

# INTERNATIONAL LEGAL ASPECTS OF THE FETUS AND ABORTION

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**Abstract:** This study explores the international legal aspects of fetal protection and the regulation of abortion, analyzing the balance between women's reproductive rights and the legal recognition of the fetus. The methodology employed is qualitative, including semi-structured interviews with health professionals, legal experts, and social workers, combined with an examination of international conventions and national legislation. The findings reveal the lack of a global consensus on the legal status of the fetus, leading to significant differences in abortion regulations across countries. As Toma (2021)<sup>1</sup> emphasizes, "the legal and ethical status of the fetus remains a topic of discussion in international human rights law". The study concludes with recommendations for harmonizing Albanian legislation with international standards and promoting informed decisions that respect both the autonomy of the mother and the potential life of the fetus.

**Keywords:** abortion, fetus, international rights, medical ethics, Albanian legislation.

## МЕЖДУНАРОДНОПРАВНИ АСПЕКТИ НА ПЛОДА И АБОРТА

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**Резюме:** Настоящата статия изследва международноправните аспекти на защитата на плода и регулирането на абортите, като анализира баланса между репродуктивните права на жените и правното признаване на плода. Използваната методология е качествена, включваща полуструктурирани интервюта със здравни специалисти, правни експерти и социални работници, съчетани с преглед на международни конвенции и национално законодателство. Резултатите показват липсата на глобален консенсус относно правния статус на плода, което води до значителни различия в регулациите за абортите в различните държави. Като подчертава Тома (2021), „правният и етичният статус на плода остава тема на дискусия в международното право в областта на правата на човека“. Изследването завършва с препоръки за хармонизиране на албанското законодателство с международните стандарти и насърчаване на информирани решения, които зачитат както автономията на майката, така и потенциала за живот на плода.

**Ключови думи:** аборт, плод, международно право, медицинска етика, албанско законодателство.

### 1. Introduction

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<sup>1</sup> Toma, L. (2021). E drejta për jetën dhe dilemat etike të abortit në të drejtën ndërkombëtare. Revista Juridike Shqiptare, 12(2), 45–60.

The issue of abortion is one of the most sensitive and debated topics in contemporary international law, as it involves the intersection of two fundamental rights: the right to life and the right to bodily autonomy. The key question that arises is: when does human life begin, and does the fetus have legal status as a person? In the philosophy of law and bioethics, this question has received different answers throughout history. In canonical and religious traditions, life is considered to begin at the moment of conception, making abortion morally unacceptable. Meanwhile, in liberal and secular thought, the life of the individual gains legal protection after birth, and the fetus is considered part of the woman's body up until a certain stage of development. On the international level, the lack of a unified definition of the term "person" has created significant discrepancies among national legislations.<sup>2</sup>

**The main human rights documents** – such as the Universal Declaration of Human Rights (1948) and the European Convention on Human Rights (1950)<sup>3</sup> – affirm the right to life, but they do not specify whether this right applies to the fetus as well. In practice, this has led some developed countries to allow abortion as a fundamental right of women (such as France, the Netherlands, Sweden)<sup>4</sup>, while other countries with a conservative orientation (such as Poland or Malta) restrict or almost completely prohibit it. In this context, Albania finds itself at an intermediate stage. With Law No. 8045, dated 7.12.1995, "On the Termination of Pregnancy"<sup>5</sup>, the Albanian legislator recognizes the right of women to make decisions about their own bodies until the 12th week of pregnancy, considering abortion as an issue of reproductive health. However, in Albanian society, there is still a lack of widespread ethical and legal debate regarding the status of the fetus, the influence of religion, and the social implications associated with this decision<sup>6</sup>.

In Albania, the issue of abortion has taken on various social and legal dimensions, reflecting not only the woman's right to make decisions about her own body but also the challenges associated with cultural and social practices. One of the most concerning phenomena is gender-based selective abortion, where some families perform pregnancy terminations with the aim of

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<sup>2</sup> Cook, R. J., & Dickens, B. M. (2000). *Human rights dynamics of abortion law reform*. *Human Rights Quarterly*, 22(1), 1–59. <https://doi.org/10.1353/hrq.2000.0011>.

<sup>3</sup> Council of Europe. (1950). *European Convention on Human Rights*. Strasbourg: Council of Europe.

<sup>4</sup> Guttmacher Institute. (2022). *Abortion in Europe: Key findings*. <https://www.guttmacher.org/fact-sheet/abortion-europe>.

<sup>5</sup> Law No. 8045, dated 07.12.1995, "On the Termination of Pregnancy". *Official Gazette, Republic of Albania*.

<sup>6</sup> Sulmasy, D. P., & Snyder, L. (2006). Ethics and the beginning of life. In E. J. Emanuel et al. (Eds.), *The Oxford textbook of clinical research ethics* (pp. 151–161). Oxford University Press.

having a child of the desired gender, usually a boy. This phenomenon has led to a disproportion between the number of male and female births, causing significant social and demographic implications. In this context, abortion is not viewed solely as a health or legal issue, but also as a reflection of the impact of culture and gender stereotypes on family decision-making. From a legal perspective, Albania allows abortion up to the 12th week for general health reasons, but sex-selective abortion is prohibited. However, the enforcement of this limitation appears to be difficult, and the practice of selective abortion continues to occur in some cases, often without being documented. According to data from international organizations, around 21,000 girls have been “missing” due to sex-selective abortion in the last decade in Albania. A small survey shows that 47% of respondents were aware of cases of sex-selective abortion in their families or among their relatives. Reproductive behavior studies also show that families without sons often continue to have children until a son is born, highlighting the strong impact of gender preference on decision-making regarding the number and gender of children. International organizations such as the United Nations Population Fund (UNFPA) and the Council of Europe have expressed concern and have launched awareness campaigns on this issue in Albania, aiming to increase gender equality and reduce sex-selective abortion. The analysis of this phenomenon is important not only to understand its demographic consequences but also to explore the impact of cultural practices and gender stereotypes on reproductive rights and family decision-making.

This study aims to analyze the international legal aspects of fetal protection and abortion regulation through a comparative analysis of different legislations and interviews with professionals in the field.

The goal is to understand how the right to life, as applied to the fetus, varies according to cultural and legal contexts, and how a balanced approach can be developed that simultaneously respects the dignity of the mother and the potential for life of the fetus.

## **2. Research Methodology**

This study was developed by combining the qualitative method of legal analysis and the empirical method through interviews.

### **2.1 Type of Study**

The study is descriptive and analytical, aiming to compare the international and national legal framework regarding the status of the fetus and the limits of the legality of abortion.

## **2.2 Data Sources**

- International legal instruments: ECHR, UDHR, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- National legislation of several European countries and the USA.
- Albanian law on the termination of pregnancy and relevant sub-legislative acts.
- Academic literature, bioethical articles, and WHO reports.

## **2.3 Sampling and Data Collection**

Purposive sampling was used. Ten semi-structured interviews were conducted with professionals selected to represent three main fields:

- 4 obstetricians-gynecologists from public and private healthcare centers,
- 3 lawyers specializing in medical law,
- 3 social workers with experience in counseling pregnant women.

The interviews aimed to gather perceptions on the legal status of the fetus, women's rights, and the ethical challenges arising in professional practice. The data were analyzed through thematic analysis, identifying recurring trends and ideas.

## **3. Study Findings**

### **3.1 Legal Status of the Fetus in International Law**

In international law, there is no universal definition of the beginning of life. The European Court of Human Rights, in the case of *Vo v. France* (2004), stated that “it is not possible to determine the moment when life begins” and that states enjoy “a margin of appreciation” to determine this in accordance with their national traditions.

### 3.2 Comparative Legal Approaches

- In France and the Netherlands, abortion is permitted as part of the right to bodily autonomy, with time limitations and health guarantees.
- In Poland and some other countries with strong religious influence, abortion is almost completely banned.
- In the United States, following the *Dobbs v. Jackson Women's Health Organization* decision (2022), each state has the right to define the limits of the legality of abortion, leading to legal and social polarization.

- **3.3 The Albanian Legal Framework**

Albania has one of the most liberal legal frameworks in the region. However, the lack of counseling services and sexual education often makes abortion a last resort for many women. The interviewed lawyers emphasized that Albanian law is in line with international standards but requires improvement in practical implementation.

- **3.4 Ethical and Social Dimensions**

Social workers and doctors highlighted the need for a humane and sensitive approach towards women facing the decision of abortion. The fetus is viewed as a potential subject of the right to life, but it is also emphasized that the autonomy and dignity of the mother should be at the center of every decision-making process.

#### Some Responses from the Interviewed Professionals:

<b>1. Doctors (Obstetricians-Gynecologists)</b>
<ul style="list-style-type: none"><li>• <b>Doctor A:</b></li></ul>

<p>“From a medical perspective, the fetus has the potential for life, but the health and safety of the woman remain the priority. Albanian law acknowledges this and limits abortion up to the 12th week, which for us is a clear guideline for clinical practice.”</p>
<ul style="list-style-type: none"> <li>• <b>Doctor B:</b></li> </ul> <p>“Often, abortion is an emotionally difficult decision. As doctors, we must ensure full information and counseling, respecting the autonomy of the patient and legal norms.”</p>
<ul style="list-style-type: none"> <li>• <b>Doctor C:</b></li> </ul> <p>“There are many ethical debates about the status of the fetus. In practice, we follow the law and international recommendations, trying not to interfere with the woman’s decision except in cases where her life is at risk.”</p>

<p><b>2. Lawyers</b></p>
<ul style="list-style-type: none"> <li>• <b>Lawyer A:</b></li> </ul> <p>“There is no international consensus on the legal status of the fetus. Albanian legislation aligns with international conventions, but there is a need for greater clarity in defining the rights of the fetus and the woman.”</p>
<ul style="list-style-type: none"> <li>• <b>Lawyer B:</b></li> </ul> <p>“The main issue is the balance between the right to life and bodily autonomy. International courts have left room for national interpretation, which is why states have different approaches.”</p>
<ul style="list-style-type: none"> <li>• <b>Lawyer C:</b></li> </ul> <p>“Albanian law allows pregnancy termination up to the 12th week. This limitation is based on medical standards and does not conflict significantly with international law.”</p>

<p><b>3. Social Workers</b></p>
<ul style="list-style-type: none"> <li>• <b>Social Worker A:</b></li> </ul> <p>“Many women lack full information about abortion options and legal assistance. Our role is to provide emotional support and counseling.”</p>
<ul style="list-style-type: none"> <li>• <b>Social Worker B:</b></li> </ul> <p>“Abortion is not just a medical issue but also a social one. We face challenges when a woman faces pressure from her family or community, and we need to intervene carefully.”</p>

- **Social Worker C:**

“It’s important that every decision is informed and voluntary. We try to provide information about all options and the legal and health consequences.”

<b>Professional group</b>	<b>Question/ Topic</b>	<b>Key answers from the interviews</b>
<b>Doctors (Obstetricians-Gynecologists)</b>	Fetal status and the right to abortion	- “The fetus has the potential for life, but the woman's health remains the priority.” (Doctor A) – “We must provide information and counseling, respecting the patient's autonomy.” (Doctor B) – “We follow the law and international recommendations, intervention is only in cases of danger to the woman's life.” (Doctor C) “Fetusi ka potencial për jetë, por shëndeti i gruas mbetet prioritet.” (Mjekja A) – “Ne duhet të sigurojmë informim dhe këshillim, duke respektuar autonominë e pacientes.” (Mjeku B) – “Ndjekim ligjin dhe rekomandimet ndërkombëtare, ndërhyrja është vetëm në raste rreziku për jetën e gruas.” (Mjekja C)
<b>Doctors (Obstetricians-Gynecologists)</b>	Legal limits on abortion	- “Albanian law allows abortion up to the 12th week, which is a guideline for clinical practice.” (Doctor A)
Lawyers	Legal status of the fetus	- “There is no international consensus on the legal status of the fetus.” (Lawyer A) – “The main issue is the balance between the right to life and bodily autonomy.” (Lawyer B) – “Albanian law is in line with international standards.” (Lawyer C)
Lawyers	Legal status of the fetus	- “Nuk ka konsensus ndërkombëtar mbi statusin juridik të fetusit.” (Juristi A) – “Çështja kryesore është

		balanca midis të drejtës për jetën dhe autonomisë trupore.” (Juristja B) – “Ligji shqiptar është në përputhje me standardet ndërkombëtare.” (Juristi C)
<b>Lawyers</b>	Albanian law and international standards	- “There is no international consensus on the legal status of the fetus.” (Lawyer A) – “The main issue is the balance between the right to life and bodily autonomy.” (Lawyer B) – “Albanian law is in line with international standards.” (Lawyer C)
<b>Social workers</b>	Emotional support and information for women	- “Many women do not have complete information about abortion options and legal assistance.” (Employee A) – “Our role is to provide emotional support and informed counseling.” (Employee B)
<b>Social workers</b>	Social pressure and ethics	- “Abortion is not only a medical issue, but also a social one.” (Employee B) – “It is important that every decision is made informed and voluntary.” (Employee C)

***Table 1: Summary of Interviews with Doctors, Lawyers, and Social Workers on Abortion and Ethical Issues***

#### **4. Conclusions**

- International law does not offer a unique standard for the legal status of the fetus.
- National legislations vary significantly due to cultural, religious, and political factors.
- Albania adopts a liberal legal approach, but a deeper ethical and professional debate is needed.
- The balance between the right to life and the right to bodily autonomy remains the core of contemporary legal discussions.

#### **5. Recommendations**



1. Review of Albanian law to align it with EU standards and international conventions on reproductive rights.
2. Creation of a national ethical framework for issues related to abortion and fetal protection.
3. Strengthening sexual education and family planning programs.
4. Provision of psychosocial counseling services for pregnant women.
5. Encouragement of interdisciplinary public debate on the ethics of abortion and the role of the state in protecting life.

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