

ABORTION AS THE PARTIAL ISSUE OF THE RIGHT TO LIFE AND THE DEVELOPMENT OF THE RELATED SLOVAK LEGAL REGULATION

Ingrid Lanczová

Department of the Legal History
Trnava University in Trnava
Slovak Republic
<https://orcid.org/0000-0003-2767-3558>

Miriám Laclavíková

Department of the Legal History
Trnava University in Trnava
Slovak Republic
<https://orcid.org/0000-0002-8984-0529>

Summary. This research paper provides an insight into legal regulation of abortions in the history of the Hungarian Kingdom, the multiethnic state which covered *inter alia* what is Slovakia today. Attention is drawn to the first Criminal Code (the Law no. V of 1878), adoption of which meant a fundamental change in the development of criminal law on the territory of the Slovaks. Consequently, there is a brief introduction into legal regulation of abortions in the Czechoslovak Republic, whose understanding makes it possible to better evaluate the current approach of the Slovak Republic to abortions. Furthermore, effective legal regulations, the pivotal court decisions and the reactions of the society on the abortion topic are presented.

Key words: termination of pregnancy, abortion, foeticide, the Kingdom of Hungary, Czechoslovakia, Slovak Republic

INTRODUCTION

Abortion is an issue which rules the right to life discussions and quite strongly resonates in the Slovak lay society. It can be said, that this issue has always been the core of the right to life together with the euthanasia and death penalty issues. The abortion issue developed from the “right not to be

deprived of life” (that is the legal regulation of murder in the oldest law-books) and is understood as such also today¹, guaranteed by the State and claimable. Though, it is important to emphasise that in the present times, so influenced with the scientific and medical progress, the right to life encompasses also different issues such as cloning, in vitro embryo research, genocide (systematic killing of members of a specific gender) or eugenics (improving the genetic quality of a human population e.g. by preventing the handicapped people from giving birth or by changing genes in the embryo). However, as the right to life has the longest tradition among the human rights, having roots in the religious life views and in the biological need of the individual to survive, abortion as the “traditional” right to life issue will cyclically be discussed until the society answers or uniformly accepts the answers about the sense of the human life and its inception.

The abortion issue polarised and still polarises the society. Generally, the views on abortions are threefold. Firstly, it is the pro-life view which opposes abortions and highlights the protection of an unborn child from any form of killing and protection of the health of woman undergoing the abortion. Secondly, it is the pro-choice view which respects the freedom of choice of the pregnant woman and agrees with the abortion on request until certain week of pregnancy. This view is the most typical view in Europe, even though a uniform approach to all the aspects of this issue is still missing (ECHR- A, B and C *versus* Ireland case originating in an application no. 25579/05, *Tysiąg versus* Poland originating in an application no. 5410/03). Thirdly, there is a view calling for previous consent of the independent official authorities to abortion. The consent or the disallowance must be based on medical and psychological expert opinions².

¹ I.e. it is not understood as the possibility to freely dispose with the right to life. This was confirmed also by the European Court of Human Rights in the case *Pretty v. United Kingdom* (2002), according to which the right to life could not, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die. In: European Court of Human Rights, *End of Life and the European Convention on Human Rights* ECHR, Strasbourg, p. 1, in: http://www.echr.coe.int/Documents/FS_Euthanasia_ENG.pdf [accessed: 13.09.2017].

² M. Nemeč, *Doktrínalno-právny pohľad katolíckej cirkvi na problematiku umelého potratu*, in: *Právo a hodnoty. Sborník příspěvků z jednání sekce teorie práva a právních dějin na konferenci Olomoucké právnícké dny konané ve dnech 21.–22.5.2016*, ed. P. Osina, Tribun EU Brno 2016, pp. 110–111 (The Author was inspired by J.M. Finnis, *Právní aspekty potratu*, in: *Úcta k životu – I. život nenarozený*, Zvon, Praha 1991, pp. 56–57).

As the society never had a uniform view on religion and the concept of life (including the non-uniform view of the legal institutions on the beginning of life³), a uniform legal regulation of these partial issues of the right to life, will, presumably not be achieved. Legislations throughout Europe vary in their euthanasia or abortion provisions. In the Slovak society is the latter more discussed and the reasons are following.

Ad 1 it has religious context, *ad 2* the need of an individual to fight for saving the life is more natural than for losing it, *ad 3* euthanasia is not regulated in the European legal orders as the right to die but as a possibility, where *conditio sine qua non* is a severe illness whose diagnoses requires medical knowledge and finally *ad 4* the terminal sedation in the palliative care for the incurably ill is an accepted approach until the moment of death⁴.

This different approach of the European countries stems from the different interpretation of the important European documents and from the application of the proportionality test or the concurrence of human rights among

³ On the national level the Slovak Constitutional Court ruled that: “The task of the Constitutional Court in this proceeding is neither to answer the philosophical, moral or ethical question about the beginning of the human life, nor to answer the question about rightness or morality of abortions, nor to answer the question about optimal legal regulation of abortions in the Slovak Republic. The task of the Constitutional Court is to answer the question, what are the constitutional limits which the Constitution imposes on legislator in the abortion issues”. On the European level the European Court of Human Rights ruled in the case *VO v. France* that: “The human embryo, whatever the moral or legal status conferred upon it in the different European cultures and ethical approaches, deserves legal protection. Even if taking into account the continuity of human life, this protection ought to be reinforced as the embryo and the foetus develop. The Treaty on European Union, which does not foresee legislative competence in the fields of research and medicine, implies that such protection falls within the competence of national legislation (as is the case for medically assisted procreation and voluntary interruption of pregnancy). However, Community authorities should be concerned with ethical questions resulting from medical practice or research dealing with early human development. However, when doing so, the said Community authorities have to address these ethical questions taking into account the moral and philosophical differences, reflected by the extreme diversity of legal rules applicable to human embryo research, in the 15 Member States. It is not only legally difficult to seek harmonisation of national laws at Community level, but because of lack of consensus, it would be inappropriate to impose one exclusive moral code. The respect for different philosophical, moral or legal approaches and for diverse national culture is essential to the building of Europe”. The ECHR ruled that the national legislators have the competency to decide when the right to life begins.

⁴ Their opinions do not vary on the death penalty because it is absolutely prohibited to all the forty-four signatories of the Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances (publication date: May, 3, 2002).

which there is no one universal and dominant right, although we advocate for the opinion that the right to life is the primordial right and a precondition for the existence of the other human rights. These are the reasons why, in our opinion, deserves this right even repeated attention.

1. ABORTIONS IN THE HISTORY OF THE KINGDOM OF HUNGARY

The provisions about abortions were already enshrined in the Great Moravia law-books⁵ and later in the law-book adopted some decades after the establishment of the Kingdom of Hungary. This proves that abortions were not unknown to the contemporary society and were deemed for something negative. Abortions were in conflict with the Catholic Church teaching, with the State legislation and later in conflict with the medical science and with the jurisprudence developing since the times of Ancient Rome⁶. The reasons why they were deemed negatively in the middle-age and modern-age society were their sinful nature according to the Catholic Teaching, their anti-society and anti-family nature, abortions seen as the breach of the matrimonial duties (the biologic function of the marriage) and abortions seen as a danger to both the woman and foetus. Abortions were in the centre of attention of the legal theory and the court practice as socially unacceptable crimes against the religion and decency⁷ or as crimes against the life and health. The disap-

⁵ Before 863 it was the penitentiary called Commands of the Holy Fathers. According to the Art. 33: "If the woman fornicates and induces herself abortion, she shall do penance for ten years, including a two years bread and water fasting". Abortion provisions are also in the Art. 40 of Nomocanon. For the characteristics of the Great-Moravian law and the Great-Moravian legal sanctions see: T. Gábriš, R. Jáger, *The Most Ancient Law in Slovakia? An Attempt for Reconstruction of Pre-Cyrrillomethodian Normative System*, Wolters Kluwer Wolters Kluwer v spolupráci s Právnickou fakultou UK v Bratislave, Bratislava 2016, p. 236 and following.

⁶ A few Roman fragments are preserved on the topic of the subjectivity of foetus: Paul. D 1.5.7.: "Quae liberis damnatorum conceduntur. qui in utero est, perinde ac si in rebus humanis esset custoditur, quotiens de commodis ipsius partus quaeritur: quamquam alii antequam nascatur nequaquam prosit"; Jul. D 1.5.26: "Qui in utero sunt, in toto paene iure civili intelleguntur in rerum natura esse". Abortion was constituted as the public crime (*crimen publicum*) by Ulpianus: Ulp. D 48.8.8: "Si mulierem visceribus suis vim intulisse, quo partum abigeret, constiterit, eam in exilium praeses provinciae exiget". Paulus defined the conduct of those who offered a special substance in order to induce abortion: Paul. D 48.19.38.5: "Qui abortio- nis aut amatorum poculum dant, etsi dolo non faciant, tamen quia mali exempli res est". See: M. Nemeč, *Doktrinálno-právny pohľad katolíckej cirkvi*, pp. 107–109.

⁷ Older literature names crimes such as demaging (*rontás*), poisoning (*méregkeverés*) and induced expulsion of foetus (*magzat-elhajtás*). J. Osváth, *Stredoveké právne ustanovizne na Slovensku*, Prešov, s.a., p. 44.

proving attitude of the States of the contemporary Christian Europe towards the abortions must be seen in the relation with the continual disapproving moral attitude of the Catholic Church⁸.

1.1. Abortions in the History of the Kingdom of Hungary until the Adoption of the Modern Criminal Code in the 19th Century

Already in the Laws of the Hungarian King Coloman (around 1070-1116), from the first ruling Arpad dynasty, was enshrined a provision stating that “women who kill their offspring shall be taken to archdeacon and do penance”⁹. Abortions were opposed by both the Church and the State as Coloman was the follower of “the King Stephen, the destroyer of unbelievers, who armed the people with the shield of faith”¹⁰. The decision of the Buda Synode (1279) was some kind of an improvement of the Laws of the King Coloman as all the women who “by induced abortion removed their foetus” were supposed to be excommunicated¹¹.

The Hungarian customary law, written up by Stephen Werbőczy in 1514 and published as *Opus Tripartitum*, did not contain explicit provisions on abortions; however, these provisions were for sure influential:

Second part, chapter 62 (2): “Here it should be known that the term «sons» can mean those conceived, those born, and those born posthumously. By conceived are meant those not yet born but quickening in the womb of the mother as a result of lawful intercourse between a man and woman. They have by nature equal rights with the living sons already born from the time of their conception, which is indicated by the time of birth”.

First part, chapter 14 (5) “(They are called taints of infidelity) [...] then, those who kill or wound their kinsmen or blood relatives within the fourth degree”¹².

⁸ Various Christian authors morally opposed abortions (e.g. Clement of Alexandria, Tertulian, Minucius Felix, Cyprian, Augustine of Hippo). M. Nemeč, *Doktrinálno-právny pohľad katolíckej cirkvi*, p. 113.

⁹ Coloman, I/58, in: *Decreta Regni Mediaevalis Hungariae 1000-1301*, ed. J.M. Bak, Charles Schlacks, Jr. Publisher, Idyllwild 1999, p. 29.

¹⁰ Coloman, I. in: *Decreta*, p. 24.

¹¹ G. Jobbágyi, *Az élet joga: abortusz, eutanázia, művi megtermékenyítés*, Szent István Társulat, Budapest 2004, p. 119.

¹² *Stephen Werbőczy: The Customary Law of the Renowned Kingdom of Hungary in Three Parts (1517)*, eds. J.M. Bak, P. Banyó, M. Rady, Charles Schlacks, Jr., Idyllwild CA, CEU, Budapest 2005, p. 325 and p. 67.

According to these provisions, the rights of the unborn child (*nasciturus*) were comparable to the rights of the born child and causing death to unborn child was qualified as a murder, i.e. as a perfidious crime punishable with forfeiture of the whole perpetrator's property and also with the capital punishment.

However, the court practice in the vast Kingdom of Hungary was not uniform and equally strict. There were opinion differences in the counties regarding the *ensoulment (animation) of the foetus* which had influence on the culpability and on the sanction imposed upon the perpetrator. E.g. in the Békés county the opinion even in the 18th century was, that abortion *until the end of the first month* is not a crime. Some other counties had two months limitation. These limitations had their roots in medieval age Church teaching accepting the Aristotelian view according to which the baby boy's body was ensouled forty days after conception and the baby girl's body was ensouled ninety days after conception. The Church opposed abortions since the very beginning, however, due to *animation views* e.g. the Pope Gregory XIV. (1591) commanded excommunication only of those women, who underwent abortion when the foetus was already *shaped, animised*¹³. In free royal city Pest, abortion was perceived as a crime since the moment of conception and since the *first movement of the foetus* it was qualified as a murder because that was the instance when the soul was believed to enter the body. There was also another view and this deemed as crucial the half time between the conception and birth¹⁴. So was formulated also the mitigating circumstance in the Austrian *Praxis Criminalis Ferdinanda* (1656)¹⁵, which became part

¹³ J.R. Schroedel, *Is the Fetus a Person? A Comparison of Policies Across the Fifty States*, Cornell University Press, Ithaca 2000, pp. 17–19. The Pope Innocent XI. condemned in 1679 abortions before animation as well as the opinion that the foetus (as long as it is in the uterus) lacks a rational soul. These were punishable with *anathema sit*. The situation remained unchanged until 1869, when the Pope Pius IX. punished with excommunication all the abortions. See: M. Nemeč, *Doktrínalno-právny pohľad katolíckej cirkvi*, pp. 117–118.

¹⁴ E.T. Szűcs, *Magyar jogi népszokások*, Gondolat, Budapest 1981, p. 124.

¹⁵ Art. LXVII, 6 (2), in: L. Kollonich, *Forma processus iudicii criminalis, seu praxis criminalis*, Typis Academicis, per Joannem Andream. Hörmann, Tyrnaviae 1697, p. 48. (i.e. the Latin translation made by Kollonics Lipót (1631-1707), the cardinal of the Holy Roman Church, Archbishop of Kalocsa and later of Esztergom, and Primate of Hungary. *Praxis Criminalis* precisely regulated different forms of abortions, i.e. killing the foetus in the woman's womb or right after the delivery (both punishable with capital punishment executed by sword). It had also provisions regulating the negligent infanticide, provisions regulating the commission of the crime because of labour pains causing insanity, provisions about negligent maternal care

of the influential Hungarian collection of laws called *Corpus Iuris Hungarici*, and which was referred to in many Hungarian court decisions, even though it was not adopted as the official Criminal Code¹⁶. Sanctions for such crime depended not only on the stage of the crime but also on the medieval world-view. Many women perpetrators or accomplices were punished as witches until 1768 when Maria Theresa prohibited the execution of witches. Mainly family members were considered to be accomplices. According to *Praxis Criminalis*, a perpetrator or an accomplice was anybody who wanted to induce a premature birth forcibly, by giving any food, drink, poison or by another means, or wanted to induce male or female sterility¹⁷.

To sum up, abortion was a serious crime in the Hungarian middle-age and modern-age era, punishable with the capital punishment, implicitly regulated in *Opus Tripartitum* and explicitly in *Praxis Criminalis Ferdinandae*. The court practice referred to both, but was not uniform due to the territorial and personal particularism.

1.2. Abortions in the History of the Kingdom of Hungary after the Adoption of the Modern Criminal Code in the 19th Century

The criminal law started to humanise since the Age of Enlightenment, under the influence of the Cesare Beccaria's treatise *On Crimes and Punishments*. There were codification attempts in the Kingdom of Hungary since the 18th century, i.e. attempts to adopt a Criminal Code which would abolish the particular sources of law. The draft Criminal Code was produced in 1795 and subsequently in 1827 and 1843. The draft produced in 1843 by the Hungarian lawyer, judge and politician Ferenc Deák (1803-1876) was regarded as the best one and even though it was not adopted due to the revolutionary

and provisions about unconscious pregnancy. In: G. Béli, *Magyar jogtörténet. A tradicionális jog*, Dialóg Kampus Kiadó, Budapest 2009, p. 123.

¹⁶ Sz. Bató, *A magzatelhajtás tényállása az osztrák és a magyar jogtudományban a Theresianától 1848-ig.*, "Acta Universitatis Szegedensis" 63 (2) 2003, p. 10 and G. Béli, *Magyar jogtörténet*, p. 90.

¹⁷ For example the widow called Totth Pálné was accused of inducing abortion to her daughter (Bihar County, 1717) and Žofia Dubkalová from Trenčín was accused of drinking a potion able to induce abortion in the third month of pregnancy, but she claimed that she had drunk the potion because of high temperature and she was punished only symbolically, with three months imprisonment. F. Schram, *Magyarországi boszorkányperek 1529–1768*, vol. I, Akadémiai Kiadó, Budapest 1983, p. 133; L. Hajdú, *Büntett és büntetés Magyarországon a XVIII. század utolsó harmadában*, Magvető, Budapest 1985, p. 262.

movement, the court practice routinely referred to it.¹⁸ It enshrined the Enlightenment principle (Joseph II.¹⁹), according to which abortions were not supposed to be punished with capital punishment²⁰, but with imprisonment²¹. Finally, after the Austro-Hungarian Compromise of 1867 nothing stood in the way of adoption of the first Criminal Code, known as the *Csemegi Code*, adopted under the no. V in 1878.

The first Hungarian Criminal Code regulated abortions in the Articles 285-286 of the chapter XVIII (misdemeanours and felonies against the human life).

Pursuant to the Art. 285: “The pregnant woman, who intentionally induces herself abortion, kills her foetus or allows killing it, shall be liable to a term of imprisonment of two years if she got pregnant in marriage, otherwise she shall be liable to a term of imprisonment of three years. The same punishment is awarded to the person who commits this crime with the consent of the woman. The offender, who commits this crime to gain larger benefits, shall be liable to a term of imprisonment of five years”.

Pursuant to the Art. 286: “Who intentionally kills the pregnant woman’s foetus or kills it without consent of this woman, shall be liable to a term of imprisonment of five years. The offender, who caused death of the pregnant woman through commission of this offence, shall be liable to a term of imprisonment of ten to fifteen years”.

In contrast with previous regulations, the *Csemegi Code* was not based on animation (ensoulment) of foetus and punished only intentional conduct. The

¹⁸ T. Horváth, *Az első magyar büntető törvénykönyv és kodifikátora: Csemegi Károly*, in: *A praxistól a kodifikációig. Csemegi Károly emlékére (1826-1899)*, Osiris, Budapest, pp. 27–39, in: http://www.ajk.elte.hu/file/Kodifikacio_HorvathTibor.pdf [accessed: 16.07.2017].

¹⁹ E. Repková, *Kresťanský svetonázor a jeho vplyv na právnu úpravu abortu a infanticídiu v dejinách na území Slovenska*, Trnavská univerzita v Trnave, Trnava 2015, p. 93 and following.

²⁰ The draft Criminal Code of 1843, head X: “On Abortion. Art. 140 The pregnant woman, who intentionally (with bad intention) (internally) applies something what induces premature birth or does so with some external means, shall be liable, if she gave premature birth or gave birth to dead or partially-decayed foetus, to a term of imprisonment of up to three years if she is not married. If she is married, she shall be liable to a term of imprisonment of up to four years. Art. 141 In the same way shall be held liable the person, who intentionally and willingly assisted the woman at abortion according to the Art. 140 or encouraged her to commit abortion”. Art. 94 regulated recidivism: “Recidivists shall be liable to a term of imprisonment of a double length in the cases of [...] b) infanticide, abortion and child abandonment”. See: M. Laclavíková, A. Švecová, *Pramene práva na území Slovenska II. (1790-1918)*, Typi Universitatis Tyrnaviensis, Trnava 2012, p. 117 and p. 115.

²¹ Articles 139-143. In Sz. Bató, *A magzatelhajtás tényállása*, p. 16.

differentiation between married and single women, as well as the impunity of the physician, who induced abortion in order to save the pregnant woman, was common with the draft Criminal Code of 1843²².

It was the medical weekly newspaper called *Orvosi hetilep* (1888) which devoted itself to the specifics of the medical expert opinions on abortions and their proving in the court. According to this newspaper: “The physician was supposed to express himself on the abortion cases and to co-operate closely with the judge. However, the witness testimonies and the testimony of the accused were more important evidences than the medical examination. Physicians had to pose their questions to women and examine women in the presence of the sent officer. Judge posed the questions to witnesses, however, if it was necessary during the proceeding to ask questions about health state, pregnancy or any related topics, it was the physician who took over the competency to interrogate”. The necessity of medical examination depended on “the time, when the abortion was carried out (the medical examination was necessary if not much time elapsed from the abortion) and it depended also on the woman’s age. If much time elapsed from the abortion, precisely if more than three-four months elapsed from the abortion (even if the woman was a first-time mother), no changes were visible on the reproductive organs, all the more if the women were older or if they gave birth multiple times, even if the foetus was fully formed. In such cases the medical examination had to be replaced by strict and professional interrogation. The accused had to be in such case always asked about the pregnancy and the birth” and both suggestive and captious questions were used, because these could “provoke the woman to reveal her secret. The judgement was supposed to be rendered on the basis of the interrogation and the examination of the accused as well as on the witness testimonies, not on the basis of the physician’s attempt to prove whether the foetus was healthy or not. All what was used in order to induce abortion had to be sealed, named and precisely described by the physician (e.g. one of the inexpert techniques was abdomen interlacing)”²³.

In spite of being very modern, the *Csemegi Code* (i.e. the Criminal Code of 1878) **was not spared of criticism**, mainly after the World War I.²⁴ “The great injustice suppressed during the war leavened and ripened”, was the

²² I. Pollák, *A magzatelhajtási probléma*, “Jogtudományi Közlönyi” 13 (1915), p. 154.

²³ T. Kun, *Törvényszéki orvosi eljárás a terhesség és szülés eseteinél*, “Orvosi Hetilap” 25 (1888), pp. 822–823.

²⁴ The human race evolves terribly slowly and the war offers the best possibility to sow the seeds of culture. In: I. Pollák, *A magzatelhajtási probléma*, p. 154.

sentence used to metaphorically condemn the fact that the Hungarian law **did not respect the free will of the woman**. The provisions of the *Csemegi Code* were reviewed also positively because “as it is true that *pecunia non olet*, so it is true that no stigmatisation of children based on their conception circumstances must be ensured”. However, many jurists stated that: “Ignoring the fact that the woman was forced to the sexual intercourse and consequently could not decide freely about the foetus and was for life considered unchaste”, was contrary to the acceptable limit of the *summum ius summa iniuria (est)* principle. According to them, it could not be accepted that the State punished the violence on woman but at the same time protected the consequence of such violence. They highlighted that: “The consensus was always the keystone of our civilisation and our ethics and this consensus has to be reached also regarding the pregnancy”²⁵. The author, very outspokenly, suggested this solution: “While the provisions about the foetus will be incorporated within the chapter XVIII [same importance of the foetus as of the born person], the problem will have no solution. Is the foetus life or is it only the woman’s part, her fibroma, her disease? Let’s imagine the situation that the foetus is the woman’s part and let’s remember that the times when somebody belonged to somebody else are over [...] The State opposed the equality of the foetus and the born person when it had denominated the foetus as inferior once it endangered the woman [...]”²⁶. Tivadar Pauler had the same opinion and his criminal law text-book *Büntetőjogtan* (1864), promoted to the level of the customary law, was based on the Roman law principle of non-independency and legal dependency of the foetus on the mother. He claimed that “the foetus is not a person”²⁷.

The criticism involved also **the missing regulation of the bodily harm of the mother due to the abortion**. “According to the court decision, Zsuzsanna T. agreed to abortion carried out by Mária K. for a certain fee, with a solid and sharp object. This led not only to abortion but also to bodily harm which required six to eight weeks recovery time. The Curia Regia (the Hungarian Supreme Court) exhibited a charge only pursuant to the Art. 285 (2) which punished the intentional abortion with the consent of the pregnant woman for a reward, however did not punish explicitly the bodily harm. According to the opinion of the Curia Regia, the punishment of the bodily harm

²⁵ Ibidem, pp. 153–154.

²⁶ Ibidem, p. 154.

²⁷ E. Repková, *Abort a infanticídium v novovekom uhorskom trestnom práve*, “Societas et Iurisprudentia” 2 (1) 2014, p. 159.

was enshrined within this Article. Naturally, this was criticised and it was stressed that the Article 285 was supposed to have the third paragraph comprising of two letters. The letter a) was supposed to explicitly punish the bodily harm and the letter b) was supposed to punish the death of the mother due to the carried out abortion. Both letters were supposed to differ between the larger benefits motive and other motive”²⁸.

Criticised was also the conjoint Ministry Regulation no. 44 653/890, stating that: “Taking into account the actual medical knowledge, regard should not be taken to the ability of certain means (substances) to induce abortion, but to the fact whether the abortion was induced by application of the concrete means”. This was criticised for being in conflict with the aim of the criminal proceeding because: “If the expert is allowed to give an opinion *a posteriori*, why should he be refused the possibility to express it *a priori*? What if the expert does not know which substance was applied to the woman? [In this case more substances were found in the house of the midwife, who had already been accused of inducing abortions before]. Experts could express their opinion only after the abortion, if they knew the substance, the applied amount of the substance, the way of application of the substance etc., what was impossible if the offender denied guilt (e.g. in this case the midwife refused the responsibility for the abortion and claimed that the only thing she gave to the pregnant woman was the mint extract because the pregnant woman had been complaining about stomach ache and she gave her no other substance present in her house. Pursuant to the Ministry Regulation no. 44 653/890 the physician expressed his opinion that the mint extract was not able to induce the abortion, but the case could have had a different ending, if it would have been possible to ask about the ability of other substances found in the midwife’s house to induce abortion)”²⁹.

At the end of the 19th century and at the beginning of the 20th century the society was becoming more liberalistic, the social taboos started to get destroyed and the spread of the new philosophical postulates affected also the issue of abortions and human sexuality (Sigmund Freud). Abortions were becoming more a medical issue (protection of both the woman and the foetus), a lay legislation issue (perception of the situation of the pregnant woman as a mitigating circumstance) and a moral issue (Catholic Church provisions

²⁸ H. Fausztin, *A nő belegegyezésével elkövetett magzatelhajtás közben a nőn elkövetett súlyos testi sértés*, “Jogtudományi Közlönyi” 9 (1901), pp. 69–70.

²⁹ B. L., *A magzatelhajtás vizsgálata*, “Jogtudományi Közlönyi” 19 (1892), pp. 148–149.

banning abortions³⁰, enshrined in the Code of Canon Law of 1917 and 1983³¹). Consequently, the 20th century brought a very new approach to abortions through the so called test of proportionality, posing the woman's rights on one side of the scale (right of the woman to life, right of the woman to health, right of the woman to privacy) and the right of the foetus on the other side of the scale (the right of the foetus to life).

1.3. Abortions in the History of Czechoslovakia

The *Csemege Code* was in effect for the Slovaks until 1950, even though since the 19th century there were attempts to revision some of its provisions. Since the 20th century loudened mainly those attempts which called for respecting the rights of women as the *maius ius*. For instance, there was an article published in the oldest national legal magazine called *Právny obzor* in 1933, in which dr. Očenášek described the abortion reality in the first Czechoslovak Republic. According to this article: "Abortions are a wide-spread and concealed evil [...], however, while the wealthy women undergo expert abortions, with the smallest health and legal risk, the poor women undergo abortions with the risk of death, with the risk of disclosure of their secret and so of the cruel penalty. We can count the losses of lives in thousands [...]"³².

Dr. Očenášek specified also the situation purely in Slovakia³³, where "abortions are carried out also by those who voted for their punishability"³⁴. We see that in the interwar Czechoslovakia, the abortion issue was somewhere in the middle of the will to step out from the shadows of the past and

³⁰ The Pope Pius XI. condemned abortions in Encyclicals *Casti connubii* in 1930. The complex doctrine on abortions called *Declaration on Procured Abortion* was adopted by the Sacred Congregation for the Doctrine of the Faith in 1974. The Declaration repeats the opinion expressed on the Second Vatican Council, according to which the life begins in the moment of conception and discourages the states to adopt legislation allowing abortions. Also the Pope John Paul II. explicitly condemned abortions. See: M. Nemeč, *Doktrinálno-právny pohľad katolíckej cirkvi*, pp. 119–120.

³¹ CIC 1917, can. 2350 § 1: "Procurantes abortum, matre non excepta, incurrunt, effectu secuto, in excommunicationem latae sententiae Ordinario reservatam; et si sint clerici, praeterea deponantur". CIC 1983, can. 1398: "A person who procures a completed abortion incurs a latae sententiae excommunication".

³² M. Očenášek, *Osnova zákona o vyhnání plodu*, "Právny obzor" 16 (1) 1933, p. 68.

³³ The ethnographic researches confirm that people in the Slovak countryside tried to regulate births even by inexpert means. The practice of "the Angel-Makers" (women carrying out abortions) was punishable, but somehow tolerated in both urban and rural society. M. Botíková, S. Švecová, K. Jakubíková, *Tradičie slovenskej rodiny*, VEDA, Vydavateľstvo Slovenskej akadémie vied a Medzinárodné stredisko pre štúdium rodiny, Bratislava 1997, p. 158.

³⁴ M. Očenášek, *Osnova zákona*, p. 68.

to step into the shadows of the future, casted by **discussion on liberalisation of the dualistic legal regulations**, hold among jurists, judges³⁵ and congressmen³⁶.

After the dissolution of Czechoslovakia and establishment of the first Slovak Republic during the World War II., the situation changed. *The Law no. 66 of 1941 Coll. on Protection of Foetus* was adopted. It was in effect until 1945 and it was known as the Anti-abortion Law which was supposed to “increase the population growth at any costs”. It banned abortions and allowed only *premature birth*, if serious health risk was involved. The sanctions imposed by legislators were stricter and they formulated also new crimes affecting those who helped to carry out abortions or who negatively influenced the fertility of others. This legal regulation was criticised during the socialist era when again the Czechoslovak and newly the Soviet abortion laws were honoured³⁷.

During the era of Communist Party rule, the legal order was influenced by the interwar Czechoslovakia liberal tendencies which had their roots in the Soviet laws³⁸. Two new couples of legal regulations were adopted, i.e.

³⁵ E.g. according to the court decision of the Czechoslovak Supreme Court, no. 4033/1930, from December, 30, 1930 it was possible to legally carry out abortion if the pregnant woman was imminently endangered. However, as we have already pointed out, this was accepted by the Hungarian jurisprudence much earlier. See: M. Očenášek, *Osnova zákona*, p. 70 and following.

³⁶ According to the L. Landová-Štychová et al., *Draft on Amendment of the Head XVI, Part I of the Criminal Code of 1852, May, 27 About Abortion as well as of the Law no. V of 1878 (Art. 284-286)* abortion was legal if it was carried out because of health, eugenic or social issues, or if the woman got pregnant after being raped and she was younger than 17 years old. The legal requirement according to which the abortion had to be done while the foetus was unable to survive outside of the body of the mother had to be met. Later, abortion was possible only if the physician decided so. Abortion was done upon the request of the pregnant woman. Issues such as the external influence on the pregnant woman's will, her unconsciousness or abortion carried out by personnel without medical licence were not enshrined within the Draft. In Poslanecká Sněmovna Parlamentu České Republiky, Návrh poslance L. Landové-Štychové a soudruhů na novelisaci ustanovení hlavy XVI., I. dílu všeobecného trestního zákona ze dne 27. května 1852 o vyhnání plodu ze života jakož i § 284-286 z r. 1878: V., Poslanecká sněmovna N. S. R. Č., Praha 1926, in: http://www.psp.cz/eknih/1925ns/ps/tisky/t0535_01.htm [accessed: 25.07.2017].

³⁷ L. Hojčová, *Pokrokové ženské hnutí na Slovensku 1918-1980*, Živena, Martin 1984, p. 49 and p. 240.

³⁸ The RSFSR legalised abortions as the first state in the world in 1920. Abortions were newly criminalised in the Stalin era in 1936 because of ideological reasons; The family became an important source of education of the children in socialist patriotism. Abortions were again legalised in the USSR in 1956, what influenced also the Czechoslovak law-makers.

the Criminal Code (1950) and the Abortion Law (1957), and consequently the Criminal Code (1961) and the Abortion Law (1986).

In the first unified Czechoslovak Criminal Code (the Law no. 86 of 1950 Coll.) was relevant the Article 218 (foeticide) which was the expression of liberal tendencies sounding since the end of the 19th century. Sanctions for the perpetrators-pregnant women got lower (up to one year imprisonment regardless being married or single), a new provision was incorporated which punished the death or bodily harm caused to pregnant woman, there was a special provision in order to punish abettors and for the first time there was a legal provision (i.e. not only a court decision or a jurisprudence opinion) about impunity of the pregnant woman and the physician who carried out the abortion in case when the pregnant woman's life or health was endangered or in case of a genetic predisposition to the hereditary mental disorders endangering the foetus³⁹.

The Abortion Law (the Law no. 68 of 1957 Coll.) was *lex specialis* while the Criminal Code was *lex generalis*. The Abortion Law was the first national complex abortion law according to which **the woman could freely decide about undergoing abortion and if meeting the law requirements, she was no longer a perpetrator of a crime, i.e. she no longer could be held liable and punished**⁴⁰. The woman (or her legal representative) could in her abortion request refer to medical reasons or *other reasons*⁴¹. A special committee

³⁹ Art. 218 of the Criminal Code no. 86 of 1950 Coll. "Foeticide. (1) The pregnant woman who intentionally kills her foetus or asks somebody to kill her foetus, or allows somebody to kill her foetus, shall be liable to a term of imprisonment of up to one year. (2) Who intentionally kills the pregnant woman's foetus with her consent, or who encourages the pregnant woman to conduct pursuant to the Art. 1, or helps her with such a conduct, shall be liable to a term of imprisonment of one to five years. (3) The perpetrator shall be liable to a term of imprisonment of three to ten years if a) commits the crime according to the par. 2 for money or b) if such conduct results into grievous bodily harm of the pregnant woman or results into her death. (4) Abortion carried out by the physician in the health care unit with the consent of the pregnant woman is legal, if the appointed physician concludes that continuation of the pregnancy or birth would seriously endanger the pregnant woman or would cause her grievous permanent injury to health, or that one of the parents suffers from severe hereditary disease; the consent of the pregnant woman can be replaced by the consent of her legal representative only if the woman is a non *sui iuris* person or if she is not able to express herself". This provision was abolished by the Law no. 68 of 1957 Coll.

⁴⁰ Art. 6 of the Law no. 68 of 1957 Coll. on Abortions: "Impunity of the pregnant woman. The pregnant woman who induces herself abortion or asks somebody to end her pregnancy or allows somebody to end her pregnancy, shall not be held criminally liable".

⁴¹ These were vaguely specified in the Art. 2, par. 2 of the Ministry of Health Regulation no. 249 of 1957: "These particular abortion reasons are mainly: a) higher age of the woman

decided about the possibility to undergo abortion⁴², what was fully consistent with the politics of the Communist Party of Czechoslovakia and private character of family, marriage etc.⁴³ This committee “when deciding whether to allow abortion or not, had to examine the main reason of the abortion request and the overall situation of the woman, determined by both health and social issues”⁴⁴. The law required typical ideological approach⁴⁵ inspired by the Soviet jurisprudence, according to which this Law was adopted “in order to ensure the healthy development of family, which could be endangered by negative side-effects of abortions on health and life of the woman, carried out by negligent personnel outside of hospitals”⁴⁶.

In 1957 the Ministry of Health issued the Regulation no. 249 of 1957 according to which **it was possible to carry out the abortion until the third month from the moment of conception** (later only because of health issues). This time limitation remained unchanged until today. The fee for abortion was 200-500 Czechoslovak crowns.

The consequently adopted Criminal Code (the Law no. 140 of 1961 Coll.⁴⁷) emphasised the necessity to protect the life and health of the preg-

b) more children c) loss of husband or his disability d) family breakdown e) prevalent economic responsibility of the woman for alimention of the family or the child f) difficult life situation as a result of pregnancy of the unmarried woman g) circumstance suggesting that pregnancy is a result of rape or of a different crime”.

⁴² The composition of the Committee was specified by the Ministry of Health Regulation no. 249 of 1957 in Art. 3, par. 2: “The Committee is created at the county public health unit whose part is a hospital and composes of the director of the county public health unit who is the chairman of the Committee, of the head of the gynaecology department of the county public health unit, eventually of another expert in medical indications and contraindications issues. Another member and assistant of this member will be appointed by the Council of the District People’s Committee. This member shall be an experienced woman, enjoying esteem and good reputation”. The Ministry of Health Regulation which put into effect the Abortion Law no. 104 of 1961 Coll. replaced the female member by a male member of the People’s Committee.

⁴³ J. Rákosník, *Sovětizace sociálního státu. Lidově demokratický režim a sociální práva občanů v Československu 1945–1960*, Karlova Univerzita v Praze, Filozofická fakulta, Praha 2010, p. 367.

⁴⁴ Art. 2, par. 4 of The Ministry of Health Regulation no. 249 of 1957.

⁴⁵ J. Rákosník, I. Tomeš, *Sociální stát v Československu. Právně-institucionální vývoj v letech 1918-1992*, Auditorium, Praha 2012, pp. 358–359.

⁴⁶ Art. 1 of the Law no. 68 of 1957 Coll. on Abortions.

⁴⁷ Abortions were regulated in the Articles 227-229 of the Criminal Code no. 140 of 1961 Coll.

nant woman, using more precise terminology existent up until today, naming the abortion as *induced ending of pregnancy*⁴⁸.

When compared to the Law no. 68 of 1957 Coll., the main differences were that the perpetrator was no longer punishable with three to ten years imprisonment but with two to eight years imprisonment and that a new crime was constituted which punished abortions carried out without pregnant woman's consent. The impunity of the pregnant woman was preserved⁴⁹.

Consequently, some other pieces of legislation of lower legal force were adopted⁵⁰, followed by adoption of the Abortion Law no. 73 of 1986 Coll.⁵¹ Pursuant to this Law (Art. 1) abortion was not only a method to *prevent predominantly the health risks*, but it was a method to *consequently solve the problem of unintended pregnancy*⁵². This Law abolished the previously mentioned committee approval procedure and abolished also the special abortion committees. As amended, it became the basis of the effective Slovak abortion regulation.

1.4. Abortions in the Effective Slovak Law

The basis of the effective Slovak abortion regulation is the amended Abortion Law no. 73 of 1986 Coll., the Criminal Code (the Law. no. 300 of

⁴⁸ Art. 227 of the Criminal Code no. 140 of 1961 Coll. Abortions: "(1) Who assists the pregnant woman with abortion or encourages her to a) end the pregnancy on her own or b) ask somebody or allow somebody to carry out abortion differently than by meeting the requirements set out by this law, shall be liable to a term of imprisonment of up to one year or of remedial measure. (2) The perpetrator, whose conduct described in the par. 1 of this Article resulted into grievous injury to health or into death shall be liable to a term of imprisonment of one to five years".

⁴⁹ Art. 229 of the Criminal Code (the Law no. 140 of 1961 Coll.): "The pregnant woman who induces herself abortion or asks somebody or allows somebody to carry out the abortion on her, shall not be held criminally liable, not even under provisions concerning the abettor".

⁵⁰ The Regulation no. 129 of 1960 Coll. (abolished the fee for abortions), the Regulation no. 104 of 1961 Coll. (amended the abortion reasons), the Government Regulation no. 126 of 1962 Coll. (changed the appointment process and composition of the abortion committees and newly introduced the abortion fees), the Regulation no. 71 of 1973 and no. 72 of 1973 Coll. (amended the abortion reasons and changed the composition of the abortion committees), the Regulation no. 141 of 1982 Coll. (amended and changed the abortion reasons), the Regulation no. 74 of 1986 Coll. (put into effect the Abortion Law no. 73 of 1986), the Regulation no. 22 of 1998 Coll. (introduced compulsory reports on abortions).

⁵¹ In the Czech Socialist Republic was adopted the Law no. 66 of 1986 Coll. on Abortion. This Law and the Law no. 73 of 1986 Coll. adopted in the Slovak Socialist Republic abolished the Law no. 68 of 1957 Coll. on Abortion.

⁵² The growth of abortions is observed since the 1980's. J. Rákosník, *Sovětzace sociálního státu*, p. 368.

2005 Coll.) and the Constitution of the Slovak Republic (the Law. no. 460 of 1992 Coll.).

The legal requirements for abortions according to the Abortion Law no. 73 of 1986 Coll.⁵³ are following:

1) Written request of the pregnant woman addressed to the gynaecologist residing in the place of her permanent residence or where her work or school is (if the woman is under 16, the consent of her legal representative with the abortion is required; if the woman is under 18, the knowledge of the legal representative about the abortion is required). The pregnancy can not last more than 12 weeks and there have to be no contraindications⁵⁴. The woman does not have to state the reason for her abortion request. If according the physician the prerequisites are not met, the director can review this physician's decision.

2) The physician can carry out the abortion with the consent/under the impulse of the pregnant woman in case of health issues⁵⁵.

3) Abortion can not be carried out to the foreigner with a temporary residence in the Slovak Republic.

The negative feature of this Law is that it does not reflect the actual situation on the Slovak pharmaceutical market. E.g. a medicament called *Mifegyne 200 mg*, with potential therapeutic use in human fertility control, was registered in Slovakia in 2012. Also *Medabon* was registered, having the same therapeutic use. Of course, these medicaments must be prescribed by the physician and can only be administered under the physician's control and within limited period in the specialised health care institution. Despite of this, it would be appropriate if the effective Slovak law took into account these different forms of abortions existent and carried out in the present days.

The relevant articles of the effective Criminal Code of 2005 are the Articles 150-153, inspired by the Criminal Code of 1961. Different is the se-

⁵³ There are no distinctive differences between the published version (1986) and the effective version (to date January 1, 2018). In the effective version the Article 3 about the free-of-charge contraceptive methods was left out and incorporated was a provision which regulated the situation when the abortion conditions were not investigated.

⁵⁴ Such contraindication is the health state of the woman which raises the risk linked to the abortion and also the fact that another abortion had been carried out before and no more than six months elapsed since this abortion (this is not applicable if the woman already gave birth twice, is older than 35 years or a circumstance suggests the pregnancy is a result of a crime which was committed on her). See the Regulation no. 74 of 1986 Coll.

⁵⁵ The list of the abortion reasons is attached to the Regulation no. 74 of 1986 Coll.

quence of the provisions (first are the provisions about abortion without the pregnant woman's consent, these are followed by the provisions about abortion carried out with her consent, subsequently there are provisions criminalising the abettors and finally, long accepted provisions about impunity of the pregnant woman take place. The minimum sentences got stricter as well as the maximum sentence in the case of abortion carried out without the pregnant woman's consent if the conduct was more severe (fifteen years imprisonment instead of twelve years imprisonment) and also when the conduct was more severe because the abettor instigated or assisted the abortion which resulted into grievous bodily harm or death (three to eight years imprisonment instead of one to three years imprisonment). More severe conduct did not mean only causing grievous bodily harm or death or carrying out the abortion for larger benefits (previously called "earnings") but it also meant committing the crime upon protected persons (such as minors) or committing it cruelly⁵⁶.

⁵⁶ Articles 150-153 of the Criminal Code (the Law no. 300 of 2005 Coll.) on Illegal Abortion: Art. 150 (1) Any person who, without the consent of a pregnant woman, performs an abortion upon her shall be liable to a term of imprisonment of three to eight years. (2) The offender shall be liable to a term of imprisonment of four to ten years if he commits the offence referred to in paragraph 1 a) acting in a more serious manner, or b) against a protected person. (3) The offender shall be liable to a term of imprisonment of eight to fifteen years if, through the commission of the offence referred to in paragraph 1, he causes grievous bodily harm or death to the pregnant woman. Art. 151 (1) Any person who performs abortion upon a pregnant woman with her consent, using procedures or under the conditions breaching generally binding legal regulations concerning the abortion, shall be liable to a term of imprisonment of two to five years. (2) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1, a) and he causes grievous bodily harm or death through its commission, b) upon an under-aged woman without the consent of her legal guardian or person to whose care or charge she had been entrusted, c) and thus he gains larger benefits, or d) acting in a more serious manner. Art. 152 (1) Any person, who incites a pregnant woman into a) performing an abortion upon herself, or b) asking or having have another person to perform abortion upon her using procedures or under the conditions breaching generally binding legal regulations concerning the abortion, shall be liable to a term of imprisonment of up to one year. (2) The same sentence as referred to in paragraph 1 shall be imposed on any person who helps a pregnant woman to abort her pregnancy, or assists her in asking or having another person to perform abortion upon her. (3) The offender shall be liable to a term of imprisonment of two to five years if he commits the offence referred to in paragraphs 1 or 2 a) acting in a more serious manner, or b) upon a protected person. (4) The offender shall be liable to a term of imprisonment of three to eight years if, through the commission of the offence referred to in paragraph 1, he causes grievous bodily harm or death. Art. 153 Any pregnant woman who induces abortion to herself, or asks or allows another person to do so, shall not be held criminally liable for such an act, not even under provisions concerning an instigator and an aider.

Following articles are relevant from the Constitution of the Slovak Republic:

According to the Art. 2, par. 3: “Everyone may do what is not prohibited by law and no one may be forced to do anything that is not prescribed by law”.

According to the Art. 15, par. 1: “Everyone has the right to life. Human life is worthy of protection already before birth”.

According to the Art. 16, par. 1: “The inviolability of the person and its privacy is guaranteed. It may be limited only in cases laid down by law”.

According to the Art. 19, par. 2: “Everyone has the right to protection against unauthorized interference in private and family life”.

According to the Art. 24, par. 1: “The freedoms of thought, conscience, religious creed and faith are guaranteed”.

According to the Art. 40, par. 1: “Everyone has a right to the protection of health”

It is a fact that the legislator distinguishes between a born and unborn child and this was confirmed also by the Constitutional Court, referring to the grammatical and systematic interpretation, in the famous case PL. ÚS 12/01⁵⁷ about the compliance of the Law no. 73 of 1986 Coll. and related Regulation with the Constitution of the Slovak Republic. According to the Slovak Constitutional Court, the unborn human life is “a value that has an objective character⁵⁸ and such values are protected by the Constitution in different ways

⁵⁷ The Constitutional Court in its decision PL. ÚS 12/01, from December, 4, 2007, expressed opinion about the compliance of certain Abortion Law provisions and of the related Regulation with the Constitution of the Slovak Republic. The Constitutional Court ruled that only one provision was not in compliance. It was the Art 2, par. 3. of the Regulation according to which it was possible to opt for abortion until the 24th week because of genetic reasons. As the Law recognises the only limitation, which is the 12 weeks period, the Constitutional Court ruled that the Ministry of Health acted *contra (ultra) legem*.

⁵⁸ “From the Art. 15, par. 1 of the Constitution of the Slovak Republic (hence Constitution), becomes evident that the law-maker distinguishes between the right of every person to life (first sentence) and between the protection of foetus (second sentence). This is the distinction between the right to life as personal, subjective right and the protection of foetus as objective value. [...] The Constitutional Court of the Slovak Republic (hence the Constitutional Court) is of opinion (in the court decision PL.ÚS 12/01 – authors’ note), that unborn human life has character of an objective value. Moreover, the Constitutional Court is of opinion that the Constitution does not exclude the possibility to balance the human rights and freedoms with Constitutional values, but such balance is of different quality [...] The possibility of a woman to decide about her mental and physical integrity and its layers, including the conception and the course of pregnancy, falls within the scope of the Art. 16, par. 1, under which the inviolability of the person and its privacy is protected. Pregnancy does not deprive the woman of her right

and with different intensity. *Nasciturus* («the potential human life») is not a subject of law and can become one only *ex tunc*, if the *nasciturus* is born alive”. The Constitutional Court referred to the decisions of the European Commission and the European Court of Human Rights. In these decisions “the unborn foetus is not a person with the right to life within the meaning of the Art. 2, par. 1 of the Convention, probably because understanding the rights of foetus as equal to the rights of women would frivolously limit these rights of women as of born persons”. The Court reasoned also with the practice of the majority of states which are members of the Council of Europe and which respect the women’s right to choice in the first trimester⁵⁹. Furthermore, taking into account the actual situation, it is hard to believe that Europe would in close future choose a different, more conservative path. E.g. the European Council Commissioner for Human Rights expressed himself that the Irish anti-abortion legal regulations must be replaced by such regulations which *respect the rights of women*. The Irish women shall not have the possibility to opt for abortion only because of health risks, but also because of the foetal damage, rape and incest and the abortions generally have to be decriminalised⁶⁰.

The approach of the Slovak Republic, that the women’s rights are *maius ius* when compared to the foetus’ right to life, is in conformity with the majority opinion of the European countries, expressed in international conventions which the Slovak Republic is constitutionally bound to recognise and honour.

Of course, the abortion issue is discussed in Slovakia and especially lively discussion took place in 2015, when three congressmen suggested amendment of the Constitution and of the Abortion Law according to which the abortions would only be allowed in the case of life/health risk endangering the pregnant woman. Other members of the Slovak National Council did not back up this amendment. The three congressmen reasoned that: “The legal order allowing intentional killing of unborn children and infringement of

to self-determination”. A. Brösl, *O pravidlách správania a o princípoch*, “Časopis pro právní vědu a praxi” 1 (2009), pp. 49–50.

⁵⁹ The only European country where the abortions are fully illegal is Malta. More on the Maltese criminal law and Maltese opinion on abortions. In R. Abela, *The Dichotomy of Abortion as a Human Right*, “Corpus Delicti” 1 (2017), p. 29 and following.

⁶⁰ P. Halpin, *Ireland must loosen abortion laws: Council of Europe rights commissioner*, in: *Reuters*, Thomson Reuters, New York, in: <http://www.reuters.com/article/us-ireland-abortion-council-idUSKBN17016M> [accessed: 3.08.2017].

their dignity is neither just, nor morally acceptable and opposes also the natural law". However, the reason about the human dignity is not satisfactory, mainly in the light of the above mentioned Constitutional Court decision PL. ÚS 12/01 and the Oviedo Convention⁶¹. The Slovak jurisprudence understands the human dignity issue as "the protection from violations of human dignity and as the protection of the human beings themselves"⁶².

In fact, the expert society is settled on a certain *status quo*, while the lay society tends to discuss with more passion. For example, there was a controversial campaign called *Right to life*, organised to commemorate fifty years from the decriminalisation of abortions. Many billboards were placed throughout Slovakia, showing an eleven weeks old foetus, dirty with blood after abortion, in the palm of the physician wearing white latex gloves. The inscription in the billboard stated that: "Since 1957, 1 370 000 children were killed in Slovakia". Consequently, thirty-three people complained that "these billboards traumatised and excessively shocked people and were far away from good manners and ethics". They said that "the campaign did not take into consideration whole audience, mainly children and thus opposed good manners". This resulted into a ruling of the Arbitrary Committee of the Advertising Standards Council according to which this campaign was in conflict with the Ethical Principles effective in the Slovak Republic⁶³. **The main reason was that the creators of this campaign did not responsibly take into account the whole spectrum of the audience**⁶⁴. Despite of this, the creators of the campaign spoke about success as, in their words, this campaign led to withdrawal of the draft produced by the Ministry of Health, which was supposed to limit the right of the physician to refuse to carry out the abortion if this was against the physician's conscience. For not all the Slovak hospitals

⁶¹ According to this Convention, the concept of human dignity constitutes the necessity to protect the foetus but does not constitute the foetus' right to life.

⁶² T. Ealík, *Ludská dôstojnosť v právnom poriadku SR*, "Justičná revue" 3 (2017), p. 327 and p. 341.

⁶³ For instance, according to the French law, the campaign creators would commit a crime, even though the campaign was only Internet-based as in 2016 the French Senators passed a bill to ban pro-life websites from spreading "false information" about abortion. With up to two years imprisonment and a 30 000 euro fine is punishable any moral or psychological pressure on people seeking information on abortions. In French lawmakers ban websites that spread "false information" on abortion. In: *France24*, Issy-les-Moulineaux: France 24, in: <http://www.france24.com/en/20161207-french-lawmakers-ban-websites-spread-false-information-abortion> [accessed: 4.08.2017].

⁶⁴ Ruling of the Arbitrary Committee of the Advertising Standards Council, no. 52 (07/06), from September, 12, 2007.

carry out abortions as the physicians have the right to collectively claim that carrying out abortions is against their conscience. The Ministry of Health claimed though, that he “changed his opinion in the law-making process, not under the influence of the campaign”⁶⁵.

CONCLUSION

Abortions have always existed in the human society, mainly because of the pressure of the society on the pregnant women (low age, single status, unintentional pregnancy as the result of rape, inconvenient social situation etc.) Since the times of Ancient Rome the abortions were severely punished. Neither history, nor the present times helped to **understand the legal status of foetus or to uniformly answer the question, when does the human life begin**. The Middle Ages were ruled by the theory of animation (ensoulment) of the foetus and as this theory was not uniform, the (often symbolical) sanctions imposed on abortion perpetrators varied. At the beginning of the 20th century the Hungarian jurisprudence started to criticise the fact that the foetus had the same rights in the field of the criminal law as the pregnant woman. Under the influence of the Soviet reforms, the decriminalisation of abortions started to be broadly discussed during the existence of Czechoslovakia. In 1950 the impunity of the pregnant woman and of the physician was established once the legal requirements were met. The turning point was the year 1957 when *lex specialis*, the Abortion Law was adopted. Pursuant to this Law, the woman could decide about abortion and it was legally carried out to her if the Abortion Committee consented. There was another Law adopted during the Communist Party rule, namely the Abortion Law no. 73 of 1986 Coll. This Law is the basis of the effective Slovak abortion law.

REFERENCES

- Abela, Roberta. 2017. “The Dichotomy of Abortion as a Human Right.” *Corpus Delicti* 1:29–32.
- B. L. 1892. “A magzatelhajtás vizsgálata.” *Jogtudományi Közlöny* 19:148–149.
- Bak, János (edited by). 1999. *Decreta Regni Mediaevalis Hungariae 1000-1301*. Idylwilld: Charles Schlacks, Jr. Publisher.

⁶⁵ *Kontroverzná kampaň proti interrupciám sa skončila*, in *aktuálne.sk*, News&Media Holding, Bratislava, in: <https://aktualne.atlas.sk/kontroverzna-kampan-proti-interrupciam-sa-skončila/slovensko/spolocnost/> [accessed: 4.08.2017].

- Bak, János, Péter Banyó, and Martyn Rady (edited by). 2005. *Stephen Werböczy: The Customary Law of the Renowned Kingdom of Hungary in Three Parts (1517)*. Budapest: Charles Schlacks, Jr., Idyllwild CA, CEU.
- Bató, Szilvia. 2003. "A magzatelhajtás tényállása az osztrák és a magyar jogtudományban a Theresianától 1848-ig." *Acta Universitatis Szegedensis* 63(2):3–34.
- Béli, Gábor. 2009. *Magyar jogtörténet. A tradicionális jog*. Budapest: Dialóg Kampusz Kiadó.
- Botíková, Marta, Soňa Švecová, and Kornélia Jakubíková. 1997. *Tradicie slovenskej rodiny*. Bratislava: VEDA, Vydavateľstvo Slovenskej akadémie vied a Medzinárodné stredisko pre štúdium rodiny.
- Bröstl, Alexander. 2009. "O pravidlách správania a o princípoch." *Časopis pro právní vědu a praxi* 1:49–51.
- Fausztin, Heil. 1901. "A nő beleegyezésével elkövetett magzatelhajtás közben a nőn elkövetett súlyos testi sértés." *Jogtudományi Közlöny* 9:69–71.
- Gábriš, Tomáš, and Róbert Jáger. 2016. *The Most Ancient Law in Slovakia? An Attempt for Reconstruction of Pre-Cyrrillomethodian Normative System*. Bratislava: Wolters Kluwer v spolupráci s Právnickou fakultou UK v Bratislave.
- Hajdú, Lajos. 1985. *Büntett és büntetés Magyarországon a XVIII. század utolsó harmadában*. Budapest: Magvető.
- Halpin, Pdraic. 2017. "Ireland must loosen abortion laws: Council of Europe rights commissioner." In *Reuters*. New York: Thomson Reuters. In <http://www.reuters.com/article/us-ireland-abortion-council-idUSKBN17016M> [accessed: 3.08.2017].
- Hojčová, Lila. 1984. *Pokrokové ženské hnutie na Slovensku 1918-1980*. Martin: Živena.
- Horváth, Tibor. 2017. "Az első magyar büntető törvénykönyv és kodifikátora: Csemegi Károly." In *A praxistól a kodifikációig. Csemegi Károly emlékére (1826-1899)*, 27–39. Budapest: Osiris, in: http://www.ajk.elte.hu/file/Kodifikacio_HorvathTibor.pdf [accessed: 16.07.2017].
- Jobbágyi, Gábor. 2004. *Az élet joga: abortusz, eutanázia, művi megtermékenyítés*. Budapest: Szent István Társulat.
- Kollonich, Lipót. 1697. *Forma processus iudicii criminalis, seu praxis criminalis*. Tyrnaviae: Typis Academicis, per Joannem Andream. Hörmann.
- Kun, Tamás. 1888. "Törvényszéki orvosi eljárás a terhesség és szülés eseteinél." *Orvosi Hetilap* 25:820–823.
- Laclavíková, Miriam, and Adriána Švecová. 2012. *Pramene práva na území Slovenska II. (1790-1918)*. Trnava: Typi Universitatis Tyrnaviensis.
- Lalík, Tomáš. 2017. "Ľudská dôstojnosť v právnom poriadku SR." *Justičná revue* 3:327–341.
- Nemec, Matúš. 2016. "Doktrinálno-právny pohľad katolíckej cirkvi na problematiku umelého potratu." In *Právo a hodnoty. Sborník příspěvků z jednání sekce teorie práva a právních dějin na konferenci Olomoucké právnícké dny konané ve dnech 21.–22.5.2016*, edited by P. Osina, 106–126. Brno: Tribun EU.
- Očenášek, Mikuláš. 1933. "Osnova zákona o vyhnání plodu." *Právní obzor* 16(1):65–79.
- Osváth, Julius. *Stredoveké právne ustanovizne na Slovensku*. Prešov, s.a.
- Pollák, Illés. 1915. "A magzatelhajtási probléma." *Jogtudományi Közlöny* 13:153–154.
- Rákosník, Jakub, and Igor Tomeš. 2012. *Sociální stát v Československu. Právně-institucionální vývoj v letech 1918-1992*. Praha: Auditorium.
- Rákosník, Jakub. 2010. *Sovětské sociálního státu. Lidově demokratický režim a sociální práva občanů v Československu 1945–1960*. Praha: Karlova Univerzita v Praze, Filozofická fakulta 2010.
- Repková, Eva. 2014. "Abort a infanticídium v novovekom uhorskom trestnom práve." *Societas et Iurisprudentia* 2(1):147–173.

- Repková, Eva. 2015. *Kresťanský svetonázor a jeho vplyv na právnu úpravu abortu a infanticidia v dejinách na územi Slovenska*. Trnava: Trnavská univerzita v Trnave 2015.
- Schram, Ferenc. 1983. *Magyarországi boszorkányperek 1529–1768*. Vol. I. Budapest: Akadémiai Kiadó.
- Schroedel, Jean R. 2000. *Is the Fetus a Person? A Comparison of Policies Across the Fifty States*. Ithaca: Cornell University Press.
- Szűcs, Ernő T. 1981. *Magyar jogi népszokások*. Budapest: Gondolat.

ABORCJA JAKO CZĘŚCIOWA KWESTIA PRAWA DO ŻYCIA I ROZWÓJ W ZWIĄZKU ZE SŁOWACKĄ REGULACJĄ PRAWNĄ

Streszczenie: Artykuł dostarcza wglądu w regulacje prawne dotyczące aborcji w historii Królestwa Węgierskiego, państwa wieloetnicznego, z którego m.in. aktualnie powstała Słowacja. Zwrócono uwagę na pierwszy Kodeks karny (ustawa nr V z 1878 r.), którego przyjęcie oznaczało zasadniczą zmianę w rozwoju prawa karnego na terytorium Słowacji. W artykule w skrócie przedstawiono także wprowadzenie do regulacji prawnych dotyczących aborcji w Republice Czechosłowackiej, ponieważ ich zrozumienie umożliwia lepszą ocenę obecnego podejścia Republiki Słowackiej do aborcji. Ponadto przedstawiono skuteczne regulacje prawne, kluczowe decyzje sądów i reakcje społeczeństwa w kwestii aborcji.

Słowa kluczowe: przerwanie ciąży, poronienie, zabicie płodu, Królestwo Węgier, Czechosłowacja, Republika Słowacji