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Our right to life comes from being human: Perception of the child before birth**

ABSTRACT: More than 70 million abortions take place worldwide every year. There is no other topic so divisive today as the recognition of the human being as human while in the mother's womb. And there is no other issue where the world of law is so disconnected from biological reality as for the beginning of life.

Our times see a cultural dissonance where due to historical and technological developments men and women turn against each other at the expense of the conceived new life, where mothers and fathers become the number one enemy of their unborn children. Recognizing the importance of our genetic heritage might lead to the rearrangement of responsibilities for the sake of the next generation.

Although on the surface, the cultural acceptance of the unborn is not widespread in the Western world, the roots of recognizing the human being as human can be found in international documents and national legislation. While the rights of the child before birth is under attack, mothers must also be strongly protected in the vulnerable period of pregnancy.

KEYWORDS: abortion, unborn, conception, motherhood, beginning of life, human being.

Introductory reflections

Is there any other topic in the world as divisive as the recognition of the human being as human from the beginning of life? Is there any other subject on which the world of law is so disconnected from biological reality? Even feminists fighting for the 'right to abortion' do not question¹ the fact that human life begins at conception; then why is it that we cannot accept and legislate for this at a social and legal level? Present-day Western societies

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¹ Konopás, 2019.

sacrifice their children at the altar of comfort in the name of freedom,² leading to an increase in the number of their elderly fellow citizens.³ Every year, 73 million induced abortions are performed,⁴ the majority of which are carried out in welfare societies.⁵ A society where more than two-thirds of its people consider abortion acceptable⁶ is practically saying ‘no’ to its own future. This is clearly reflected in the phenomenon known as “demographic winter”.⁷ It is in this twisted context of law, biology, and culture that we ask the question: if a child is human before birth, why is his life terminable?

1. Cultural dissonance

1.1. Denying biology and human nature

Based on common sense, technological advances, ultrasound scans, and our knowledge of the genetic background of humans, we can say that we become human from the moment when two gametes meet. It is now scientifically accepted that the meeting of the sperm and the egg is the origin of new human life, a new human being.⁸ From this moment on starts the development of a human being into a child, an adult, an elderly person: whatever the label we give him is only a linguistic matter and the human system of rules associated with it, such as how we name him and what qualities, opportunities, and prohibitions we attach to him. The decisions on whether to let it (the human being) live and, if so, for how long are up to the individual and the community.

Presently, the life of a human being concealed in the womb is subject to regulations established by well-organised international fora, with loud slogans raised by people making demands, mostly at the expense of new

2 Eurostat (2023) Legally induced abortions by mother's age, Eurostat Data Browser, [Online]. Available at: https://doi.org/10.2908/DEMO_FABORT (Accessed: 28 January 2024).

3 Buchholz, 2022.

4 World Health Organization (2021) Abortion, [Online]. Available at: <https://www.who.int/news-room/fact-sheets/detail/abortion> (Accessed: 29 January 2024).

5 Johnston, 2010.

6 Ipsos, 2021.

7 United Nations Department of Economic and Social Affairs, Population Division (2022) World Population Prospects 2022, [Online]. Available at: <https://population.un.org/wpp/Graphs/DemographicProfiles/Line/900> (Accessed: 29 January 2024).

8 Condic, 2014.

lives.⁹ The world outside the womb, which often dictates what happens within the womb, has created a culture that turns a mother against her child, one where the woman is first and foremost a resource factor and not a mother, and the man responsible for this can lead a carefree and irresponsible life. As part of this emerging culture, in Hungary alone, 22,000 pregnancies are terminated every year for various reasons, among people from diverse backgrounds,¹⁰ contributing greatly to the demographic ‘ice age’¹¹ and psychological distress.¹² However, despite the abortion culture, women still want to have children. The desire for a child is reflected not only in the mental health problems that follow abortion, but also in the number of parents who are waiting for adoption.¹³

1.2. Mothers against children

The world wars brought about a transformation, which had previously seemed unimaginable, in women's lives. In the absence of men, women joined the labour ranks, shouldering a significant share of the labour market burden. A change in the role of women in the family was observed. First, the representatives of the so-called weaker sex were no longer seen as mothers, but as an integral part of the workforce, of the world of work, and this was reinforced by culture. The working woman drew appreciation from the society,¹⁴ while the social status of motherhood declined rapidly. This was also visible in the lack of family support benefits, which until then had seemed unnecessary.¹⁵ Since those fighting for equality between women and men have increasingly placed an equal sign between the two sexes, women have found themselves trapped in the ‘8 hours work, 8 hours rest, 8 hours childcare’ box. This gave entertainment barely any room to fit in between

9 World Health Organization (2022) Abortion care guideline, [Online]. Available at: <https://www.who.int/publications/i/item/9789240039483> (Accessed: 1 February 2024).

10 Nyírády, 2023, pp. 101–111.

11 MTI (2023) Demográfiai csúcs - Novák Katalin: A családpártiság legyen nemzeti minimum’, [Online]. Available at: <https://kormany.hu/hirek/demografiai-csucs-novak-katalin-a-csaladpartisag-legyen-nemzeti-minimum> (Accessed: 1 February 2024).

12 Gebeyehu et al., 2023.

13 Központi Statisztikai Hivatal, 2023.

14 Kiss Eszter (2019) Elvtársnő, a magyar szocialista építés ereibe friss vért traktorral vigyél!, [Online]. Available at: zala_projekt_mi_videkunk_elvtarsno_a_magyar_szocialista_epites_ereibe_friss_vert_traktorral_vigyel (Accessed: 1 February 2024).

15 Központi Statisztikai Hivatal, 2010.

the two shifts of work, that is, child-rearing and housework. In the Western culture, which prioritises individual well-being, entertainment and the need for personal comfort have been given precedence over and, at the expense of, child-rearing. Women are faced with a choice: either live a busy life working two shifts a day (8 hours at work, 8 hours raising children) or settle for a life of parenting with tighter belts. Far worse is the situation of a huge number of single mothers (or fathers), who have no choice between working or raising children. One does not need a university degree to realise that full-time women find it difficult to be 100% available to fulfil the maternal role. Although the situation is improving with the growing use of machines in the home and the increasing involvement of fathers who value their wives enough to take on household chores in addition to raising the children, the value of invisible work is still to be recognised. Besides, the responsibilities of motherhood and fatherhood are difficult to monetise, and perhaps it would be unwise to compensate for them financially.

It is up to the family, first, and society, second, to resolve this tension and turn the anti-motherhood and anti-fatherhood culture of recent decades into a pro-mother-father-parent culture. Since the family is the basic unit of society, as defined by the United Nations, the family is the natural and fundamental unit of society, entitled to the protection of society and the state,¹⁶ the cells and networks between them form the very fabric of society, which provides a source of support for individuals in vulnerable situations. Until this cultural shift takes place, the pressures of family, social, and workplace expectations, or the lure of comfort rather than working two shifts a day, will push women (and men) toward childlessness.

In fact, childlessness can be intentional or unintentional. Today, one out of six couples in the world who want to have children are infertile, implying that they do not conceive naturally within a year or two, despite regular attempts.¹⁷ They do not deliberately choose to be childless, at least at this stage of their lives. In the face of this, just in Hungary, my country, around 60 abortions are performed every day, including on Christmas and public holidays. These abortions, paid for by taxpayers, are performed in

16 United Nations, (1948), Art. 16.

17 World Health Organization (2023) 1 in 6 people globally affected by infertility: WHO, [Online]. Available at: <https://www.who.int/news/item/04-04-2023-1-in-6-people-globally-affected-by-infertility> (Accessed: 1 February 2024).

hospitals, ironically named after saints, terminating human life that has already been conceived in the womb.¹⁸

“Freedom” and women's empowerment is achieved at the cost of human lives. Since this serious contradiction is difficult to digest, vague phrases are used to alleviate the weight of conscience. The operation is called termination of pregnancy or abortion, and the child is portrayed as a burden that must be protected against. Doctors have started prescribing contraceptives and even post-event contraceptives (morning-after pills) – supporting a huge industry – while some components of these contraceptives deny the conceived life access to nutrients.¹⁹ Contraceptives taken after the event (conception) – obviously – do not prevent conception either. Abortion, which for decades has been called family planning, sometimes a condition for receiving international aid,²⁰ is neither about the family nor about planning, because neither is (or will be) the case. This is supported by the Programme of Action of the International Conference on Population and Development, held in Cairo in 1994, which states that in no case should abortion be promoted as a method of family planning.²¹

A way to disguise the reality (i.e. what happens during an abortion) is to dehumanise the person. A planned child is usually a wanted child and an unplanned child is often an unwanted child. In the former case, it is given a name immediately after the first positive pregnancy test, while in the latter case, it is ‘just a lump of tissue’ to be removed. However, in reality, there is no difference whatsoever between the two developing human beings. If the mother, who is carrying the life she has conceived, has no supportive environment – from the father, parents, workplace, society – from the very first moment,²² she can easily fall into a crisis, and the child can easily

18 Központi Statisztikai Hivatal (2022) *Magzati veszteségek száma és aránya*, [Online]. Available at: https://www.ksh.hu/stadat_files/nep/hu/nep0013.html (Accessed: 1 February 2024).

19 ‘They can also prevent pregnancy by changing the lining of the womb so it's unlikely the fertilized egg will be implanted’, Benisek, 2023.

20 Oas, 2016.

The current and proposed indicators for family planning within the global development agenda are based on assumptions that are inextricably wedded to an advocacy agenda, which in turn unabashedly misconstrues them in an effort to direct funds toward meeting a demand that barely exists.

21 United Nations, 1995, p. 58.

22 Szent István Intézet, 2022.

become unwanted. This is how, almost unnoticed, in the name of freedom, mothers become their children's greatest enemies.

1.3. Fathers against children

With the rise of feminism, we have created a world in which it is often assumed that fathers do not want to be involved in child-rearing. Only the mother can decide on the life of the children she conceives; the father's genetic contribution carries no obligation until birth, and perhaps not even after that. If the mother gives up her child through abortion, the father has very little say – legally speaking. He is excluded from the loop, even someone who wants to be a part of the decision, who wants to raise the child, and who wants to pursue fatherhood. This is an issue that must be addressed as soon as possible, not only to protect children, but also to protect women

1.4. Protecting our genetic heritage is our common responsibility

A clear vision is needed at both the individual and social levels on the transmission of our genetic heritage. Worldwide, the practice of selling gametes and commoditising children through surrogacy,²³ alongside the rapid pace of globalisation, has set in motion unforeseen processes that call into question parenting and children's right to know their origins.²⁴

At the individual level, while women, with the support of legislators, leave it to doctors to terminate pregnancies, men are not even consulted on the matter, nor are they obliged to face the consequences. Neither do they have to attend pre-abortion counselling, nor do they have to contribute financially to the abortion, which is 50% the result of their genetic contribution.

A woman who decides to have an abortion often faces, in addition to the physical and psychological hardship, existential insecurity (loss of her home, income, employment), threat of abandonment, and even loneliness. All this with a new life on the way. In this situation, a large number of men – who may also find it difficult to come to terms with the reality of the new

23 Frank, 2009.

24 Commission President von der Leyen, in her State of the Union speech in 2020, said that, 'If you are parent in one country, you are parent in every country'. With this statement, the Commission President referred to the need to ensure that parenthood established in a Member State is recognised in all other Member States for all purposes. European Commission, 2022.

life – just give up and run away. This leads to a situation in the woman's life where she cannot choose to say 'yes' to the new baby. A life situation can be improved, but the child's life cannot be brought back. Therefore, living conditions must be improved so that women have the opportunity and even the right to say 'yes' to motherhood. The sooner the right not to abort is established,²⁵ the fewer will be the number of victims each year.

The distribution of responsibilities around the mother (and her child) is best illustrated by concentric circles. First, the father (and mother) of the child are responsible for the new life they have created. This is followed by the families of the two parents, then by their relatives, their local community, and finally their country.

The first circle of responsibility could be strengthened by the protection of genetic heritage, through which everyone would take responsibility not only morally but also financially for their genetic heritage at an individual level. 'I have a dream' – to quote Martin Luther King – of a world where fathers no longer question their responsibility for their children, where they cannot disappear from the scene in fear or in pursuit of comfort while the child is 'invisible', where they have to pay alimony not only for children already born as a result of lengthy negotiations, but also from the very beginning, by default, for their children, their future. If there is any question about paternity, concentric responsibilities imply that the wider environment (municipality, nation) provides the material security necessary for the mother's existential stability – for roughly the first two years of the child's life – in order to keep the child alive in the womb. Further, at birth, genetic testing would verify whether the named father is liable financially or whether the mother might be liable for causing bad reputation.

It is clear that this is only a dream at the moment, but it is also clear that in the coming years a solution must be found to address the difficult situation of women who are considering abortion and who are often unable to cope with it. Until this dream comes true – just as Martin Luther King's dream was later realised – let us examine how we relate to the developing child in the womb at the national and international level.

25 European Center for Law and Justice (2022) *The Prevention of Abortion: Guaranteeing the Social Right Not to Abort*, [Online]. Available at: <https://eclj.org/abortion/eu/la-prevention-de-lavortement--garantir-le-droit-de-ne-pas-avorter> (Accessed: 3 February 2024).

2. Social perception of the unborn child

In the next section, considering the legal recognition of the human being before birth, we examine relevant sections of Hungarian and international legislation; apparently, legislators, under cultural pressure, are reluctant to voice what science has already stated: humans are human from conception. At the same time, there are clear signs that the laws will eventually 'catch up' with the established facts of science. We are on our way, but we are not there yet.

2.1. The right to life is 'inherent' rather than a right that 'comes with birth'

The human being is human from the moment of conception: human life begins at conception, and the life of the foetus shall be protected from the moment of conception, according to art. II of the Fundamental Law of Hungary.²⁶ This protection is reflected in the original text of the Convention on the Rights of the Child, while in the official Hungarian translation it is linked to birth instead of being an 'immanent', 'inherent', and 'natural' right: States parties recognize that every child has the inherent right to life.²⁷ Earlier, Tamás Lábady, a constitutional judge, wrote on the subject, in which he makes it perfectly clear that birth does not change the human nature of a human being:

Human development is a continuum from conception, it is not divided into 'subhuman' and human phases. The genetically defined criterion of 'human' thus encompasses both prenatal (foetal) existence as an integral part of the coherent, indissoluble biological process, and the dimension of existence from birth to death. The foetus is therefore biologically human, not a thing, not an object; it is a genetically completed individual: an individuum; and individual human life is the continuous process between conception and biological death. Foetal life before birth (in utero and out of utero) does not (cannot) have a separate legal status because birth is an artificial, yet arbitrary normative boundary compared to biological continuity. ... If the law could distinguish between

²⁶ Fundamental Law of Hungary.

²⁷ United Nations, 1989, Art. 6.

the postnatal and pre-natal stages of human life, and even further articulate within the latter, for example, whether or not the foetus is already capable of life outside the womb, how far or close the foetus is to birth, whether it is genetically healthy or disabled, etc., it could, in principle, make the same normative distinction, even on the basis of the same criteria (viability of the infant, postnatal time limit, quality of life, state of consciousness, health, etc.), in relation to the person already born. This would lead to an apartheid normative concept of the person.²⁸

János Frivaldszky further analyses the question and the use of words in his article 'Towards a Constitutional Concept of the Human Person':

The concept of the 'innate' right to life, which, in our view, is necessarily inherent in the right to legal personality, means, according to the correct interpretation, that it is not the society or the political power that grants legal personality, still less the right to life, but that these are – together with the dignity of the human being – an immanent part of human nature, rights deriving from its ontology, and thus they are only recognized and declared by the legislator and the states that have signed the convention. 'Innate' thus obviously means 'immanent', 'natural', 'belonging to the human essence', and not 'arising by birth'.²⁹

The Hungarian translation has yet to be corrected to reflect the original text and to make it clearer: humans are human beings from conception who are entitled to protection.

2.2. Humans cannot be 'fabricated' for research purposes

The technological revolution has vastly improved our knowledge of humans. We are able to create humans outside the womb. Current regulations allow these procedures so long as the human being created can presumably be born and raised in a family. For many, this practice raises ethical questions for which there are no widely shared clear and definite

28 Hámori, 2015 and the dissenting opinion of the judge: Lábady, 1998.

29 Frivaldszky, 2010.

answers. One thing is certain, however: no human being should be “fabricated” for research purposes. The Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, signed in Oviedo on 4 April 1997, in its art. 1, states in the formulation of its purpose that Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine.³⁰

It also puts the interests and welfare of human beings above social and scientific interests: the interests and welfare of the human being shall prevail over the sole interest of society or science.³¹

The already conceived human being is given additional protection in the Convention, which is much needed in the present ‘over-medicalised’ times. The Convention prohibits the creation of embryos for research purposes in what is commonly referred to as “IVF”: Where the law allows research on embryos in vitro, it shall ensure adequate protection of the embryo. The creation of human embryos for research purposes is prohibited.³² The Oviedo Convention clearly promotes protection of human life from conception. However, much is required to be done at the national level to implement the ideas underlying these legal sections.

2.3. Human beings are not commodities – embryos cannot be commercialised

A video series exposing the practice of foetal organ harvesting, released in 2015, caused a huge stir around the world.³³ Interviews with executives of one of the largest and most influential abortion providers revealed details of how the foetal organs are harvested. The globally circulated footage has certainly given impetus to the legal changes that are still underway in the United States today. But what about European regulations?

A lawsuit brought by Greenpeace against Oliver Brüstle resulted in a judgement by the Court of Justice of the European Union in 2011. In its

30 Council of Europe, 1997.

31 Ibid., Art. 2.

32 Ibid., Art. 18.

33 The Center for Medical Progress (2015) Human Capital: Planned Parenthood's Black Market in Baby Parts' Documentary Web Series (Episode 1), [Online]. Available at: <https://www.centerformedicalprogress.org/human-capital/documentary-web-series/> (Accessed: 3 February 2024).

ruling, it recognises the dignity of human embryos and respect for that dignity, and consequently prohibits their commercial use: the human body at the various stages of its formation and development cannot constitute a patentable invention [...] It follows that the concept of ‘human embryo’ within the meaning of Article 6(2)(c) of the Directive must be understood in a wide sense.³⁴

According to the judgement, there is no boundary in time that can be used to divide human life, the development of a human being inside or outside the womb.

From the moment of conception, when a human being is called an embryo, through foetal development, to birth and beyond, a human being is a member of the human family. In order to ensure consistency in the legislation, in the light of this judgement and the related directive, all human ovocytes are considered to be human embryos from the fertilisation stage onwards.³⁵

This is also in line with Recommendation 1046 of the Parliamentary Assembly of the Council of Europe, which states, human embryos and fetuses must be treated in all circumstances with the respect due to human dignity.³⁶

We can thus observe that protection of human life beginning at conception, whose human dignity must be treated with respect, is also reflected in international documents.

2.4. Human beings are not commodities – the ban on surrogacy

At the beginning of the pandemic, images of a Ukrainian surrogacy company appeared on the Internet, assuring foreigners using their services that their children would not suffer shortages until they could come to pick them up after the closures.³⁷

34 Case C -34/10, *Oliver Brüstle v. Greenpeace e.V.*, 18 October 2011.

35 ‘uses of human embryos for industrial or commercial purposes [...] shall be considered unpatentable’, Official Journal of the European Communities, C 229, 22 July 1998. Date of document: 22/07/1998.

36 Parliamentary Assembly of the Council of Europe (1986) Use of human embryos and fetuses for diagnostic, therapeutic, scientific, industrial and commercial purposes, Recommendation 1046, [Online]. Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15080&lang=en> (Accessed: 4 February 2024).

37 BioTexCom (no date) Center for Human Reproduction, Blog. Available at: <https://biotexcom.com/surrogacy-babies-are-waiting-for-their-parents/> (Accessed: 08 November 2024).

Surrogacy refers to the agreement between the client and the woman (surrogate mother) in which the surrogate mother carries the newborn child in her womb and hands it over to the client shortly after the birth of the child. The practice of surrogacy raises serious concerns about the human dignity and fundamental human rights of both the newborn and the surrogate mother.³⁸

For the surrogate mother, the practice of surrogacy violates her right to autonomy, as her body and herself are subject to the will of others. The content of surrogacy arrangements dehumanises women and commodifies their fertility, exploiting them for money or other gains. Poverty, lack of income prospects, discrimination, and other economic factors push members of the weaker sex into the role of surrogate mothers. These factors raise questions about the ‘validity’ of the role of surrogate mothers in a power structure that is already imbalanced.

A further concern is that surrogacy contracts also commodify the child, who is sold on the ‘surrogate market’.³⁹ It is true that in all surrogacy agreements, the mother gives up the child according to the prior plan with the contractor (parental rights to unborn children cannot be given up before birth).⁴⁰ By this action, the child not only loses the birth mother but is also exposed to the risk of statelessness and the possibility of being eventually rejected by the contracting party. Surrogacy arrangements make it difficult to know the identity of the biological parents; there are often secrets surrounding the birth, revealing these secrets can often lead to mental health difficulties.⁴¹

Surrogacy contracts subject the child and his or her rights to the wishes of the contracting parties, overshadowing the relationship with the birth mother and her family, making it impossible to raise the child in the biological family.

Most women who apply to become surrogate mothers come from vulnerable backgrounds, are usually poorly educated, and are financially dependent. Women who struggle financially have no real freedom of choice or are not on an equal level in terms of financial differences with the parties that employ surrogates. We cannot forget the further children of surrogate

38 ADF International, 2019.

39 Ibid.

40 ‘the consent of the mother, where required, has been given only after the birth of the child’, Hague Conference, 1993.

41 Burke, 2021.

mothers. There is not enough evidence on the impact of surrogacy on the other children of the surrogate mother in her own family.

Unlike in the case of adoptions, surrogacy contracts do not have any screening processes to determine the suitability of the prospective parents to raise the child. This puts the child at additional risk.

Despite this, in recent years, there have been attempts to regulate surrogacy internationally. In 2014, the Parliamentary Assembly of the Council of Europe voted on a report that wished to regulate and institutionalise surrogacy.⁴² The majority of MPs – including Zsolt Csenger-Zalán, Zsolt Németh, and Bence Tuzson from Hungary – voted against it, as surrogacy undermines the human dignity of the woman carrier as her body and its reproductive function are used as a commodity and the practice of surrogacy also disregards the rights and human dignity of the child by effectively turning the baby in question into a product.⁴³ By its very nature, surrogacy is contrary to human dignity.

2.5. Discrimination in the womb - Eugenics in practice

According to art. II of our Fundamental Law human dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception.⁴⁴

Every human being – including people with disabilities – has the right to life. In our country, the law does not allow doctors or parents to choose between human lives; we must accept the child with his or her abilities. Different tests carried out at different foetal stages should not be used for eugenics, the unspoken genetic breeding. Yet, the practice of selection involving the destruction of human life continues and persists in several European, including Hungarian, gynaecological institutions.

As per our law on the protection of foetal life, the practice of eugenics appears in the term ‘teratological damage’, in a very dissonant way to its title: Pregnancy can be terminated up to 20 weeks – 24 weeks if the diagnostic procedure is delayed – if the probability of genetic, teratological damage to the foetus reaches 50%.

A human being developing in the womb is also a human being, and his dignity is inviolable under our Constitution. By protecting the unborn

42 Parliamentary Assembly of the Council of Europe, 2016.

43 Parliamentary Assembly of the Council of Europe, 2014.

44 Ibid.

child, we include the possibility of life outside the womb. This is particularly true in cases where a child is placed from a ‘wanted’ status to an ‘unwanted’ status as a result of a medical diagnosis.

It should be noted that medical diagnoses are made by some kind of image technology, which does not give 100% certainty. In addition, quoting Dr Tibor Verebely: many life-threatening conditions can be corrected by medical intervention immediately after birth, leading to up to 100% recovery within the first few years of the child's life.⁴⁵

The previously mentioned Oviedo Convention of the Council of Europe, ratified by Hungary as well, states that any form of discrimination against an individual on the basis of his or her hereditary genetic make-up is forbidden.⁴⁶

One of the most violent forms of discrimination is to take a person's life. Abortion is a clear example of this discrimination.

3. Protection before birth

3.1. Protecting the child before birth is the obligation of the state

The state has an obligation to avoid abortion and to guarantee the right to avoid abortion.⁴⁷ This duty stems from the protection of the family, motherhood, and human life.

One of the most important international documents mentioned earlier, which plays a key role in international conventions, is the Universal Declaration of Human Rights, which starts its preamble with the recognition of ‘the dignity and equal and inalienable rights of every member of the human family’.⁴⁸ Human rights therefore apply not only to people who have already been born, but also to those who are to be born, as stated in the preamble to the Convention on the Rights of the Child: the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.⁴⁹

45 Gyermekjogi Napok 2. Budapest, 30 November 2023–01 December 2023.

46 Council of Europe, 1997.

47 European Center for Law and Justice (2022) The Prevention of Abortion: Guaranteeing the Social Right Not to Abort, [Online]. Available at: <https://eclj.org/abortion/eu/la-prevention-de-lavortement--garantir-le-droit-de-ne-pas-avorter> (Accessed: 3 February 2024).

48 United Nations, 1948.

49 United Nations, 1989.

Any harm, including the taking away of the life of the child, contradicts this language. States are similarly bound by paragraph 7.24 of the Programme of Action of the International Conference on Population and Development (ICPD), which states that governments should take appropriate steps to help women avoid abortion, which in no case should be promoted as a method of family planning.⁵⁰

Hence, governments should help women avoid abortion, not facilitate it. One person's situation in life (which can be improved) is not comparable to another person's life (which cannot be given back once it has been taken away.) Therefore, protective fortifications must be built around mothers to avoid abortion.

3.2. The right to avoid abortion

Mother and child are united as one before birth. It is probably beyond human reason to comprehend the harshness of separating mother and child surgically during this fragile period.

The right to avoid abortion is based on the fact that abortion is violence against the woman and the child. A woman undergoes an abortion, not because of the pregnancy – which is only a triggering factor – but because of particular circumstances, and the same woman, placed in other circumstances, would not necessarily resort to abortion. Abortion is thus the result of a combination of circumstances for which society is in part responsible.⁵¹

This basically means that every woman must be protected from violence caused by circumstances that force her to take this step. It is a question of not only protecting women from the actual execution of an abortion, but also preventing the risks that put them in a situation that leads to abortion. Preventing abortion involves helping pregnant women to resist any pressure to undergo an abortion or coercion for them to do so. To claim, like an official truth, that abortion is an individual freedom, is an ideological blindfold that separates the question from its real causes and in the end, leads to making the woman feel guilty, since this violence apparently results from her own will, her own freedom. If abortion is but a freedom, an individual choice, then the woman is fully responsible. It is to leave her alone in the face of a violence: both guilty and victim, in an inextricable

50 United Nations, 1995.

51 Puppinck, 2022.

psychological situation, when this violence is largely generated, structurally, by society.⁵²

The psychological burden of her own responsibility in this situation can become extremely difficult for her to resolve. The woman becomes the victim, while the violence is shaped by society. The decision to have an abortion is not a woman's freedom, but a combination of pressures from her immediate and wider environment. Looking at the question from a psychological, economic, or demographic angle will not allow us to remain indifferent. Our national creed and our fundamental law call us to do so: We hold that we have a general duty to help the vulnerable and the poor. Hungary shall strive to provide social security to all of its citizens. Every Hungarian citizen shall be entitled to assistance in the event of maternity, illness, invalidity, disability, widowhood, orphanage and unemployment for reasons outside of his or her control, as provided for by an Act.⁵³

3.3. Redesigning prevention

Most people consider programmes on sex education and use of contraceptives as ways to avoid abortion. However, the experience of the past years has proved that the currently widespread sex education programmes, which focus on contraception and sexual life, have failed. Not only did they not achieve their goals, which was to reduce teenage pregnancies and sexually transmitted diseases, but in some communities, they even led to an increase in both.⁵⁴

Avoiding abortions, especially among young people, and reducing women's social and economic vulnerability is an increasingly pertinent and urgent issue. The basis of prevention should be individual responsibility, and school education programmes should focus on this aspect as well.

Closing remarks

The consumerism that is becoming increasingly evident nowadays, the increased expectations from doctors, the surreal worldview comprising of rational elements, and the anonymous power of technology that is increasingly penetrating our intimate sphere in the field of medicine have

52 Ibid.

53 Fundamental Law of Hungary, Art. XIX.

54 Weed and Ericksen, 2017.

led to the fact that fate and randomness can often become a legal issue, and economic considerations measure against human life and dignity.⁵⁵

We live in this age within this social structure. Looking back, we can make judgements on slavery or anti-women practices of previous societies, but what judgement will the generations following us pass on our society? What crumbles a society that systematically says no to its own future, its children, and motherhood? Our clear vision is obscured by the mainstream of our culture, the shackles of our own experiences and comfort, or the burden of expectations placed on us. It is a big question whether our society in its current state is ready to acknowledge the unborn child as a human being. If we do not take steps to protect life now, a life-affirming society in the future on the territory of the current Europe will certainly do it.

55 Navratyil, 2019, p. 50.

Bibliography

- [1] Benisek, A. (2023) ‘*Birth Control Pills*’, WebMD. [Online]. Available at: <https://www.webmd.com/sex/birth-control/birth-control-pills> (Accessed: 2 February 2024).
- [2] Buchholz, K. (2022) ‘Where Most People Die by Assisted Suicide’, *Statista*, 18, [Online]. Available at: <https://www.statista.com/chart/28130/assisted-suicide-numbers/> (Accessed: 29 January 2024).
- [3] Burke, R., Lavery, Y. O., Katznelson, G., North, J., Wesley Boyd, J. (2021) ‘*How Do Individuals Who Were Conceived Through the Use of Donor Technologies Feel About the Nature of their Conception?*’ Center for Bioethics, Harvard medical School, Biotechnology, [Online]. Available at: <https://bioethics.hms.harvard.edu/journal/donor-technology> (Accessed: 4 February 2024).
- [4] Condic, M. (2014) ‘*A Scientific View of When Life Begins*’, [Online]. Available at: <https://lozierinstitute.org/a-scientific-view-of-when-life-begins/> (Accessed: 29 January 2024).
- [5] Frank, Z. B. (2009) ‘*Google Baby*’ *Documentary*, [Online]. Available at: <https://rmwfilm.org/films/google-baby/> (Accessed: 2 February 2024).
- [6] Frivaldszky, J. (2010) ‘Az emberi személy alkotmányos fogalma felé – a méhmagzat életjogának tesztjén keresztül’, in Schanda B., Varga Zs. A. (eds.) *Láttelek közjogunk elmúlt évtizedéről*, Budapest: PPKE JÁK, pp. 19–51, [Online]. Available at: <https://jak.ppke.hu/uploads/articles/16324/file/Frivaldszky.%20Az%20emberi%20szem%20C3%A9ly%20alkotm%20A1nyos%20fogalma%20fel%20C3%A9.pdf> (Accessed: 3 February 2024).

- [7] Gebeyehu, N. A., Kirubel, D. T., Kelemu. A., Yibeltal, A., Belete, B. A., Getachew, A. A., Biresaw, W. A., Dagne, A. S. (2023) 'Global prevalence of post-abortion depression: systematic review and Meta-analysis', *BMC Psychiatry*, (23), 786; <https://doi.org/10.1186/s12888-023-05278-7>.
- [8] Hámori, A. (2015) 'Beszéd Lábady Tamás tiszteletére, a Gaizler Gyula-émlékérem átadása alkalmából', *Iustum Equum Salutare*, 2015/4, pp. 139-156. [Online]. Available at: https://epa.oszk.hu/02400/02445/00038/pdf/EPA02445_ias_2015_04_09.pdf (Accessed: 3 February 2024).
- [9] Johnston, R. (2010) *Maps of percentage of Pregnancies Aborted Worldwide - by Country*, [Online]. Available at: <https://www.johnstonsarchive.net/policy/abortion/mapworldabrate.html> (Accessed: 29 January 2024).
- [10] Konopás, N. (2019) 'Hol kezdődik az emberi élet?', *Mandiner*, [Online]. Available at: <https://mandiner.hu/belfold/2019/12/hol-kezdodik-az-emberi-elet> (Accessed: 21 January 2024).
- [11] Lábady, T. (1998) 'Dr. Lábady Tamás alkotmánybíró különvéleménye' in 48/1998. (XI.23.) AB határozat. [Online]. Available at: <https://public.mkab.hu/dev/dontesek.nsf/0/DAE998E2349BE7D2C1257ADA005258A0?OpenDocument> (Accessed: 3 February 2024).
- [12] Navratyil, Z. (2019) *A gyermek, mint „kár”?* Jogtudományi Monográfiák 11., Budapest: Pázmány Press.
- [13] Nyírády, A. (2023) 'Abortusz helyzetkép', *Kapocs*, 6(2/3), pp. 101-111; [Online]. Available at: https://epa.oszk.hu/02900/02943/00092/pdf/EPA02943_kapocs_2023_2-3_101-111.pdf (Accessed: 1 February 2024).
- [14] Oas, R. (2016) 'Is there an Unmet Need for Family Planning?', *The New Atlantis*, 2016/49, pp. 61-76. [Online]. Available at: <https://www.thenewatlantis.com/publications/is-there-an-unmet-need-for-family-planning> (Accessed: 2 February 2024).

- [15] Puppinck, G. (2022) ‘The obligation of the States to prevent the recourse to abortion’, *European Center for Law and Justice*, [Online]. Available at: <https://eclj.org/abortion/french-institutions/prevenir-le-recours-a-lavortement> (Accessed: 4 February 2024).
- [16] Szent István Intézet (2022) ‘*Veletek az első pillanattól!*’, [Online]. Available at: <https://szentistvanintezet.hu/veletek-az-első-pillanattól-mathe-zsuzsa-kezdemenyezese> (Accessed: 2 February 2024).
- [17] Weed, S. E., Ericksen, I. H. (2017) ‘Re-Examining the Evidence: School-Based Comprehensive Sex Education in the United States’ *Institute for Research and Evaluation*, [Online]. Available at: https://www.institute-research.com/CSEReport/CSEReport-Final_9-13-17.pdf (Accessed: 6 February 2024).
- [18] ADF International (2019) *Surrogacy: The Commoditization of Children and Women Brief*, [Online]. Available at: https://adfinternational.org/wp-content/uploads/2021/08/ADF_INT_Surrogacy_Brief_20180315.pdf (Accessed: 4 February 2024).
- [19] BioTexCom, *Surrogacy: babies are witing for their parents*. [Online] Available at: https://www.youtube.com/watch?v=xPdRx_L96C0 (Accessed: 4 February 2024).
- [20] Council of Europe (1997) *The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine*, [Online]. Available at: <https://www.coe.int/en/web/bioethics/oviedo-convention> (Accessed: 3 February 2024).

- [21] European Commission (2022) '*Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood*', COM(2022) 695 final, 2022/0402(CNS) [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0695> (Accessed: 3 February 2024).
- [22] Hague Conference (1993) *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, [Online] Available at: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69> (Accessed: 4 February 2024).
- [23] Ipsos (2021) '*Global views on abortion in 2021*'. [Online]. Available at: <https://www.ipsos.com/sites/default/files/ct/news/documents/2021-09/Global-views-on-abortion-report-2021.pdf> (Accessed: 29 January 2024).
- [24] Központi Statisztikai Hivatal (2010) '*Családtámogatás*', [Online]. Available at: https://www.ksh.hu/szamlap/eletunk_cst.html (Accessed: 1 February 2024).
- [25] Központi Statisztikai Hivatal (2023) '*Az örökbefogadás helyzete*', Statisztikai tükör, [Online]. Available at: <https://www.ksh.hu/docs/hun/xftp/stattukor/orokbefogadas.pdf> (Accessed: 1 February 2024).
- [26] Parliamentary Assembly of the Council of Europe (2014) '*Human Rights and ethical issues related to surrogacy*', Motion for a resolution, Doc. 13562. [Online]. Available at: <https://pace.coe.int/en/files/21092/html> (Accessed: 4 February 2024).
- [27] Parliamentary Assembly of the Council of Europe (2016) '*Children's rights related to surrogacy*', Report, Doc. 14140. [Online]. Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23015&lang=en> (Accessed: 4 February 2024).

- [28] United Nations (1948) *Universal Declaration of Human Rights*, [Online]. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Accessed: 1 February 2024).
- [29] United Nations (1989) *Convention on the Rights of the Child*, [Online]. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (Accessed: 3 February 2024).
- [30] United Nations (1995) *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994*, New York: United Nations Publications, [Online]. Available at: https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/icpd_en.pdf (Accessed: 2 February 2024).