

ABORTION WITHIN THE INTERNATIONAL PROTECTION OF CHILD'S RIGHTS

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Abstract

The current importance of the research topic stems from the fact that abortion has always remained a rather acute topic for violent disputes between its supporters and opponents.

The position of the states in this matter has never been and cannot become similar, at least because of the difference in scientific and technical development, the level of life and the level of medicine, religion and traditions. The recognition of a woman's right to abortion is a controversial and still unresolved issue among the global community.

The paper develops a new theoretical conceptual framework of legal study: it considers the termination of pregnancy in the context of the international legal protection of the rights of the child, and focuses on the legal protection of the unborn child.

The above framework has shaped the research goal: to analyse international legislation with regard to two controversial rights, namely the right of a woman to dispose of her body or the life of an unborn child.

The research followed qualitative methodology and used comparative legal analysis as the main tool. Legal content analysis and interpretation techniques were also used.

The research materials included basic international legal documents, both at the universal and at the regional levels, dedicated to the protection of the rights of the child. The study focused on international legal instruments in the field of human rights in order to identify the provisions on the protection of the rights of the unborn child.

The research findings made it possible to identify challenges within international legislation regarding the rights of an unborn child that the research explored and qualified.

Keywords: international law, human rights, child's rights, right of an unborn child

1. INTRODUCTION

The problem of abortion by women in the modern world has always remained a rather acute topic for violent disputes between supporters and opponents of abortion. The position of the states in this matter has never been and cannot become similar, at least because of the difference in scientific and technical development,

the standard of living and the level of medicine, religion and traditions. The recognition of a woman's right to abortion is a controversial and still unresolved issue among the global community. Therefore, the author decided to sanctify the problem in a different way, having considered the termination of pregnancy in the context of the international legal protection of the rights of the child.

1.1 Theoretical Framework

The paper develops a new theoretical conceptual framework of legal study: it considers the termination of pregnancy in the context of the international legal protection of the rights of the child, and focuses on the legal protection of the unborn child.

1.2. Research Goal

The paper aims to analyse international legislation with regard to two controversial rights, namely the right of a woman to dispose of her body or the life of an unborn child.

1.3. Research Methods and Materials

The research followed qualitative methodology and used comparative legal analysis as the main tool. Legal content analysis and interpretation techniques were also used.

The research materials included basic international legal documents, both at the universal and at the regional level, dedicated to the protection of the rights of the child. The study focused on international legal instruments in the field of human rights in order to identify the provisions on the protection of the rights of the unborn child.

2. RESEARCH FINDINGS

Today there are a sufficient number of international legal documents, both at the universal and at the regional level, dedicated to the protection of the rights of the child. But what arouses particular interest is the international legal protection of the unborn child and this is the main focus of the article.

The section explores the provisions of international legal instruments in the field of human rights in order to identify the provisions on the protection of the rights of the unborn child.

2.1. Universal Declaration of Human Rights

Let us turn to the Universal Declaration of Human Rights (hereinafter the Declaration), adopted by the UN General Assembly in 1948, the preamble of which speaks of the "equal and inalienable rights of all members of the human family," and article 3 declares that "everyone has the right to life" . And Article 7 already states that "all people are equal before the law and have the right, without any distinction, to the equal protection of the law". It is obvious that this document does not contain any specificity regarding age, which does not allow us to say that the provisions of the Declaration are applicable or, on the contrary, do not apply to unborn children. The lack of clarity in this matter is due to the fact that in 1948, when the states adopted the Declaration, the problem of abortion was not acute enough. In most countries, abortion was used in exceptional cases if there was a threat to the life of a woman or other equally weighty reasons. This Declaration was to become the basis for the conclusion of binding international treaties, which specified and supplemented the provisions of the Declaration, thereby putting into practice the general provisions of the UN Charter in the field of protection and promotion of human rights. But still the question of whether the unborn child is protected by international law is still debatable.

2.2. International Covenant on Civil and Political Rights

International Covenant on Civil and Political Rights of 1966, paragraph 5, Art. 6, states that "the death sentence is not imposed for crimes committed by persons under eighteen years of age and is not carried out against pregnant women." Indirectly, we can conclude that in this way, by consolidating this provision, the states showed concern for the unborn child, recognizing that his right to life was thus protected. Similar provisions are also widely disseminated in the national legislations of most states.

2.3. Convention on the Protection of the Rights of the Child

The preamble of this international treaty reproduces the provision of the Declaration on the Rights of the Child of 1959 stating that "a child, due to his physical and mental immaturity, needs special protection and care, including adequate legal protection, both before and after birth". It should be noted that at the time of the adoption of the text of this document, states had serious debates regarding the use of the term "child" to

unborn children. According to the 1989 Convention, the child is “every human being under the age of 18, if under the law applicable to this child, he does not reach the age of majority earlier.” Some states proposed to consider the human being as a child from the moment of birth, others - from the moment of conception. At the same time, the states, of course, understood that concretization of such a controversial moment was a “Pandora's box”, because then the problem of abortion and women's rights would automatically surface. Perhaps, therefore, the states have left this important aspect of protecting the rights of an unborn child without specifying. But at the same time, the states nevertheless noted the tacit priority of the life of the unborn child, which is supported by the absence of abortion provisions in the 1989 Convention.

The position of the Committee on the Rights of the Child (hereinafter referred to as the HR Committee), which is one of the 10 treaty bodies in the field of human rights, deserves attention in this matter. The Committee has repeatedly noted that there is no international recognition of the right to abortion, and states independently decide whether or not to restrict this right at the national level. In 1997, with respect to unborn children with disabilities, the CHR urged the participating States to abandon the legislative provisions on the legalization of abortions of disabled children. The HR Committee also noted the existence of such vicious practices in some states as the use of abortion as a method of family planning. This gives us reason to believe that the HRC also puts the lives of unborn children as a priority.

2.4. Position of International and Regional Organizations

International organizations of the UN system are also actively involved in shaping a universal approach to the problem of abortion and the protection of the rights of the child. For example, the World Health Organization (hereinafter WHO), concerned about the number of unsafe abortions, in 2003 adopted the First WHO Global Reproductive Health Strategy in order to accelerate progress towards achieving international development goals and objectives. The organization's position is to make abortion safe in those countries where it is officially authorized, but abortion without medical evidence is not encouraged, since there are no calls for states to legalize abortion. And the Cairo program, adopted at the International Conference on Population and Development in Cairo in 1994, excludes abortion as a method of family planning.

As for the Council of Europe, it adopted Resolution No. 1607 (2008) “Access to safe and legal abortions in Europe” in which it was stated that only a woman herself has the right to decide whether to have an abortion, and at the same time she should be able to effectively implement that right. This Resolution also appealed to the member states and candidate states to legalize clandestine abortions, which caused a very controversial reaction from the member states. The Parliamentary Assembly of the Council of Europe was severely criticized for the content of this recommendation, although the official position of the Assembly was that under no circumstances can abortion be considered a family planning method, but in cases where abortion does not contradict legislation, services related to abortion must be provided in the safest and most accessible conditions. ”

The Council of Europe Commissioner for Human Rights Neil Muiznieks, in turn, condemned one of the Council of Europe member states - Ireland for one of the toughest laws in the world regarding abortion (abortion is allowed only in the event of a threat to a woman's life). In his opinion, the law is not fair, in view of the fact that wealthy women can afford an abortion when they go abroad, but the poor do not, and this in turn leads to social inequality. And he urged Ireland to legalize abortion in other cases, in particular, because of violence or incest.

In 2005, several European Union member states (Germany, Poland, Austria, Slovakia, Malta and Italy) expressed their objection to proposals for research on human embryonic stem cells in the European Union, leaving this issue to the personal discretion of the member states. And in 2013, the European Parliament refused to officially recognize the right to abortion as an inalienable right of a woman.

Within the framework of the African System for the Protection of Human Rights, the African Charter on the Rights and Welfare of the Child of 1990 was adopted, which repeats the provisions of the 1989 Convention on the Rights of the Child. Art. 5 of this document proclaims that "every child has the inherent right to life", and Art. 30 stipulate that the death sentence does not apply to expectant mothers, as well as to women with young children.

3. CONCLUSION

In conclusion, it makes sense to present the position of the United Nations (hereinafter referred to as the UN). At the 32nd session of the UN Human Rights Council, the document “Report of the Working Group on the Discrimination of Women in Law and in Practice” was submitted, which calls for the UN to legalize

abortion, in view of the fact that “in some cases coercion to continue unwanted pregnancy before childbirth can be considered cruel and inhuman treatment”.

The authors of this report insist on the lifting of any restrictions on abortions, as well as demanding the abolition of responsibility for abortion doctors, abolition of mandatory “waiting periods”, and financing abortions from the state budget.

But even after this report, the UN did not change its position on abortion, preferring to leave a solution to such a complex issue as to what is the priority, the right of a woman to control her body or the life of an unborn child, at the discretion of states.

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