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HUMAN RIGHTS PROTECTION FROM CHILDHOOD TO THE RIGHT TO A DIGNIFIED OLD AGE HUMAN RIGHTS AND INSTITUTIONS

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PROTECTING THE RIGHTS OF THE UNBORN CHILD

Unborn or future children require wider legal protection compared to the one they have today. Basic human rights, starting with the right to life, the right to dignity, the right to health protection and other rights, such as protection from all forms of violence, are tied to the concept of legal subjectivity, which, by carefully reading international and regional documents, today has a different dimension than before. Unborn children are recognized as a category that should be given a chance for equal treatment and protection from harmful influences, based on the law. This is increasingly indicated by medical science that the rights of the fetus should be protected, in accordance with the scientific achievements of perinatology. This certainly does not exclude but rather supports the right and freedom of women to decide on the birth of children/in deciding whether to have children. The civilisational achievements of the new age/era do not exclude the achievements won long ago in national legislation and the special protection of pregnant women. It is about the fact that the law must also protect other rights and (or) relevant legal interests of the unborn child, and not only the hereditary rights established by Roman law.

Keywords: *unborn children, legal protection, inalienable rights of women, rights and interests of the child.*

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Introductory considerations

The legal protection of the unborn child, thanks to modern medical achievements, today acquires a completely different dimension and the need in harmonizing legal documents with the achievements of humanity. Hence, this issue has many dilemmas and different (often conflicting) opinions, which should aim at a single goal: strengthening the positive development of children and their capacity. The complete regulation of the legal protection of the unborn child essentially represents a preventive concept, which can avoid or reduce the risks of various forms of victimization, from the very beginning (Pavlović, 2019, 46). This means that we should take into consideration the traditional understandings of the acquisition of legal capacity of individuals and determine new concepts and constructions of legal capacity that refer to the subject we have designated as an unborn child.

Various risk factors for the healthy psychophysical development of the unborn child have been identified in many international studies. It is about alcohol abuse, drug addiction, smoking, domestic violence, mental and infectious diseases, feelings related to pregnancy, socio-economic status of a pregnant woman who is often left to take care of herself and of the unborn child, and similar. Only by formulating a satisfactory legal framework, which guarantees protection and a favourable developmental start of the child, it is possible to lay a preventive basis for further actions aimed at protecting the unborn child from victimization.

Domestic violence has its psychological, physical, economic and social dimensions, with numerous risks not only for the pregnant mother, but also for the unborn child. It includes low birth weight, miscarriage, premature birth, fetal problems and injuries to the child, which affects, through depression, anxiety and stress experienced by the mother during pregnancy, the child's mental health later in life. Based on these indisputable (notorious) and possible consequences caused by domestic violence, it is indisputable that an unborn child can have harmful consequences in development. That is why the question arises as to how the unborn child can be legally protected, what are his/her rights and - can we claim that the only victim of this risk factor is only the pregnant woman or the woman giving birth.

The questions posed in this way are unresolved, and there is no consensus on a possible solution among the states that belong to the same legal tradition as the Republic of Serbia. Bearing in mind that there is a general disagreement on proposed solutions, a possible way out, could be the establishment of a new institute for the protection of the interests

of the unborn child, which would be socially and legally acceptable in the national legislation.

Although at first glance it seems that specifying the rights of the unborn child threatens only the physical integrity of the mother, we are of the opinion that the legal protection of the mother should be viewed separately from the legal protection of the unborn child. It is the social responsibility to provide protection to the pregnant woman, as it was already recognized before, but also to the unborn child, which is a novelty, especially if such protection would be ensured by the norms of criminal law. In this context, they could also observe the protection of pregnant women who are serving prison sentences (Pavlović, 2020), female convicts as a particularly sensitive category. Except for the right of a woman to freely decide on giving birth, the unborn child should also receive legal protection, if there is a “violation” of his/her rights. Although today there is no uniform position in law on when life begins, but that definition falls within the field of free assessment of each state (the so-called margin of appreciation),¹ the fact is that the fetus also enjoys legal protection (without entering into the nature right of a woman to decides on giving birth).

Looking for a solution to this problem, one should start from international and regional documents, as well as solutions in national legislation, regardless of the fact that these solutions still do not provide a complete answer.

The question that could be proposed is whether the unborn child can enjoy independent legal protection, meaning the right to life, or whether the unborn child (fetus) realizes its rights exclusively throughout the mother! As Kolarić notes, the European Court of Human Rights has dealt with the issue of legal protection of the unborn child on several occasions, but it has very skilfully avoided answering the question to whom the word “every” (right to life) refers, i.e. whether it refers also to the prenatal stage.

Following the academic education programmes at the Faculties of Law, the curriculum of the majority includes a course dealing with the theory of law. Kelsen is certainly an indispensable authority in this area, who ties the beginning and the end of the legal capacity of an individual to the facts of biological birth and death of a human being (Kelsen, 2004). This legal construction was based, with all its consequences, on the hour

¹The European Court of Human Rights has left discretion to each member state to regulate the issue of abortion as long as the legislation strikes a fair balance between the need to ensure the protection of the fetus and the interests of women. From the judgment of the ECHR: *Boso v. Italy*, App. No. 50490/99, September 5th, 2002.

of birth, which led to the construction that basic human rights are recognized and protected for the newly born. This concept of protection is still ruling today, with the legal rationale that it is not about some “metaphysical” conditions that an individual must fulfil in order to have legal subjectivity, but rather about an ability recognized by law. In this sense, the right of the unborn and future child to legal protection is not recognized, in the way it is traditionally accepted.

In the jurisprudence of the Republic of Serbia, this was discussed in several cases, especially in the case of the serious crime against human health, where various actions of the doctor towards the mother had led to the death of the fetus. Domestic jurisprudence is inclined to the point of view that until the birth, the fetus enjoys only indirect protection through the mother, through various criminal acts, while the fetus enjoys somewhat more direct legal protection of the right to life only in the case of the criminal act of illegal termination of pregnancy. In some other countries, the issue of more immediate protection of the bodily integrity and health of the unborn child is viewed through the special subjectivity of the fetus (Kolarić, D.2019). Regardless of this fact, judicial practice has so far not specifically dealt with issues of violations of other rights of the unborn child, starting with the right to dignity or the right to protection from the harmful effects of domestic violence. Between the unborn and the future, born person, there is an inseparable connection, because life itself is a continuous process. Legal protection of the unborn child exists and should serve exclusively in the function of protecting the born person and his/her life, so these are topics that should be taken into consideration.

One example and a few questions

According to the indictment of the competent Prosecutor’s office in Valjevo, from 2007, the defendant, specialist gynaecologist SG, was accused of acting negligently on the night between January 23rd and 24th, 2007 during the delivery of a child, which resulted in the death of the fetus. After 12 years of trial, a final judgment was passed by the Appellate Court in Belgrade, which confirmed the acquittal of the first instance court. Bearing in mind the fact that the court creates law with its decisions, and that during the trial the matter that was determined primarily related to whether the defendant acted negligently; we could stop in this position, which is here. However, what was determined also concerned the legal status of the child, and whether the unborn child enjoys legal protection. Exercising the right to use all regular legal remedies during the court proceedings, the accused SG and his defence proposed, and it was adopted, forensic medical expertise, which was performed on three occasions by the forensic medical boards of the Medical Faculties of the University of Novi Sad and Belgrade. Their

position, which the court accepted, was that the accused specialist doctor acted conscientiously, and that the fatal outcome was not causally related to his actions.²

What the court also took into account during the decision process in this case is the legal status of the unborn child. The Court of Appeal in Belgrade based its decision precisely on that fact related to the legal status of an unborn child, considering that an unborn child, regardless of the fact that it was a self-sustaining fetus, does not have the properties and characteristics required for legal subjectivity. Such a solution to the prejudicial question could be said to be based on the law, reading it *stricto sensu*. At the same time, no analogies with legal fiction from the law of inheritance are possible in the criminal law. In this sense, we cannot even talk about a cause-and-effect relationship between the actions of negligent treatment, that is, a serious crime against people's health and the consequence - the death of an unborn child.³

The issue of attitudes towards pregnant women, women in labour and mothers, is a topic of strategic, security and existential importance in Serbian society, and any form of violence towards them concerns the immediate victim, society as a whole, but also the unborn child. This issue as such, has not yet appeared in the practice of the courts, but an (in)adequate social reaction will have consequences for the creation of healthy offspring, in other words, for the developing bio-psychosocial base of children. Experiences of physical, psychological, emotional, economic and financial violence during pregnancy show their effects on children as well, so the issue of protecting the basic rights of the unborn child and its subjectivity is extremely important.

The answers are not simple, and require our full engagement in the future, in order to find the right measure of protection and to determine the legal subjectivity of the unborn child. The unborn and future child are new entities in legal (criminal) theory, and one should be extremely careful in answering these questions. Not a single aspect should be neglected, which requires a broader discussion that goes beyond the scope of this paper. In any case, it is a request to give the unborn or future child an appropriate place in the legislative framework, which will be the basis for the work of all competent institutions. But let us start in order.

² <https://www.paragraflex.co.rs/dnevne-vesti/280119/280119-vest10.html>
Last visited on September 20th, 2022 at 21:00

³ <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:772897-Nerodjenu-decu-zakon-ne-vidi>
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International legal protection of the unborn child

There is a large number of documents related to the protection of the right to life, and consequently to the legal protection of children. Some of them, by their definition, could also include the rights of the unborn child to protection; however, by reviewing the relevant literature and the jurisprudence of international courts, we did not find confirmation for the stated.

The UN Universal Declaration of Human Rights ⁴of December 10th, 1948 states that everyone has the right to life, liberty and personal security. As we have emphasized earlier, the word “everyone” would lead to the conclusion that everyone, including the unborn (and future) child - the fetus has the right to life and to special legal protection independently of the pregnant woman or the child’s mother.

The European Convention for the Protection of Human Rights and Fundamental Freedoms ⁵(ECHR) from 1950, entered into force in 1953, and the contracting parties are all members of the Council of Europe, in its Article 2 regulates the issue of the right to life: “The right to life of every person is protected by law.” No one may be intentionally deprived of life, except during the execution of a court verdict by which he/she was convicted of a crime for which this punishment is provided by law. The following text of the convention talks about the right to respect for private and family life, the prohibition of discrimination, but also the right to dignity.

Although it looks like a very modern solution covered by the word “every”, the practice of the ECHR has not yet decisively confirmed it. This significantly points to the fact that the protection of the right to life is aimed primarily at those already born. The most widely accepted document at the level of the UN, the Convention on the Rights of the Child⁶, means a child as any/every human being who has not reached the age of eighteen, unless, according to the law applicable to the child, majority is not reached earlier.

A multilateral treaty adopted by Resolution 2200A of the United Nations General Assembly on December 16th, 1966, and entered into force on March 23rd, 1976, the

⁴ https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/cnr.pdf

⁵ <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/02/Konvencija-za-za%C5%A1titu-ljudskih-prava-i-osnovnih-sloboda-sa-izmenama-predvi%C4%91enim-Protocols-11-and-14.pdf>

⁶ <https://www.unicef.org/serbia/media/3186/file/Konvencija%20o%20pravima%20deteta.pdf>

International Covenant on Civil and Political Rights ⁷similarly defines the subject of protection of the right to life. Namely, Article 6 states that every human being has a natural right to life and that no one may be arbitrarily deprived of life. That right should be protected by law and no one should be arbitrarily deprived of life. If we were to connect this with the definition from the Convention on the Rights of the Child that a child is any human being who has not reached the age of 18, it would be concluded that both conventions protect the right of the fetus because it represents life. Even the signatory states of this Convention interpreted differently when it came to the protection of life before birth. We ratified the convention itself in 1971 (ex Yugoslavia), but we also pointed out the lack of a legislative framework that would elaborate this further.

At the end of this short presentation, we will also mention the General Declaration on Bioethics and Human Rights adopted by the UNESCO General Conference in 2005. In the Preamble of the Declaration, it was pointed out that it is decisive and necessary for the international community to establish general principles that will serve as a basis for providing answers to humanity's ever-growing dilemmas and contradictions that science and technology bring to mankind and the environment. The preamble also refers to international treaties and UN conventions, including the UN Convention on Children's Rights of November 20th, 1989, as well as the UN Convention on the Elimination of All Forms of Discrimination against Women of December 18th, 1979. As the General Declaration on Bioethics and Human Rights refers to science and technological development, and to the need to harmonize international documents with current achievements, it is necessary to do so in the field of fetal rights. General Declaration, in its Art. 3, speaks about human dignity and human rights: "Human dignity, human rights and fundamental freedoms must be respected in their entirety." The interests and well-being of individuals should have priority over the interests of science or society. It follows from the above mentioned that the interest of the child as a human being in the prenatal period should be prioritized and that the right to life as an inviolable right must be enjoyed by every/any child, regardless of whether they were born or are yet to be born or found in the mother's womb.

In the section dedicated to international documents in which we can notice the basis for the initial thoughts that allow the uniqueness of the subjectivity (or legal interests) of the unborn child, we will refer to two national legislations. Namely, the provision that is still valid in the USA, and which was valid in the same or similar form on the territory of our

⁷ <https://akb.org.rs/wp-content/uploads/2022/03/8-Zakon-o-ratifaciji-Medjunarodnog-pakta-o-gradjanskim-i-politikim-pravima.pdf>

country, concerns the execution of the death penalty, which cannot be executed on a pregnant woman. When the USA joined the International Covenant on Civil and Political Rights, it was clearly stated that pregnant women are excluded from the death penalty.

By reviewing all the adopted legal regulations of substantive criminal legislation, which were provided for the death penalty in our country from 1944 until its complete abolition, including the right to execute criminal sanctions in the Republic of Serbia, we did not determine the existence of the possibility that the death penalty could be carried out against a pregnant woman. By further studying the comments on criminal legislation published by authorities in the field of criminal law who wrote and published in the Serbian language from 1944 until today (Tahović J., Srzentić N, Stajić N. and Lazarević Lj., Đorđević M., Čejović B . and others) we did not find a rationale or explanation for this determination. The only conclusion we could draw is that this provision protected (and in the USA this legal rule still applies) the unborn child's right to life. Exactly the same as it is expressly provided for in the UNESCO General Declaration on Bioethics and Human Rights.

Criminal law protection of the unborn child in the Republic of Serbia

And while the civil right position of the unborn child was regulated more than a century and a half ago, primarily through the institute of hereditary law and the fiction that a conceived child is considered born if it concerns the protection of his/her property (inheritance) interests, the criminal legal protection of his/her rights still causes numerous doubts for theoreticians, and only after that for the practice itself, bearing in mind the fact that apart from the listed international documents, no law-based direct protection of the unborn child is foreseen in the national legislation.

Starting from the constitutional provisions and the Constitution of the Republic of Serbia dated 2006 Article 24 stipulates that human life is inviolable. It is not without reason that we emphasized the importance of determining the point when life begins. This issue is very complex because it contains a whole series of not only medical, but also religious and ethical dilemmas (Stjepanović S., Stjepanović B., 2018). If the same mentioned were to be resolved only from a religious aspect, in the religious sense life begins with conception itself, however, modern science separates these two concepts through the right of a woman to have an abortion, i.e. to give birth in countries where it is allowed. In our country, provisions that legally guarantee this right to women date back to the early 70s of the last century.

In the Republic of Serbia, today, abortion is permitted under the conditions prescribed by the Law on Procedures for Termination of Pregnancy in Healthcare Institutions ⁸, and this law is the regulation to which the blanket disposition of the criminal offense/act of Unauthorized termination of pregnancy from Art. 120 of the Criminal Code, Chapter XIII crimes against life and body. By the way, this incrimination is not new, as well as the crime of Murder of a Child during Childbirth from Art. 116 of the CC both were also sanctioned by the previously valid Criminal Code of the Republic of Serbia. It can be taken already, from the very name of the criminal offense from Art. 116 of the CC, that there is no doubt that in this case the object of protection is the child's life during childbirth or immediately after childbirth, while the mother, who according to the law is the only possible perpetrator, continues to have a disorder caused by childbirth.

But, in the case of the criminal offense/act under Art. 120 of the Criminal Code, a dilemma may arise as to whether the relevant criminal law norm protects the bodily integrity of a pregnant woman, or the life of an unborn child. If the intention was to protect the physical integrity of the pregnant woman in the sense of the possible deterioration of her health in conditions that entail an illegal termination of pregnancy, in that case, considering the object of criminal legal protection, the offense should be regulated in Chapter XXIII of the Criminal Code - criminal offenses against human health, which is not the case.

Based on the mentioned, it follows that the object of protection is also the right to life of the unborn child. Namely, the negligent death of a pregnant woman, a severe impairment of health, or other serious physical injury are qualifying circumstances from paragraph 4 Art. 120 of the CC, while the first three paragraphs in their dispositions do not state any consequence that would refer to the physical integrity of the pregnant woman, but exclusively refer to the conditions of termination of pregnancy, referring to the positive regulations that regulate this matter.

In this connection, it is necessary to return to the provisions of the aforementioned Law on the Procedure for Termination of Pregnancy in Health Institutions. This law, in art. 6, stipulates that termination of pregnancy can be carried out up to the tenth week of pregnancy, and only in exceptional cases even later:

⁸ Official Gazette of the RS no. 16/95, 101/2005

- In case that, on the basis of medical indications, it is established that the life of a woman cannot be saved or serious damage to a woman's health cannot be removed in any other way,
- In case that, based on scientific and medical knowledge, it can be expected that the child will be born with severe physical or mental defects and
- In case that, the conception occurred as a result of the commission of a criminal offense (rape, abuse of a helpless person, abuse of a minor, abuse of position, seduction and desecration).

The law stipulates that up to the tenth week of pregnancy, the existence of conditions for termination is determined by a doctor specializing in obstetrics and gynaecology of a health institution, from the tenth to the twentieth week of pregnancy - the doctor's council of the corresponding health institution, and after the twentieth week of pregnancy - the ethics committee of the health institution.

The question that arises is why, after the twentieth week of pregnancy, it is necessary to include forensic ethics in the decision to terminate the pregnancy, forensic ethics as a philosophical discipline investigates the meaning and goals of moral norms. The answer to this should be sought in the fact that modern medical achievements allow premature babies to survive and continue to live even in the 22nd week of pregnancy.

Precisely in the context of that fact, and in connection with the increasingly frequent current events in the legal protection of the unborn child, it is also necessary to consider the position that has been generally accepted in judicial practice until now (judgment of the Court of Appeal in Belgrade Kž.1. 789/15) and refers to the qualifying circumstance for the criminal offense of Serious crimes against human health, from paragraph 2 and paragraph 4 of Art. 259 of the Criminal Code, regarding the criminal offense of Unconscionable provision of medical assistance from Art. 251 of the CC, in a situation where one of the alternatively provided actions was committed against an unborn child. According to this understanding, in order for the child to enjoy criminal legal protection, it is necessary that childbirth has begun, and in all other situations, if death occurs in the mother's womb due to the so-called "doctor's mistakes" would not be about this legal qualification. The position expressed in the specific case is a settled matter, but...

Taking into account everything presented above, this point of view is unacceptable, all the more so because medicine has progressed all the way to fetal surgery - surgery on the

baby in the mother's womb, so there is no reason why the object of protection in the criminal offense of Serious crimes against human health could not be an unborn child also, provided that it is properly established that the death is the result of intentional or negligent use of an obviously unsuitable means or an obviously unsuitable method of treatment or failure to apply appropriate hygiene measures or generally negligent behaviour. To that extent, we cannot fully agree with the legally binding decision from the aforementioned example of a pregnant woman in the case against SG from Valjevo, namely in the part that an unborn child does not have legal subjectivity. Only through the adoption of scientific achievements in this area, we can come to a conclusion whether, and since when, life is protected, and not what life is, because it is, as we emphasized, an uninterrupted whole.

If the judicial practice were to opt for this point of view, it is a special question from which moment criminal legal protection should be provided to the unborn child. It seems that the most acceptable moment would be after the completion of that week of pregnancy until the issue of termination of pregnancy is free (in our country until the end of the 10th week, and in some other legislation up to the 12th week) and depends on the woman's decision, from that moment, excluding the aforementioned reasons justified by the law, abortion is not allowed, so it is logical that from that moment the fetus has the right to the criminal legal protection of life and health.

It seems that the confirmation of the stated position and the incrimination that was introduced into the criminal legislation of the Republic of Serbia with the entry into force of the Criminal Code published in the Official Gazette of the RS no. 85/05 and it is a criminal act of aggravated murder from Art. 114 paragraph 9 where the qualifying circumstance is the murder of a child as well as the murder of a pregnant woman. The very fact that the life of a pregnant woman is protected by the law through a more difficult qualification for which, starting from 2019, a sentence of life imprisonment is also foreseen, indicates that the *purpose* of this provision is that killing a pregnant woman ends not one, but two or more lives in the case of multiple pregnancy and her murder is not an ordinary murder from Art. 113 of the CC.

We conclude that the pregnant women, as well as the fetus, that is, the unborn child, are the subjects of protection in the criminal offense of aggravated murder of a pregnant woman.

Here we would point out that our legislation, although the first interventions on the fetus (unborn child) were performed more than half a century ago, did not adequately regulate

either the legal subjectivity or the status of the unborn child. This precedent of civil and criminal law requires a wider discussion than the one with which we have limited this work itself.

Protection of pregnant women from violence in Serbia

By reviewing the relevant literature, we did not find precise indicators of the frequency of violence against pregnant women in the Republic of Serbia, and therefore also against unborn children. A similar situation of the absence of official statistics is observed in neighbouring Croatia, where, according to the Croatian Society of Gynaecology and Obstetrics in 2017, this problem is noted as important, but without clear frameworks of the origin of the threat.

Following the statistical reports on the crime of domestic violence, it is clear that it multiplies during the period of pregnancy. Partner pressure, abuser manipulations and the like during pregnancy could be cited as some of the elements that limit pregnant women and mothers in labour from reporting violence and identifying abusers. To emphasize, not just violence that is perpetrated against a pregnant woman, but also against an unborn child, regardless of the existing vagueness in the definition of violence according to the cited Istanbul Convention, as well as the Law on Prevention of Domestic Violence of the RS.

When analyzing the framework of media reports, it is clear that this form of victimization exists in Serbia. Only a particular obviousness is noted in connection with the cases that ended with a fatal outcome, i.e. the murder of pregnant women. However, such events do not give a precise picture of the frequency of victimization in a given population. Noticing the importance of the problem, in the period from 2019 to 2021, research was conducted on the social response to domestic violence in Serbia. The research (unpublished) which included 86 women (mothers) throughout Serbia, chosen by the method of random sampling, including women aged 30 to 55, asked for an answer about the presence of violence against pregnant women and unborn children. Using the questionnaire that was compiled within the focus group at the criminal law department of the Faculty of Law of the University of Economics in Novi Sad, one of the items related to the respondents' reporting on the experience of violence during pregnancy. A number of respondents, 4.6% of them, positively reported physical or particularly intense psychological violence during pregnancy. About 12% of women subsequently reported various forms of violence, which they did not initially recognize as violence. These include cursing, insults, restricting

movement or contact, as well as threats of abandonment and unfavourable socioeconomic status.

In the same context, the frequency of experiencing of violence, as well as the time of the incident during the gestational period, was also analyzed. Namely, practically the entire sample of respondents reported only one experience of physical violence, while only three respondents gave a positive statement about two or more physically violent incidents. Only when it comes to psychological violence, in the sub-sample of victimized women, more than 85% of respondents reported two or more incidents of serious psychological abuse. These results are not comparable to earlier research, taking into account the pre- and post-covid situation, but they are a reference example of the presence of violence.

The time of violence in relation to the duration of pregnancy was divided by trimesters. In addition, 80% of cases of physical violence occurred in the first trimester, while only 3% of cases occurred in the last trimester. Only when it comes to psychological violence, the advanced stage of pregnancy did not have such striking correlations. In this sense, 28% of women reported that the mentioned incidents were in the last trimester of pregnancy.

Violence against pregnant women is an extreme form of domestic, i.e. partner and gender-based violence, primarily due to its consequences, but not its causes. If we take as correct the paradigm that violence is partly the result of previously suffered violence, then we will see the results only when children not born at that time enter the world in which they will independently perform the functions of life.

As in the earlier research of the same questionnaire (Pavlović, 2019 , 54), the main factors identified as causes of violence are pathological jealousy and expressed suspicion of paternity, alcohol abuse, and economic problems in the family, i.e. problems concerning the male partner's employment. A small number of women cited the diagnosis of an existing or previously sexually transmitted disease in a woman as the reason for the violence, some of which were also transmitted to the newborn. The respondents did not register any comments related to economic and financial violence, because the unborn child also has the right to receive alimentation, conditionally speaking.

The findings of the subject research bring some other important conclusions, which relate to the already stated acquired rights of women and constitutional guarantees on freedom of decision in the reproductive context, which will be an extremely important area for research. Bearing in mind the fact that at the moment we do not have relevant data in the

RS on the exact number of abortions (state and private practice), we cannot know the etiology of abortions, including violence against pregnant women. Because the question to which we do not have an answer is whether pregnancy termination occurs in the absence of emotional and financial support from the partner. Whether it is just the negative attitude of women towards contraception or their lack of knowledge can be the subject of new further research. However, the observations of experts should be emphasized, as well as the reports of women that men often refuse to use contraceptives, considering that it is the woman's duty to prevent pregnancy. It is often about a kind of coercion and psychological pressure, which can be understood as a form of violence.

The question is what should be an adequate social response to this phenomenon? How familiar are we all together with the possible consequences of this behaviour and how to prevent it?

One should also ask whether basic information is enough to protect young people from social pressure. Is there any difference in society's attitudes and support for pregnant women in relation to their age (Solarević, Pavlović, 2018)? But also from all forms of violence to which women are exposed. It is only through the integrative strengthening of gender roles and the correction of social values and trends that a real effect on young people can be achieved. Bearing in mind the fact that pregnancy and childbirth bring a special psychological quality to women, and that that is also recognized at the criminal law level, the need for comprehensive social response, observation and gender empowerment of girls or young women is set as an imperative.

The framework of the relevant laws foresees a whole series of other mechanisms for the protection of mothers and families with children. True is that changes in the law never pass without criticism, and questions are raised about the justification of the correction of legal solutions that would further change the attitude towards pregnant women and unborn children, in order to protect them from violence.

Nevertheless, one gets the impression that in addition to certain, primarily technical details, the state has a well-regulated system of protection against domestic violence, which functions at a satisfactory level. Whether the subjectivity of the unborn child should be recognized within that protection system is a separate question. It is possible that such a relationship would lead to an increase in the birth rate, but for such an attitude, it is still necessary to find a mechanism to empower women. This kind of thinking is essentially a preventive concept, which can be used to avoid or reduce the risks of various forms of victimization, already at the very beginning, and before the birth of a child.

Pregnancy and the period of early upbringing of a child certainly bring within self a whole series of problems. It is a multi-determined framework that includes a whole range of variables that could be analyzed in a separate study. Bare forms of violence, discrimination or the absence of an adequate legal framework are just some of the aspects that require analysis in this kind of a context. Only by formulating a satisfactory standard on the legal protection of the unborn child that guarantees protection and a favourable developmental start of the child, it is possible to lay a preventive basis for further, continuous actions in the area of possible victimization.

Instead of a conclusion

Human rights law from the middle of the twentieth century and at the beginning of the twenty-first century is not only the subject of international conventions on human rights and the work of international bodies, but human rights are part of the legal framework of every state and belong to everyone. It could be concluded that in addition to so many regulations in this area, there is no possibility that the basic right to life will be denied to one human being who, according to the point of view of medical science, is special, different from his parents, and that is the unborn and future child (Stjepanović, S., Stjepanović B., 2018). On the one hand, modern medicine and achievements related to the diagnosis and treatment of the child before birth, pregnant women and childbirth, along with the progress of technology, are developing into a special scientific discipline - perinatology.

On the other side are the rights of parents to freely decide on the birth of children, which in practice translates into the fact that parents, primarily the mother, decide on the termination of the right to life of the fetus under the conditions stipulated by law, which is considered an inalienable right of a woman in the modern world. Family planning is one of the freedoms of parents protected by conventions and constitutions, but conventions also protect the right to life of every human being. Could the answer to the question of when to protect the rights of the fetus be that it is only when it is in the interest of its mother? It is undeniable that the right to life of every human being is interpreted differently when it comes to the fetus. However, at a certain point in pregnancy, the legal protection of the unborn child becomes a separate issue, but also a child's right. From the child's right to life, dignity, protection from the violence, to the child's right to development, alimentation and the like.

In order to realize any human right and freedom, one must have a basic right, which is the right to life. Based on the analysis of international treaties and court decisions

mentioned in this paper, it could be concluded that the protection of the rights of the fetus should be extended to other areas of law and not only to hereditary rights, which were granted by Roman law, which did not have today's achievements of medical sciences in front of it. Issues of social support, administrative law, but also protection by provisions of criminal law require precise standardization.

The issues of regulation of the legal status of the fetus should be in accordance with the recommendations that are also valid for the field of modern medical science. This means that the issue of the right to life is not as relevant as the previous theory has observed it, because life is a constant. The question is, from when one acquires legal subjectivity, regardless of what is the object of protection in connection with the protection of the rights of the unborn child. The way and quality of legal protection of the unborn child will depend on the answer to that question.

If they were to accept the position that the unborn child also has legal subjectivity (complete or partial), then numerous other issues related to the protection of the unborn child will arise. It is a wrong perception that the legal protection of the unborn child is related exclusively to the norms of civil and criminal law. It also concerns norms of social protection, administrative law and others (Đanić Čeko, A, Šego, M., 2020).

The overall improvement of the position of women is linked today to the adoption of the so-called Istanbul Convention on the Prevention of Domestic Violence, as well as the adoption of appropriate regulations by the signatory countries regarding domestic violence. Likewise, by preventing violence against pregnant women and women, we will indirectly reduce violence against unborn children, regardless of their legal status. That is why the question of protecting basic human rights in the way we have raised it here is perhaps a part of the question of our survival in general. The position that we put in the focus of this paper speaks of the fact that the inviolable protection of the rights of a woman, a pregnant woman, does not exclude the special protection of the rights of the unborn child, and in accordance with the established and generally accepted standards in society.

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