

A comparative assessment of minors' competence to consent to treatment in Polish and English law

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ABSTRACT

The publication concerns the problem of minors' consent in regard to health services. The authors have provided legal solutions adopted in the UK and Poland. The British case law presented in the first part of the article provides that minors have the opportunity to decide on issues relevant to their own health. The ruling which made a breakthrough in automatic treatment of all children (0-16) in the same way was the Gillick case. Since then the test of actual competence has depended on whether the child is able to make a reasonable assessment of the advantages and disadvantages of the proposed treatment and the type of medical intervention, not on age. The British Medical Association has developed manuals to facilitate proceedings of assessing the ability by the physicians. In turn, the Polish legislator in relation to the consent of minors under 16 to treatment introduces only one criterion: the age. Children under 16 years of age, even if they are competent, are not asked for permission to

violate their physical integrity. Legal representatives (in the case of medical examination -- actual custodians) are solely entitled to express the consent. In turn, minors above the age of 16 are entitled to consent together with their legal representatives (the actual custodians). In the case of dual consent, in principle, both entities should actually be capable of expressing it. Reading of the provisions of Polish medical law, however, leads to the conclusion that, in fact, the competence of parents is the most important. In the case of a minor patient's (over 16 years of age) incompetence, consent is made only by his legal representative. In contrast, in the case of a minor's opposition, the doctor does not examine his actual competence, only whether the patient is acting with sufficient discernment and refers the matter to the guardianship court.

Key words: Minor, capacity, consent, medical intervention, Gillick competence, maturity, test
