

PAPER DETAILS

TITLE: Cross-Cutting Issues on The Right To Life in The Context of Law

AUTHORS: Sevinj JABRAYILOVASHENER

PAGES: 117-138

ORIGINAL PDF URL: <https://dergipark.org.tr/tr/download/article-file/701596>

Cross-Cutting Issues on The Right To Life in The Context of Law

Hakemli Makale

Sevinj JABRAYİLOVA-SHENER

Senior Human Rights Adviser, Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan.

İÇİNDEKİLER

I. Right To Life Vs. Right To Health	119
A. Right To Life In Under Echr.	122
B. Abortion is a Human Rights Issue Under International Law.	126
II. Ethical Issues in Prenatal Screening.	127
III. Abortion As a Crime From The Perspective of the Legislation of Azerbaijan.	130
Conclusion	134

ABSTRACT

Cross-cutting issues in relation to the legal status of a fetus and the reproductive rights of woman are some of the most discussed issues. This paper legally analyzes the elements of the status of the fetus by focusing on the capacity of the personality of an unborn child, which depends on the complete and live birth of an infant, the time limit of the life that is vague within the European Convention on Human Rights, and the national laws of Azerbaijan, where medicine has just recently started progressing

Key words: abortion, reproductive rights, legal status of fetus, criminal abortion, complete and live birth, international and national law

ÖZET

Ceninin hukuki durumu ve kadının üreme sağlığıyla ilgili kesişen konular sıkça tartışılan konulardır. Bu hukuki tahlillere dayanan makalede ceninin hukuki durumunun öğelerinden olan doğmamış çocuğun tam ve sağ doğumuna bağlı olarak gerçekleşen kişilik haklarından, Avrupa Temel İnsan Hakları Sözleşmesinde muğallak olan hayatın zaman sınırından, tıbbi hukukun son zamanlarda gelişmeye başladığı Azerbaycan mevduatından konu edilmektedir.

Anahtar Kelimeler: Kürtaj, üreme sağlığı, ceninin hukuki durumu, yasadışı kürtaj, tam ve sağ doğum, uluslararası ve ulusal hukuk

Introduction

In this paper I will present the right to life from the context of law, especially the health law while this right from the very beginning is considered disputable among the scholars, lawyers and health professionals. In the first part of the paper, I would rather talk about the definition of this right focusing on the European law and international law, namely the United Nations legal documents. The second part will explore the cross-cutting issues of the right to life with the right to health from the perspective of the right to reproductive right of women. The main purpose in here is that whether the right of fetus must be prevailed over the health of mother. The third part of the paper is about the overall situation of protecting and ensuring the right of fetus and of mother and how abortions, including pre-selective are regulated at the national legislation of Azerbaijan.

The right to health as one of the inherent rights of a human being has been stated in a number of international and regional legal documents, including the 1946 Constitution of the World Health Organization (WHO), the 1948 Universal Declaration of Human Rights, the Convention on Economic, Social and Cultural Rights, and the European Social Charter. Unfortunately, as a result of a negligent approach to social, economic and cultural rights in comparison to civil and political rights, they are mostly recognized as 'soft law.' While drafting international treaties in the UN system, civil and political rights (*hereafter "CP rights"*) have been somehow separated from economic, social and cultural rights (*hereafter "ESC rights"*) due to the Cold World War and internal conflicts in various States because as a result of mass violations of rights of people to life, prohibition of torture, ill-treatment, prohibition of any discrimination, arbitrary detentions, extrajudicial killings, mass gang rapes, including military rapes and etc., all States had mainly focused on how to override those abuses; and consequently, the Western states have approached equalization of ESC with CP rights with extreme sensitivity because the latter would be undercut,¹ despite the fact that, according to the preamble of the WHO, the right to health has been considered to be an absolute and inherent in any person, without any kind of discrimination², such as failing to protect the land right of indigenous peoples in a view to collectively develop, or denying them to enjoy their right to education, no single right can be realized with ignoring the other one, for example, in order to improve the right to freedom of opinion and expression, person must be fully provided with the right to education as well as right to self-development or so right to life requires eliminating causes of infant and maternal mortality³, preventing criminal abortions, excluding serious risks to the health of a mother. As well

1 Linda M. Keller, (2001), Indivisibility of Economic and Political Rights, in *Human Rights and Human Welfare*, Vol.1:3, A Review of Development as Freedom by Amartya Sen. New York: Knopf, 1999 (Paperback Edition: Random House, 2000). 366 pp., p. 10

2 UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 31, The Right to Health*, June 2008, No. 31, available at: <http://www.refworld.org/docid/48625a742.html> [accessed 25 June 2015]

3 UN Human Rights Committee (HRC), *CCPR General Comment No. 6: Article 6 (Right to Life)*, 30 April 1982, available at: <http://www.refworld.org/docid/45388400a.html> [accessed 29 January 2016]

as EU institutions consider the economic nature of rights not to deprive them of the characteristic of being the fundamental rights and, therefore, both should be equally protected and promoted.⁴ Thus, separation rights in two fronts considering them main and "secondary level" rights, also not taking international binding provisions seriously by the Member States can be resulted with the violation of wider closely linked to each other infringements.

Furthermore, according to scholars, the 'right to health' is an abstract concept because it does not directly refer to the 'right to be healthy'⁵ as such and does not fall under the notion of 'eternal'. Somewhere this can be naturally, forcibly and/or voluntarily cut down as happens during constant torture, physical abuse with severe complications, or by induced and spontaneous abortions. The preamble of the WHO, defines the definition of the right to health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."⁶ Later, this definition has been extended in Paragraph 1 of the 1978 Alma Ata Declaration during the International Conference on Primary Health Care, where it was recognized that the concept of health covers not only a state of physical, mental and social welfare, but also the absence of illness and disability, as a fundamental right altogether.⁷

Since reproductive rights became a subject of human rights debate during the UN International Conference on Human Rights held in 1968, the non-binding Proclamation of Tehran has been adopted whereby parents have the right to freely choose the number and spacing of their children. Nevertheless, this issue remained open despite the fact that some states accepted this document as binding, whereas others prefer approaching this document as soft law. Later, for the regulation of issues of reproductive and sexual rights of women, the UN Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women have both clearly stated that the right to health covers the right to reproductive health as well as sexual rights.⁸

II. Right To Life Vs. Right To Health

Does a person have a right to die or must he continue to live even if he suffers from the consequences of an incurable disease or injuries, just because he is 'entitled' to an absolute 'right to life.' The right to life as a fundamental right prevails over the other rights because they are directly linked to the former and cannot exist independently.

4 Sybe A. de Vries, *Balancing Fundamental Rights with Economic Freedoms According to the European Court of Justice*, in *Utrecht Law Review*, Volume 9, Issue 1 (January) 2013, pp. 169-192; p. 177

5 Brigit Thoebes, *the Right to Health, Economic, Social and Cultural Rights: Textbook*, Asbjorn Eide, v.d. (ed.), Dodrecht/Boston/London, Martinus Nijhoff Publishers, (Second revised Edition), 2001,p. 170

6 Supra at 2

7 Sultan Tahmazoglu Üzeltürk, *Anayasa hükuku açısından sağlık hakkı (Ulusal ve Uluslararası boyutuyla)*, Legal Yayıncılık San. Ve Tic. LTD.ŞTİ, İstanbul, Türkiye, (2012), p. 3, ISBN: 978-605-4354-57-3

8 UNGA Report, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/61/338, para. 13

The promotion of this right fully necessitates sustainable improvement of the health system, biomedicine, bioethics, drug therapy, etc. Even so, new technologies give rise to new problems in medicine and transform the understanding of traditional values. Considering that everyone has the right to life and to health, the legal aspects in the promotion of those rights is a major goal of the new methods in medicine. However, unfortunately, not all diseases have a happy ending. Fatal endings stem from various reasons, including severe and incurable disease, late treatment, atypical complications of the disease, etc. on the one hand, or action/inaction of the physician or malpractice, on the other hand. Such fatalities, complications or mistakes made by doctors in their professional capacity must be criminally investigated. Imagine that a patient died as a negligent of a doctor. What legal responsibilities may be subjected? If a patient dying due to the mistake of a health provider, the most likely criminal charge for this conduct is gross negligence manslaughter as it was stated in the *R.v Adomako* case, when the appellant-anesthetist could not explain why the oxygen pipe was disconnected during the operation that caused to death of the patient. So, the Court upheld that any involving breach of duty is sufficient evidence to consider the conduct as gross negligence manslaughter if the *Bateman test* was proved, according to which elements such as the defendant owed a duty to the deceased to take care; the defendant breached this duty; the breach caused the death of the deceased; and the defendant's negligence was gross, that is, it showed such a disregard for the life and safety of others as to amount to a crime and deserve punishment.^{9, 10} Furthermore, if a doctor operated a patient without his consent can also faced with battery.¹¹ However, such crimes are not always reported and the law enforcement bodies can address the issue only after the crime has occurred.

Apart from this, during an assisted suicide - one that is performed with the participation of a physician and a patient - a person is killed, but at his/her own request. Taking into account that some schools of thought are of the opinion that assisted suicide or other forms of euthanasia are acts of mercy where such 'killers' ought not be indicted (formally charged with a crime),¹² even though euthanasia is not countenanced by the law in the vast majority of states and as it is held by the Court in the *People v. Kevorkian* that it violates the due process clause of the Fourteenth Amendments of the United States Constitution.¹³

9 *R.v Adomako* [1995] 1 AC 171; [1994] 3 WLR 288, [1994] 3 All ER 79, 99 Cr App R 362, HL

10 *R v Bateman* (1925) 19 Cr App R 8, (1925)? Cox 33, [1925] All ER Rep 45, CCA

11 *Cobbs v. Grant*, 8 Cal. 3d 229, 502 P.2d 1, 104 Cal. Rptr. 505 (Cal. 1972)p. 240; para. 38

12 Norman St. **John-Stevas**, (2002). *Life, Death and the Law: Law and Christian Morals in England and the United States*, BeardBooks Washington D.C. p.264

13 Belgium, the Netherlands, France, Germany, Switzerland, Ireland, Luxembourg, Canada, Mexico, Colombia, and India are notable exceptions where assisting suicide may be legal under some circumstances. See at <http://www.theguardian.com/world/2014/sep/16/belgium-convict-granted-right-to-die>; André Janssen, (2002), *The New Regulation of Voluntary Euthanasia and Medically Assisted Suicide in the Netherlands*, Int J Law Policy Family (2002) 16(2): 260-269. at <http://bjgp.org/content/bjgp/60/573/263.full.pdf> [last accepted 22.08.2015]

Considering the law's opinion dealing with suicide is complex then to understand further inciting or aiding to suicide, a number of issues must be borne in mind. What is suicide? What is inciting or aiding to suicide? When can aiding to suicide be prosecuted? Regarding the definition of suicide it must be noted in prior that it is very complicated to select the right chose between the controversial understandings of suicide. So, there are two main differences between legal definitions of suicide. The first is about omissions: if a person refuses to be treated because s/he wants to die, is this can be considered suicide?¹⁴ The second is whether to act knowing that death will result, but who is not acting for the purpose of dying, is committing suicide. For example, a prisoner went on a hunger strike and died as a result did not commit suicide, maybe because the hunger striker did not intend to die but just would like to draw attention on himself to deal with his application. Suicide is a conduct committing by a suicidee knowingly that a death will happen but he does not do that purposefully.¹⁵

Concerning the assisting suicide it must be underlined that it depends on an intention. If a doctor directly participating in the process of death by injecting him/her overdose lethal medicine or helping a patient to disconnect the oxygen pipe is simply aiding a patient to die. But a crime and investigation programs describing a scene of suicide in details that help someone to commit suicide will not be guilty of the offence because (presumably) TV Channel did not intend to assist or encourage a suicide.

If the person takes his own life, he is committing suicide (perhaps a sin but maybe not a crime), but any doctor or other person who assists a person committing suicide can be held criminally responsible for the death either in the second degree as an accomplice for helping people commit suicide or in the first degree for the murder of another because they administered a fatal dose themselves without the consent of a patient.¹⁶ In some cases, they may be considered principals if the patient has not given his consent.¹⁷

A person who terminally ill and ho has made a free and informed choice to commit suicide has a right to do so and a right to receive assistance. However, that right may be interfered with if the interference is justified under Article 8 (2). In *Purdy* case, the Court held that even if the society cannot instruct the person what to do with his own life. But it is justifiable for society to insist that they value the life of a person if he does not.¹⁸ In addition, decision to commit suicide is a protected under Article 8 of the European Convention on Human Rights (hereinafter "ECHR") protects the right to

14 Lanham D (1990), the Right to choose to die with dignity 14 Crim L J (16) 401-30

15 Michael Cholbi (2007), Self-manslaughter and the forensic classification of self-inflicted death, in J Med Ethics 2007;33:155-157

16 TERRY BRANTLEY (1996), People v. Kevorkian: Michigan's Supreme Court Leads the Way in Declaring No Fundamental Right to Assist Another in Suicide, in Mercer Law Review Vol. 47, (1996), 1191-1199, at 1192, see at <http://www2.law.mercer.edu/lawreview/getfile.cfm?file=47410.pdf> [last accessed 25. 08.2015]

17 Ibid.,p.261,

18 R (Purdy) v DPP (2009) UKHL 45, [68]

private and family life, which makes it clear that decision about suicide falls under the Convention. However, there are limitations can be applied to this provision. This is the permission to interference under paragraph (2) of Article 8.

A. Right To Life In Under Echr

A right to life is a fundamental right, which allows to a person to fully enjoy his other rights. This fundamental right, which is enshrined in international legal norms and constitutions of many states, means preventing any harm to the existence of a person through protection of physical and mental integrity.¹⁹ In order to well understand the precise definition and value of a human life it is necessary to look through the comprehensive inquiry related to how the world recognize the right to life. Here is needed some investigations. First is that taking into account a broad principle of the right to life so this investigation would involve a general inquiry of positive law. For example to see how different religions such as Christianity, Islam, and etc. and philosophical teachings define the human life; second, step would be a broad comparison of provisions of national constitutions.²⁰ Finally, third step might involve investigating criminal procedure laws and judicial decisions how this right is interpreted as well as applied under those normative.²¹ Besides that the right to life is enumerated in number of international legal norms, only American Convention on Human Rights guarantees the exceptional character to this right defining it being inherited from the time of conception. So, that Convention defines this right as an inherent to a person based on natural law principles, which means the right to life is fundamental that is given to a person from his birth.²²

Nonetheless, Article 2 of ECHR does not exclude that this right can be restricted only by a proportionate excessive use of force to prevent escaping from lawful detention, to defense someone from any violence and to take lawful actions during soothing a public disorder. In addition, the right to life can be also used against the person himself, because this definition refers not only to the protection of one's own physical integrity from any other person, but also the taking of one own's life or to consent to a third party taking one's life. Having the consent of a person to terminate his life requires an actual killing, which is recognized as a criminal offence,²³ whereas a suicide is an act of person killing himself that should not be considered to be a crime or a violation of a fundamental right.

19 Mehmet Emin **Özgül**, (2010), *Yeni Tıbbi Yöntemlerin Hukuka Uygunluğu*, On İki Levha Yayıncılık, İstanbul, Türkiye, p. 95

20 Linda J. **Mad**, *General Principles of Human Rights Law Recognized by All Nations: Freedom From Arbitrary Arrest and Detention*, 10 CAL. W. INT'L LJ. 272,301-02 (1980)

21 M. Sherif **Bassiouni**, (1994), *Human Rights in the Context of Criminal Justice: identifying international procedural protections and equivalent protections in national constitutions*, in *Duke Journal of Comparative & International Law*, Vol. (3), pp.235-297, p.248

22 *Ibid.* 20, p. 254

23 Marc **Groenhuijsen**, (2007), *Euthanasia and the Criminal Justice System*, in *Electronic Journal of Comparative Law*, Vol. 11.3, p. 21

Apart from equating euthanasia with suicide, which is not correct because suicide is committed by a person on a voluntary basis but euthanasia by definition must be performed by another person – this could be without the consent of a patient, based on the decision of a medical professional to terminate medical treatment due to a lack of progress in the patient's situation or to stop pain. Referring to euthanasia as an 'assisted suicide' should not be justified when performing 'passive euthanasia' with a patient in a condition where s/he is unable to decide whether or not to terminate his/her life (even if performed with the consent of family members), cannot be considered to be a voluntary termination of a patient's life. Opponents of euthanasia argue that to permit one person to kill another is a violation of a crucial principle- the sanctity of life.²⁴ Mercy killing must not encourage killing mercy, because most of the time patients prefer euthanasia due to lack of alternative care methods, such as palliative care that can control the treatment, because palliative care is an active and creative care for dying.²⁵ If terminally ill patients or their next to kin would know that there is an alternative cure, they would not want to die.²⁶ Euthanasia should not be a way to ease the solution of the existed problem in the capacity of a person suffering from incurable disease.

Despite the fact that many Western states, namely the Netherlands, Belgium, Luxembourg, the US States of Oregon, Washington²⁷, Vermont and California, as well as with some limitations in Sweden, Switzerland and Mexico have legalized assisted suicide, this does not affect other states, especially Muslim States, those of population is mainly following Islam, like Turkey, Azerbaijan, and others, as well as Islamic States, those are governed by Sharia Law, namely Iran, Saudi Arabia and etc. where suicide in any form is seen as non-Islamic and equivalent to murder.²⁸

Nonetheless, according to the European Court of Human Rights (ECtHR), the right to life is not an absolute right, but is a fundamental right that has some justifiable limitations.²⁹ As Article 2 of ECHR states "*[e]veryone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law...*

Under this article, the right to life has been proclaimed as one of the main

24 Jonathan **Herring** (2014), *Medical Law and Ethics*, Ch.9 Dying and Death, p.519

25 **Saunders** C. Terminal care in medical oncology. In: Begshawe KD, editor. *Medical oncology*. Oxford: Blackwell; 1975. pp. 563-76.

26 Zyllicz Z, **Finlay** IG.(1999), Euthanasia and palliative care: reflections from The Netherlands and the UK. *J R Soc Med*. 1999;92:370-3

27 J. Pereira, Erratum Legalizing euthanasia or assisted suicide: the illusion of safeguards and controls, in *Current Oncology*—Volume 19, Number 3, June 2012; *Curr Oncol* 2011;18:e38-45. Published online April 4, 2011; corrected after publication May 14, 2012.

28 Božidar **BANOVI** and Veljko **TURANJANIN**, (2014), *Euthanasia: Murder or Not: A Comparative Approach*, in *Iranian Journal of Public Health*. 2014 Oct; 43(10): 1316-1323, see at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4441884/> (last visited on 25.06.15)

29 Factsheet of the European Court of Human Rights on the right to life, July 2013, http://www.echr.coe.int/Documents/FS_Life_ENG.pdf

fundamental rights because if one is arbitrarily deprived of his right to life, all other rights would also be violated. The concept of 'everyone' in that legal norm is vague and requires an expanded understanding because the provision does not clearly state to whom exactly this life belongs. There is no reference to indicate the subject, such as 'human,' 'animal' or 'legal person'.

Article 2 also does not refer to the fact that the "right to life" means also the "right to die." So, neither euthanasia nor suicide would fall under this Article and only in limited circumstances can a person can be intentionally deprived from his life, as e.g. police acting in self-defense or defending a someone form an harmful action of another.³⁰

Furthermore, this article establishes the right to life and imposes additional protection as a duty on a state. The article does not only impose an obligation to protect this right and refrain from any act to deprive one of one's life, but also to ensure its protection by the national legal system, that is, it would imply an obligation for the state to prohibit the taking of life and to determine the criminal responsibility for the deprivation of a person's life.³¹

Some thoughts in Article 2 are paradoxical due to absence of a discussion of the scope of this right, because the Convention does not provide any reference to the beginning or end of the life. However, due to differing perceptions regarding the beginning of the life by states, the ECtHR considers this determination to be within the 'margin of appreciation' of State Parties³² since in *Vo.v France case*, the Court could not give reasonable justification to its decision about whether a fetus can be protected under Article 2, nor impose obligation on States where abortion on request is tolerated. Simply, to determine whether fetus has a right to life or not remained up to Member States.

Equally, the Convention apparently also does not protect the life of a fetus,³³ as we have seen in *Vo.v France* where the Court became effete to explain how a human being at embryonic stage entitles to human rights that are equal, inalienable and inherent and only holding that human embryos are beginning to receive some protection in the light of scientific investigation,³⁴ where under the international human rights law, principles of non-discrimination and equality some protection can be considered as equal protection.³⁵

Unlike Article 4 of the American Convention on Human Rights (ACHR), which proclaims that the right to life begins from the "moment of conception,"³⁶ Article 2 of the

30 Neil **Mooney**, (2005), *Health and Social Care*, Heinemann Educational Publishers, p. 25

31 *Makaratzis v. Greece*, (App. No. 50385/99) (2004) Judgment 20.12. 2004 [Grand Chamber], para. 29, p. 20

32 Jakob **Pichon**, *Does the Unborn Child Have a Right to Life? The Insufficient Answer of the European Court of Human Rights in the Judgment Vo v. France*, in *German Law Journal* Vol. 07, No. 04, (2006), pp. 439-440

33 Francisco **Forest**, Martin **Stephen** and et.al, (2006), *International Human Rights and Humanitarian Law: treaties, cases and analysis*, Cambridge University Press, USA, First edition, p. 333

34 *Vo v France* ECtHR, judgment of 8 July 2004, no. 53924/00, para.84

35 Rita **Joseph**, (2009), *Human Rights and the Unborn Child*, Ch. 9, Martinus Nijhoff Publishers, Leiden, Boston, p. 210

36 Article 4, 1969 American Convention on Human Rights, Pact of San Jose, Costa Rica

Convention does not determine the time when the right to life begins. Also, as was noted above, the term “everybody” has to be clarified so that it would be clear if this provision would be considered to grant the right to life to a fetus; until today, the right to life of a fetus has been reviewed only in relation to abortion. In the case of *Paton v. the United Kingdom*, where the husband claimed that termination of the ten-week pregnancy of his wife on medical grounds violated the right of the fetus under Article 2 of the Convention, the Human Rights Commission (hereinafter “the Commission”) pointed out that the fetus did not fall under Article 2 of the Convention, and that the term “everyone” could only apply from the moment of birth.³⁷ However, the Commission did not formulate a precise answer to the question as to whether or not Article 2 protects the unborn child, and if the fetus had a right to live in comply with the Article, with all its limitations.

This issue was approached in the case *Vo v. France* from the aspect of whether the life of the fetus can be considered in isolation from the mother’s and/or whether killing of the unborn child could lead to criminal proceedings. Thus, according to the decision of the Commission, the fetus cannot be considered to be a “human” until it was born and the fetus was not a victim of an international homicide under French law.³⁸

Studies done up to now on the different abortion laws have found that an unborn child is not recognized as “a person” directly protected under Article 2 of the Convention, and if an unborn child has the right to life, then it is apparently restricted in favor of the rights and interests of the mother.

Furthermore, if an unborn child is a human and has the right to life from birth, the abortion of this embryo will directly violate the principle of equality. Likewise, Robert Jorge argues³⁹ that an “equal moral status” belongs to all human beings regardless their age, size or stage of development. From this perspective, the fetus has the right to life because it is a ‘potential human being’. According to that argument, the unborn child inherited the right to life from the very earliest stage of his physical integrity inside the uterus.⁴⁰

As previously noted, the question of when life begins is within the competence of every State due to two reasons: first, question of the protection has not been resolved in some States because of approaches to abortion. As I think that the evolution of human society mainly can be classified into two approaches: 1) the conservative approach and 2) the liberal approach. The conservative approach is based on religious and ethical values, but even if the religion is against abortion, depending on these approaches, they are further divided into two groups: the radical conservative approach, such as

37 Sharon **Detrick**, (1999), *A Commentary on the United Nations Convention on the Right of the Child*, Martinus Nijhoff Publishers, Hague, the Netherlands, p.135

38 Bernadette **Rainey** and et. al,(2014), *Jakobs, White and Ovey*, Oxford University Press, Sixth Edition, p.166; see also at A. **Plomer**, *A Faetal Right to Life?, The Case of Vo. v. France (2005)*,5 *HRLR* 311

39 Quoted in *Debating the Moral Status of the Embryo*, (July-Aug. 2014), Harvard magazine, Available from <http://harvardmagazine.com/2004/07/debating-the-moral-statu.html> [Accessed on July 24 2014]

40 Quoted in <http://www.bbc.co.uk/ethics/abortion/child/potential.shtml> [Accessed on June 07 2014]

pursued by Catholics, Buddhists, and the relatively conservative approach as advanced by the Orthodox religions, Protestants and Islam.

In the last few years, medical ethics policies and the sources of these policies became the generally recognized attitude in interpreting this dilemma with respect to Hippocrates and his guidance to doctors. Beneficence, non-maleficence, autonomy and justice are at the core of modern ethical principles as stated in the Hippocratic Oath - the seminal document on the ethics of medical practice.⁴¹ According to Lawrence, the principle of utility which requires us to contribute to make good to others is a manifestation of the universal norms of fundamental ethics. Moreover, scholars like "Beauchamp and Childress have stated that there are two principles of beneficence, positive beneficence and utility." The standard of positive beneficence asks that ethical operators give to others, while the rule of utility obliges ethical specialists to balance advantages and shortfalls to create the best result.⁴²

From the time of Hippocrates until today, the principle of non-maleficence has been accepted as a fundamental principle of medical ethics.⁴³ While the principle of non-maleficence is at the forefront of all medical practice, then as in abortion, there may be arisen cross-cutting issues such that one's beneficence can cause another's maleficence. During pregnancy, the absolute need in beneficence is that both the mother and the fetus should be in harmony. According to the pro-abortionists, in order to achieve this absolute beneficence, if the mother wants to have an abortion, then the fetus has no choice. Whereas, anti-abortionists argue that if because of the absolute beneficence of the mother, the outright beneficence of the baby is violated, it would be unfair to the latter. Therefore, in the context of the absolute beneficence, the two sides - pro-abortion and anti-abortion - cannot reach a consensus.⁴⁴

Pregnancy, as a result of the rape or disability of the fetus does not entail a change to the balance between the beneficence and non-maleficence because the fetus is innocent. If such a fetus is unwanted then until his birth, the corresponding authorities can make an agreement with the mother, encouraging her to save the life of the fetus provided that after the birth, the baby will be under the protection of the government.

B. Abortion Is a Human Rights Issue Under International Law

As it is mentioned above, the right to health as a fundamental right of person has enshrined not only in majority of legal documents at regional level, but also at international level as, namely in the UN system. Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), was the first binding international treaty covering

41 Erdem **Aydın**, Nermin Ersoy, Tıp Etiği İlkeleri, T Klin Tıbbi Etik, 1995, 2-3, s. 52

42 Dana J. Lawrence, 2007, The Four Principles of Biomedical Ethics: A Foundation for Current Bioethical Debate, Journal of Chiropractic Humanities, p. 35

43 Erhan **Büken**, Nüket **Örnek Büken**, Yasal ve Etik Yönleriyle Türkiyede Tıbbi Malpraktis, Ed. Aşegül Demirhan Erdemir ve diğ. Çağdaş Tıp Etiği, Nobel Tıp Kitapevleriç İstanbul 2003, p. 163

44 Kamil **Sarıtaş**, 2012, Kürtajın Ahlakiliği Sorunu/ Ethicality Problem of Abortion, International Journal of Social Studies, Vol. 5, p.587-608, p.590

the issue of family planning. At the 1994 International Conference on Population and Development, 179 Member states agreed that free and informed decision-making about pregnancy and childbirth is a fundamental right.

Furthermore, in 1999 the UN General Assembly recommended the governments to ensure the safe abortion if that is a lawful at the national level.⁴⁵ Several UN Human Rights treaties, including the Universal Declaration of Human Rights, articulate the right to health. And the majority of international human-rights expert committees, in their observations to specific governments, have identified unsafe abortion or lack of access to safe abortion as a human-rights issue.

The Covenant on Economic, Social and Cultural Rights (CESCR) guarantees the right to the highest attainable standard of physical and mental health, with equity and non-discrimination. In 2004, the UN Special Rapporteur on the Right to Health made explicit the need for abortion services so that governments fulfill the right to health, writing that "where abortions are legal, they must be safe: public-health systems should train and equip health-service providers and take other measures to ensure that abortions are not only safe but accessible," echoing earlier UN proclamations.

The Article 10 (2) of the CESCR states that "[s]pecial protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits." Analyzing this norm, it is easy to see how the Convention imposes obligations on the State members about providing special protection for women, while the second sentence of the provision does not undermine the rights of working mothers. However, the Convention pointed out the inadequate sexual and reproductive health services,⁴⁶ condemned criminalization of abortions when a mother's life is at risk or when the pregnancy was the result of rape or incest,⁴⁷ and especially highlighting the risk of deaths by clandestine abortions.⁴⁸

III. Ethical Issues in Prenatal Screening

By the development of medical methods, the most women wished to know whether their pregnancy is progressing normally, because through such pre-natal testing it is possible to have information about sex, any abnormalities and genetic disorders of a fetus. So, even health professionals can forecast the diagnosis to maintain or terminate the pregnancy because this phenomenon directly linked with the ensuring the reproductive rights of women and the right to life of fetus.

45 Iqbal H. **Shah**, Elisabeth Åhman and Nuriye Ortayli, "Access to Safe Abortion: Progress and Challenges since the 1994 International Conference on Population and Development (ICPD)", *Background Paper No. 3*, p. 13, [http://icpdbeyond2014.org/uploads/browser/files/access_to_safe_abortion.pdf last access 10, 11.2015]

46 CESCR, Concluding Observations: Kazakhstan, E/C.12/KAZ/CO/1, (7 June 2010), para. 133; Nicaragua E/C.12/NIC/CO/4, (28 November 2008), para.26

47 CESCR, Concluding Observations: Mauritius, E/C.12/MUS/CO/4, (8 June 2010), para. 25

48 Ben **Saul**, David Kinley and Jaqueline Lowbray, (2014), *The International Covenant on Economic, Social and Cultural Rights: Commentary, cases and materials*, Oxford University Press, London, Great Britain. p. 798

Furthermore, pursuant to international legal norms, everyone enjoys the right to dignity, privacy, equality and autonomy (control over own life). Ethical principles are intertwined with prenatal testing; those seeking and providing it often face controversial decisions and ethical dilemmas. What happens if saving the life of an unborn child violates the right of the mother to reproductive health, private life and the right to choose? The fundamental human rights values of dignity, privacy, equality and autonomy are often relevant to the way a woman is treated during pregnancy and childbirth. Therefore, before screening or testing pregnancies for underlying genetic disorders, it is important to consider the ethics of a given situation. Genetic diagnosis may affect decisions about maintaining or ending a pregnancy, place stress upon the family, and/or provide information that may only be pertinent years into the future.

Ideally, couples considering prenatal diagnosis meet with a genetic counselor before diagnostic testing. Even though from the perspective of reproductive rights, a woman enjoys the full right to have an abortion or to decide what to do with her own body, so pregnancy is a state where the woman and the fetus have a special relationship.⁴⁹ A woman is free to enjoy her right to choose against medical advice and cannot be forced to accept treatment which is said to be in the unborn child's interest.⁵⁰ In some situations prenatal diagnosis may be of little, no or questionable benefit especially if parents would not alter their decisions to maintain or voluntarily terminate a pregnancy and/or if treatment is not available for the given disorder. Medical professionals should be aware that it may not be necessary, or ethical, to diagnose prenatally adult-onset conditions. Moreover, provision of a specific diagnosis may affect the individual's access to healthcare and ability to maintain health insurance for years to come. It is important to explore these and other issues in depth before physically and socially invasive tests are performed. Hospital ethics boards may provide valuable insight for specific cases.

Of course today, in the globalized world, economic misbalance, demographic growth and many social problems may cause married couples or single mothers to opt for selective abortion in certain circumstances. Therefore, pre-natal testing that includes ultrasound, amniocentesis and *chorionic villus* sampling, are aimed at diagnosis of various diseases or genetic defects *in utero* so that the option of selective abortion may be offered to the prospective parents.

The International Conference on Population and Development, Program of Action states that “[R]eproductive rights embrace certain human rights that are already recognized in national laws, international laws and international human rights documents and other consensus documents. These rights rest on the recognition of the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right

49 Hafize **Öztürk**, “Abortus ve etik sorunlar,” içinde: Etik Bunun Neresinde (yayına hazırlayan: Ankara Tabip Odası Etik Bürosu), Ankara Tabip Odası Yayınları, Ankara, 1997, s. 77; Altıparmak ve ark., “Abortus ve etik,” s. 81.

50 Factsheet of the UK Organization Birthrights: protecting human rights in childbirth on Human Rights in maternity care, Available from <http://www.birthrights.org.uk/advice/factsheets/> [Accessed on 19 June 2014]

*to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents."*⁵¹

It should be highlighted that a lack of access to adequate health service, maternal mortality, gender-based violence and absence of family planning drive the violations of reproductive rights. All these factors are integral elements of the right to health when imagining that victim of one of the abovementioned factors has no access to medical care.

Apart from this, from the perspective of portability and durability in medical methods, diagnostic and medical ultrasound is very important in the promotion of patient's rights. This method is often used for prenatal sex-selective abortion, which is "an act of violence" on the grounds of gender, as stated in the Beijing Platform of Action, along with the ensuring the right to the reproductive health for woman in general.⁵² Of course, the woman must have regular medical check-ups during the pregnancy in order to anticipate any future complications, both in the fetus or the woman. Similarly, in order to prevent one of such complications and to intervene at an early stage, nowadays, in medicine, two-dimensional ultrasound is used in order to show the mobility of the fetus. This is crucial, particularly in detecting of childhood cerebral palsy (CCP), which encompasses a group of non-progressive and non-infectious conditions, which cause slight, moderate, and severe deviations in neurological development. This cerebral damage mainly occurs prenatally and today early intervention in cases of neurological damage is successful, due to such an ultrasound.⁵³ Nonetheless, if such a development will inform a pregnant mother and a doctor about the possible complications of fetus, this could lead to abortion in the majority of cases, which on one hand violates the right to life of an unborn child if that fetus is considered to be a human, but on the other hand will give the mother the right to choose whether to keep or abort this fetus. So, this sparks contradictions between human rights, such as the right to reproductive health, the right to choose (family life) and the right to private life in general.

Moreover, as indicated above, as a result of such pre-natal testing, the woman or both parents may prefer abortion due to the sex of the fetus, particularly in relation to a female child, in this case, which is a discriminatory act against that female child. This should be noted that such selective abortions are in progress mainly in Eastern countries (e.g. India, Bangladesh) and in some Muslim countries, including Azerbaijan, where women are involuntarily subjected to pre-natal testing because the parents or mainly the male members of the family prefer a male child. Arguably, if the fetus is to

51 UNFPA, The Danish Institute for Human Rights and OHCHR (2014), *Reproductive Rights are Human Rights: A handbook for national Human Rights Institutions: United Nations* [<http://www.ohchr.org/Documents/Publications/NHRIHandbook.pdf> last access 09 November 2015]

52 Rita **Joseph**, (2009), *Human Rights and the Unborn Child*, (2009), Martinus Nijhoff Publishers, Chapter 13, p. 266

53 Sanja Tomasovic and Maja Predojevic, *4D Ultrasound - Medical Devices for Recent Advances on the Etiology of Cerebral Palsy*, (Online Article), Available from <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3564175/> [Accessed on 21 June 2014]

have the right to life, and the mother has the right to a private life, in this case, there is a contradiction here where the right of the mother to obtain the abortion trumps the fetus's right to life - both cannot exist together.

Despite all of the possible negative impacts of the ultrasound or screening on the mother or the fetus, it also has positive sides, as while seeing the little embryo a mother can change her mind to terminate the pregnancy, so, ultrasound images not always badly influence on a woman's decision.⁵⁴ Also, ultrasound is no longer a diagnostic test applied only to just a few pregnancies regarded, on clinical grounds, as being "at risk," but is used in the majority of pregnancies as an integral part of antenatal care."⁵⁵

Nonetheless, the psychological and negative impacts of this technology have not been studied thoroughly taking into consideration the increasing mechanism of antenatal and obstetric services.⁵⁶ In many countries, such as Azerbaijan, Turkey, Saudi Arabia, the commercial application of ultrasound scanning during pregnancy is widespread, offering "baby look" and "fun ultrasound" in order to "meet your baby" with photographs and home videos. Feminists like Petchesky contends that pre-natal testing allows women a greater freedom of choice and enhances reproductive autonomy,⁵⁷ whereas the unrestricted use of such tools can cause childhood cancer⁵⁸ and lead parents restrict life of by selective abortion.

IV. Abortion As A Crime From The Perspective of The Legislation of Azerbaijan

The basic principle of the equality of rights and freedoms of all citizens is enshrined in the Article 24 of the Constitution of the Azerbaijan Republic. According to the Article 25 of the Constitution, "(1) *Everyone is equal before the law and the courts. (2) Men and women have equal rights and freedoms. (3) The State guarantees the equality of everyone's rights and freedoms irrespective of race, nationality, religion, language, sex, origin, property or official status, or membership of political parties, trade unions or other public organizations. Limitations of human and civil rights and freedoms on the grounds of racial, ethnic, religious or linguistic affiliation, sex, convictions and political*

54 Kathy Waldman, (2014 Jan.), *Does Looking at the Ultrasound Before an Abortion Change Women's Minds?*, see at http://www.slate.com/blogs/xx_factor/2014/01/09/ultrasound_viewing_before_an_abortion_a_new_study_finds_that_for_a_small.html [Accessed on 21 June 2014]

55 **Campbell** S. (1980), *Diagnosis of fetal abnormalities by ultrasound*, in Milunski A (ed) *Genetic Disorders and the fetus*. Plenum, New York, pp.431-467

56 A.E. **Reading** and S. **Campbell**, (1982), *The psychological effects of Ultrasound Scanning and in Pregnancy*, in *Advances in Psychosomatic Obstetrics and Gynecology*, Springer Berlin Heidelberg, pp.371-373;

57 Petchesky R. P. (1984) "Abortion and Woman's Choice" Northeastern University; see also Melissa Masden (1992), *Pe-Natal Testing and Selective Abortion: The Development of a Feminist Disability Rights Perspective* in *Women With Disabilities Australia (WWA) online journal*, at <http://wwda.org.au/issues/eugenic/eugenic1995/masden1/>; [Accessed on 21 June 2014]

58 **Henderson** JT, **Harper** CC, **Gutin** S, et al. *Routine bimanual pelvic examinations: practices and beliefs of US obstetrician-gynecologists*. *Am J Obstet Gynecol* 2013; 208:109.e1-7; see at <http://www.ajog.org/article/S0002-9378%2812%2902070-4/pdf>; [Accessed on May 03 2014]

or social affiliation are prohibited." Although the new Criminal Code provides the punishment for violations of the right to equality, including gender equality under the Article 154,, the term "discrimination against women" has remained absent. Since the adoption of the new Criminal Code in 2000, Article 154 has never been used.⁵⁹ So, consequently, women in Azerbaijan are hindered by the gap between their legal situation and their real situation.⁶⁰

Committee on Economic Social and Cultural Rights adopted General Comment 14 on the right to the highest attainable standard of health at its 22nd Session, in 2000. With regard to gender, the Committee recommends that States integrate a gender perspective in their health-related policies, planning programs and research in order to promote better health for both women and men." As well as with regard to women and the right to health, the Committee notes in paragraph 21 that "to eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span." The same paragraph states: "A major goal should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence." Moreover, the Committee stresses that "it is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights."⁶¹

The level of maternal mortality during labor remains high. There is an explicit connection between poor health, reduced life-expectancies and population residing in the zones of ecological risk.

The induced termination of a pregnancy is one of the medical-social factors negatively influencing the health of women. It is not surprisingly that the WHO considers abortion in most countries to be a serious problem to the reproductive health of women,⁶² because abortion leads to maternal mortality, infertility and prenatal pathologies. Furthermore, abortion raises the risk of birth of physically and/or mentally ill babies in the future inasmuch as during induced abortion, that is, with medical interference, the wall of the uterus is injured by medical instruments and this creates additional problems for the future pregnancies of that woman.⁶³ Abortion also increases the rate of miscarriages. ⁶⁴The situation in Azerbaijan in this regard remains unchanged, because an increase in abortions is an additional factor in the country. Sixty-three percent of women at the age from 15 to 44 years old have had an abortion in Azerbaijan. The

59 CESCR, Violence against Women in Azerbaijan: Alternative Report, p. 5, [:///D:/46c190290.pdf]

60 Ibid. p. 6

61 Supra 44. p. 33

62 WHO, Safe Abortion: technical and policy guidance for health problems, Second Edition, 2012, p.18

63 Yuelian Sun,Yan Che., Ersheng Gao, Jørn Olsen and Weijin Zhou, (2003),Induced abortion and risk of subsequent miscarriage, in Oxford Journals,, [online article], <http://ije.oxfordjournals.org/content/32/3/449.full> [last visited 26.08.2015]

64 Ibid.

number can increased since many women, without desiring publicity, abort illegally⁶⁵, because Azerbaijani law does not deem abortion a crime, but a doctor can be punished criminally order for the facilitation of an illegal abortion.⁶⁶

According to the State Committee for Family, Women and Child Affairs, the rate of abortions increased to 11 thousand per year in the last nine years and only 2070 women who had abortions within the last three years were 19-year-old women. According to the information women aged 25-29 mostly obtain abortions in Azerbaijan.⁶⁷

An even more dangerous scenario becomes clear while taking into account the abortions performed outside of health establishments. Abortion increases the rate of maternal mortality as well. According to the State Statistics Committee, in 2000-2013 years, the rate of maternal deaths in the country during the pregnancy, birth and confinement were as in the table below:⁶⁸

Years	Persons	Per 100 000 born alive
2000	44	37.6
2005	41	28.9
2007	54	35.5
2008	40	26.3
2009	37	24.3
2010	26	15.7
2012	26	14.9
2013	25	14.5

The current Criminal Code of the Republic of Azerbaijan classifies crimes enshrined in the Chapter VIII as "Crimes against life and health." These include: first, crimes against life, second, crimes against health, and third, crimes against life and health. Illegal abortion is proscribed in Article 141 of the Criminal Code in the group of crimes threatening life and health.⁶⁹

65 Supra 44, p.34

66 Art. 141 of the Criminal Code. The Criminal Code punishes "illegal abortions, namely abortions performed by a physician outside hospitals or other medical establishments or by an individual without higher medical information"

67 Aynur Ramazanova, (2014), Abortion Rates in Azerbaijan, Social Science In The Caucasus, <http://Crrc-Caucasus.blogspot.com/2014/05/Abortion-Rates-In-Azerbaijan.html>

68 The table was taken from the Official Report of the State Statistics Committee

69 Article 141, Criminal Code of the Republic of Azerbaijan, 2000

Generally, during the Soviet period, there were three relevant criminal laws in Azerbaijan. Illegal abortion was considered to be a criminal offence under Article 115 of the third Criminal Code approved by the Law of Azerbaijan, dated 8 December 1960. In the first part of the article, abortion by the doctor outside of the hospitals or health institutions, abortion by a person without a proper special medical knowledge, a recurrence of the previously mentioned two criminal offences or causing long-term detrimental side effects to health, or to death, were assigned criminal liability.

After independence, the government adopted the new criminal law, which entered into force in 2000. Illegal abortion was dealt with in Article 141 of the Criminal Code, which also provided criminal responsibility for offences such as a doctor performing abortion outside of a medical institution (141(1)); abortion by a person who does not have special medical education (141(2)); and imprudence resulting in serious harm to health (141(3)) and death of the victim. (141(4))

While analyzing the provisions of both the criminal or relevant legislative acts on health, it can be said that those legal norms still have to be improved in order to ease the interpretation for lawyers and physicians. Neither Article 141 in the Criminal Code nor Article 30 of the Law on the Protection of Health (according to which the induced termination of pregnancy can be done upon the consent of the mother until 12th week of the pregnancy, whereas according to social causes such abortion may be done until 22th week of the pregnancy) provide total guidance. In the context of the Turkish Civil Law, a fetus refers to the baby, who possesses the right of capacity at the very moment of conception until live birth, without having yet a personality.⁷⁰

Personal rights are very important in the context of human rights. Such rights are interlinked to the sanctity of a person. These rights include the autonomy of a person over his own body. Personal rights are associated with the right to life, honor and dignity, physical integrity, liberty, and right to private life.

The right to life is one of the fundamental rights according to Article 27 of the Constitution of Azerbaijan. The question about whether to grant the fetus the right to life or not has been discussed for many years but still remains unresolved.

The Criminal Code fails first to resolve the notions of complete and live births, considering the fact that legally speaking, an infant enjoys the capacity of personality from the very moment of "complete expulsion or extraction of a fetus from its mother, irrespective of gestational age and regardless of whether the umbilical cord has been cut or the placenta is attached" and consequently, does not recognize such a distinction.

The Criminal Law and the Law on the Health do not address the notion of "moment of conception" as well, as the personality of the live-born infant, who has capacity or personality, starts from the moment of conception, personality is gained retrospectively because according to the *Corpus Iuris Civilis* and Part 1.5.7. of the *Digesta*, the fetus is protected by the law to a level equal to that of the live born infant.⁷¹

70 Article 28, Turkish Civil Code, Law N. 4721, dated 7/12/2002

71 Aydın Ünver, **Tülay**: *Ceninin Hukuki Konumu*, Xii Levha Yayıncılık, İstanbul 2011, s. 17

Apart from this point, the termination of the pregnancy later than prescribed by the Law on Health is unlawful. Social reasons for abortion are determined by the Cabinet of Ministers. Thus, according to such a list of social reasons, that includes severe disability of the husband, death of the husband during the pregnancy of the mother, a court decision about the deprivation or restriction of parental rights, unemployment of a woman or her husband, detention of the woman or her husband, pregnancy out of wedlock, divorce during the pregnancy, rape-related pregnancy, having many children (five or more); having a child with limited health capacities, having a status of refugee or internally displaced person, absence of an apartment, housing in dormitory, and living in another's personal house was approved by Decision No. 5 of the Cabinet of Ministers of Azerbaijan, dated 12 January 1999.

Furthermore, taking into account the spontaneous, therapeutic and criminal forms of abortions performed due to medico-legal reasons,⁷² both legal norms do not reflect the notion of a therapeutic abortion. In many cases it is impossible to discover the underlying reason for the abortion. In general, first the Law on the Protection of Health and the relevant article of the Criminal Code do not differentiate those types of abortions. The second, third and fourth subparagraphs of Article 141 of the Criminal Code hold that negligence causing serious injury or death to the mother is an offence, but do not identify the offender and the basis for negligence, in particular. The mother herself or a third person can also terminate the pregnancy, that is, the criminal abortion, whereas, which is recognized as a synonym of the induced abortion may be spontaneously stopped. So, the Law does not recognize such a distinction.

Also, the status of the woman: whether she is married or not or whether she was aged or not was not addressed in the norm due to fact that not only married or aged women can be pregnant. Thus, in case of an underage or unmarried pregnant woman, the law must also consider the causes of the pregnancy, be it is rape or incest, and the issue of consent of close relatives or legal guardians of the underage mother.

Conclusion

The right to health as an inherent right of a person has not yet been clearly identified by international legal instruments that hinders to fully enjoyment of other rights like right to education, right to development, freedom of expression, reproductive rights and etc. Furthermore, States undertake international obligations over ensuring rights and freedoms of citizens otherwise this can cause to mass infringements.

The enjoyment of the right to life of an embryo remains also vogue because international treaties, excluding the American Convention on Human Rights, which particularly emphasizes that the life of an embryo begins from the moment of its conception. Despite fact that the European precedent law recognizes some protection to an embryo but has not still clearly implied the justification of this right in relation to a fetus. According to the European law, life starts from the birth.

72 Russel S. Fischer, 1951, Criminal Abortion, 42 Journal of Criminal Law and Criminology, p. 242

The issue becomes to be more complicated when it deals with the suicide and assisted suicide, which are different due to the fact of *mens rea*. So, if a person must not be held criminally responsible if s/he kill himself without an intention to die, whereas a person directly participating or inciting to kill of another, even if that person is a physician can be brought to justice. As has been noted until nowadays already unaccepted right to life of a fetus can be restricted in favor of a mother, even if if that process would be unfair to the latter. ... In addition the society can also interferes into the private life of a person based on a value of a suicidee as well as under Article 8 (2) of the ECHR.

Inasmuch as ECtHR do recognize the right to life as a fundamental, in spite of an absolute right. Henceforth, the States which legally accept assisted suicide can perform this act of so-called "mercy killing" even if with the consent of a patient or his relatives, as a last resort but must inform the patient and his relatives about the alternative methods of treatment, instead.

Due to unclear determination of elements of the beginning of life, whether it starts from the moment of conception or depends on the live birth of a fetus in order to recognize that being as a person, the main problem on legal status of a fetus and the reproductive rights of a woman remain legally unresolved.. While drafting relevant legal norms, the principles of beneficence, mal-beneficence, personal rights, and limits of life, consent, parental rights in relation to married couple and other related questions must be legally defined.

REFERENCES

- American Convention on Human Rights, Pact of San Jose, Costa Rica, 1969
- André Janssen, (2002), The New Regulation of Voluntary Euthanasia and Medically Assisted Suicide in the Netherlands, *Int J Law Policy Family* (2002) 16(2): 260-269
- Aydın Ünver, Tülay: *Ceninin Hukuki Konumu*, XII Levha Yayıncılık, İstanbul 2011, s. 17
- Aynur Ramazanova, (2014), Abortion Rates in Azerbaijan, social, <http://crrc-caucasus.blogspot.com/2014/05/abortion-rates-in-azerbaijan.html>
- Ben Saul, David Kinley and Jaqueline Lowbray, (2014), *The International Covenant on Economic, Social and Cultural Rights: Commentary, cases and materials*, Oxford University Press, London, Great Britain. p. 798
- Bernadette Rainey and et. al, (2014), *Jakobs, White and Ovey*, Oxford University Press, Sixth Edition, p. 166; see also at A. Plomer, *A Foetal Right to Life? The Case of Vo. v. France (2005)*, 5 HRLR 311
- V. Božidar BANOVIĆ and Veljko TURANJANIN, (2014), *Euthanasia: Murder or Not: A Comparative Approach*, in *Iranian Journal of Public Health*. 2014 Oct; 43(10): 1316-1323
- Brigit Thoeses, *the Right to Health, Economic, Social and Cultural Rights: Textbook*, Asbjorn Eide, v.d. (ed.), *Dordrecht/Boston/London*, Martinus Nijhoff Publishers, (Second revised Edition), 2001, p. 170
- Campbell S. (1980), *Diagnosis of fetal abnormalities by ultrasound*, in Milunski A (ed) *Genetic Disorders and the fetus*. Plenum, New York, pp.431-467
- CESCR, Concluding Observations: Kazakhstan, E/C.12/KAZ/CO/1, (7 June 2010), para. 133 Nicaragua E/C.12/NIC/CO/4, (28 November 2008), para.26
- CESCR, Concluding Observations: Mauritius, E/C.12/MUS/CO/4, (8 June 2010), para. 25
- Criminal Code of the Republic of Azerbaijan, 2000
- Dana J. Lawrence, 2007, The Four Principles of Biomedical Ethics: A Foundation for Current Bioethical Debate, *Journal of Chiropractic Humanities*, p. 35
- Erdem Aydın, Nermin Ersoy, *Tıp Etiği İlkeleri*, T Klin Tıbbi Etik, 1995, 2-3, s. 52
- Erhan Büken, Nüket Örnek Büken, *Yasal ve Etik Yönleriyle Türkiyede Tıbbi Malpraktı*, Ed. Ayşegül Demirhan Erdemir ve diğ. *Çağdaş Tıp Etiği*, Nobel Tıp Kitapevleriç İstanbul 2003, p. 163
- Factsheet of the UK Organization Birthrights: protecting human rights in childbirth on Human Rights in maternity care
- Francisco Forest, Martin Stephen and et.al, (2006), *International Human Rights and Humanitarian Law: treaties, cases and analysis*, Cambridge University Press, USA, First edition, p. 333
- Jonathan Herring (2014), *Medical Law and Ethics*, Ch.9 Dying and Death, p.519
- Henderson JT, Harper CC, Gutin S, et al. Routine *bimanual pelvic examinations: practices and beliefs of US obstetrician-gynecologists*. *Am J Obstet Gynecol* 2013; 208:109.e1-7
- Iqbal H. Shah, Elisabeth Åhman and Nuriye Ortaylı, "Access to Safe Abortion: Progress and Challenges since the 1994 International Conference on Population and Development (ICPD)", *Background Paper No. 3*, p. 13
- Jakob Pichon, *Does the Unborn Child Have a Right to Life? The Insufficient Answer of the European Court of Human Rights in the Judgment Vo v. France*, in *German Law Journal* Vol. 07, No. 04, (2006), pp. 435-436
- Kamil Sarıtaş, 2012, *Kürtajın Ahlakiliği Sorunu/ Ethicality Problem of Abortion*, *International Journal of Social Studies*, Vol. 5, p.587-608, p.590
- VI. Kathy Waldman, (2014 Jan.), *Does Looking at the Ultrasound Before an Abortion Change Women's Minds?* see at http://www.slate.com/blogs/xx_factor/2014/01/09/ultrasound_viewing_before_an_abortion_a_new_study_finds_that_for_a_small.html [Accessed on 21 June 2014]
- Linda M. Keller, (2001), *Indivisibility of Economic and Political Rights*, in *Human Rights and Human Welfare*, Vol.1:3, A review of Development as Freedom by Amartya Sen. New York: Knopf, 1999

- (Paperback Edition: Random House, 2000). 366 pp., p. 10
- Linda J. Mad, General Principles of Human Rights Law Recognized by All Nations: Freedom From Arbitrary Arrest and Detention, 10 CAL. W. INT'L LJ. 272,301-02 (1980)
- Marc Groenhuijsen, (2007), *Euthanasia and the Criminal Justice System*, in Electronic Journal of Comparative Law, Vol. 11.3, p. 21
- Mehmet Emin Özgül, (2010), Yeni Tıbbi Yöntemlerin Hukuka Uygunluğu, On İki Levha Yayıncılık, İstanbul, Türkiye, p. 95
- Michael Cholbi (2007), Self-manslaughter and the forensic classification of self-inflicted death, in J Med Ethics 2007;33:155-157
- Neil Moonie, (2005), Health and Social Care, Heinemann Educational Publishers, p. 25
- Norman St. John-Stevass, (2002). Life, Death and the Law: Law and Christian Morals in England and the United States, BeardBooks Washington D.C. p.264
- Quoted in *Debating the Moral Status of the Embryo*, (July-Aug. 2014), Harvard magazine
- VII. J. Pereira, Erratum Legalizing euthanasia or assisted suicide: the illusion of safeguards and controls, in Current Oncology–Volume 19, Number 3, June 2012; Curr Oncol 2011;18:e38-45. Published online April 4, 2011; corrected after publication May 14, 2012
- D. Petchesky R. P. (1984) "Abortion and Woman's Choice" Northeastern University; see also Melissa Masden (1992), *Pe-Natal Testing and Selective Abortion: The Development of a Feminist Disability Rights Perspective* in Women With Disabilities Australia (WWA) online journal,
- A.E. Reading and S. Campbell, (1982), *The psychological effects of Ultrasound Scanning and in Pregnancy*, in Advances in Psychosomatic Obstetrics and Gynecology, Springer Berlin Heidelberg, pp.371-373;
- Rita Joseph, (2009), *Human Rights and the Unborn Child*, (2009), Martinus Nijhoff Publishers, Chapter 13, p. 266, p.210
- Russel S. Fischer, 1951, Criminal Abortion, 42 Journal of Criminal Law and Criminology, p. 242
- VIII. Sanja Tomasovic and Maja Predojevic, 4D Ultrasound - Medical Devices for Recent Advances on the Etiology of Cerebral Palsy, (Online Article),
- Sharon Detrick, (1999), A Commentary on the United Nations Convention on the Right of the Child, Martinus Nijhoff Publishers, Hague, the Netherlands, p. 135
- Sultan Tahmazoglu Üzeltürk, Anayasa hükuku açısından sağlık hakkı (Ulusal ve Uluslararası boyutuyla), Legal Yayıncılık San. Ve Tic. LTD.ŞTİ, İstanbul, Türkiye, (2012), p. 3, ISBN: 978-605-4354-57-3
- Saunders C. Terminal care in medical oncology. In: Begshawe KD, editor. Medical oncology. Oxford: Blackwell; 1975. pp. 563-76
- M. Sherif Bassiouni, (1994), Human Rights in the Context of Criminal Justice: identifying international procedural protections and equivalent protections in national constitutions, in Duke Journal of Comparative & International Law, Vol. (3), pp.235-297, p.248
- Sybe A. de Vries, *Balancing Fundamental Rights with Economic Freedoms According to the European Court of Justice*, in Utrecht Law Review, Volume 9, Issue 1 (January) 2013, pp. 169-192; p. 177
- TERRY BRANTLEY (1996), People v. Kevorkian: Michigan's Supreme Court Leads the Way in Declaring No Fundamental Right to Assist Another in Suicide, in Mercer Law Review Vol. 47, (1996), 1191-1199, at 1192
- Turkish Civil Code, Law N. 4721, dated 7/12/2002
- UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 31, The Right to Health*, June 2008, No. 31
- UNGA Report, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/61/338, para. 13
- UNFPA, The Danish Institute for Human Rights and OHCHR (2014), Reproductive Rights are Human Rights: A handbook for national Human Rights Institutions: United Nations
- UN Human Rights Committee (HRC), *CCPR General Comment No. 6: Article 6 (Right to Life)*, 30 April

1982, available at: <http://www.refworld.org/docid/45388400a.html> [accessed 29 January 2016]
 Yuelian Sun, Yan Che,, Ersheng Gao, Jørn Olsen and Weijin Zhou, (2003), Induced abortion and risk of subsequent miscarriage, in Oxford Journals,, [online article]
 Zylicz Z, Finlay IG.(1999), Euthanasia and palliative care: reflections from The Netherlands and the UK. J R Soc Med. 1999;92:370-3

Cases:

Lanham D (1990), the Right to choose to die with dignity 14 Crim L J (16) 401-30
 R.v Adomako [1995] 1 AC 171; [1994] 3 WLR 288, [1994] 3 All ER 79, 99 Cr App R 362, HL
 R v Bateman (1925) 19 Cr App R 8, (1925)? Cox 33, [1925] All ER Rep 45, CCA
 E. Cobbs v. Grant, 8 Cal. 3d 229, 502 P.2d 1, 104 Cal. Rptr. 505 (Cal. 1972) p. 240; para. 38
 F. R (Purdy) v DPP (2009) UKHL 45, [68]
 Makaratzis v. Greece, (App. No. 50385/99) (2004) Judgment 20.12. 2004 [Grand Chamber], para. 29, p. 20
 Vo v France ECtHR, judgment of 8 July 2004, no. 53924/00, para.84