procedure and the situation in which it is justified to give the person the status of a patient. On the other hand, the entities performing aesthetic procedures have been analyzed. Such an approach allowed for the adoption of a competence structure, where arguments for adopting the division into aesthetic invasive, minimally invasive, microinvasive and non-invasive procedures are presented, and then, each type of the procedures is assigned to particular entities authorized to perform them.

The fourth chapter analyzes the consent for an aesthetic procedure in terms of its legal nature, form, content and scope. Entities authorized to give consent to aesthetic treatment have been characterized. The issues of voluntary consent, its withdrawal, as well as the temporal limits of consent, have also been presented. The issues related to the defects in the declaration of will that may arise when granting consent for an aesthetic procedure are also discussed herein.

The fifth chapter deals with illegality of aesthetic procedures, which is presented in a comparative approach concerning various types of procedures. Such a view of the issue of unlawfulness enables to examine the limits of legality of aesthetic procedures and to present arguments that are based on the legal admissibility of procedures involving body decorating (e.g. tattooing, piercing) and sex change procedures. As a result, joint and disjoint criteria have been tested, which underpin the legality of aesthetic procedures, procedures decorating the human body, as well as sex change surgery.

In chapter six a broad analysis of obligatory relations for aesthetic procedures is carried out. This way, the issue of the legality of aesthetic procedures has been also based on provisions of the contract for aesthetic surgery. Presenting different types of contracts that can be used for aesthetic procedures has led to the assumption that such procedures might be regulated by contracts for aesthetic procedures, in particular contracts similar to a contract of mandate, less frequently a task-specific contract. The analysis focused on the consumer nature of the contracts. Finally, an analysis of consequences in the case of consent withdrawal for aesthetic surgery which affect the legal existence of the aesthetic surgery agreement has been made.

At the end of the dissertation, *de lege ferenda* proposals, as well as the summary of the research effects and conclusions are presented.

The research problem undertaken in the work concerns important aspects related to the legality of performing aesthetic procedures. Both universality and the large number of treatments performed justify the thesis that the lack of legislative solutions in this field is a major drawback, which requires some urgent intervention of the legislator. The solutions *de lege ferenda* proposed in the paper may be a starting point for implementing legal solutions much-awaited by the representatives of the aesthetic services market. The subject matter

of the PhD dissertation allowed to examine a number of issues related to the legality of aesthetic procedures under Polish law, which are increasingly provided on the market and whose dynamic development is justified not only from the economical point of view, but also by a significant increase in the social need for aestheticization of human life by creating one's own appearance.

Keywords: aesthetic procedure, unlawfulness, limits of legality, primary legality of the procedure, contract for aesthetic procedure, consent to the aesthetic procedure, non-therapeutic procedures.

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