

SIMILARITIES AND DIFFERENCES BETWEEN THE CRIME OF ABORTION PROVIDED BY THE HUNGARIAN CRIMINAL CODE (HCC) AND THE CRIME OF TERMINATION OF PREGNANCY PROVIDED BY THE ROMANIAN CRIMINAL CODE (RCC)

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Abstract

This article presents some considerations about the similarities and differences between the Hungarian Criminal Code (HCC) and the Romanian Criminal Code (RCC), both of which are in force at present, with regard to the criminal offence of abortion, respectively termination of pregnancy.

Generically, abortion is defined as the non-survival of the underdeveloped fetus, as a consequence of the illegal use of means of termination of the intrauterine pregnancy which result in its expulsion.

In the Romanian Criminal Code (RCC), the crime of termination of pregnancy is provided in Title I: Criminal Offences against the Person, Chapter IV: Aggressions against the Fetus, Article 201, and in the Hungarian Criminal Code (HCC), in Chapter XV entitled Crimes against Life, Limb and Health, in Section 163.

Keywords: *fetus, pregnant woman, termination of pregnancy, criminal offence*

Introduction

From a medical point of view, when a pregnancy is terminated either spontaneously or intentionally, before the fetus may be born and adapt to extrauterine life, regardless of the time when the interruption occurs, be it in early pregnancy or more advanced stages, we are dealing with an action of abortion¹.

Incrimination as a criminal offence occurs when the action of abortion does not happen in the conditions and circumstances provided by the law, thus entailing criminal consequences.

Life is a gift from God, which is received from the moment of conception, when the two nuclei of the cells of the mother and father unite, and should be preserved with love and joy.

1. Psychological and religious aspects of the action of abortion

Some women want with all their heart to be mothers, other women who are pregnant choose to have an abortion voluntarily, others are forced to terminate their pregnancy for health reasons, and others end up being victims of a termination of pregnancy without their consent.

One of the reasons why pregnant women fall victims to the criminal offence of termination of pregnancy is their lack of education in terms of their own health and pregnancy.

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Luca, V., (1987), *Avortul provocat (Induced Abortion)*, Editura Medicală (Medical Publishing House), No. 69, Bucharest, p.12.

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This refers to the ability of the pregnant woman to obtain, process and understand basic information about her own health and pregnancy and specialized health services, and make decisions in this respect. Pregnant women should also have the ability to read, write, work with numbers and maintain good interaction with the specialized medical system².

World Health Organization defines abortion as the pregnancy stopped before the 22nd week of gestation and the expulsion of a fetus weighing less than 500 grams.

There are certain risk variables that make a pregnant woman vulnerable to a termination of pregnancy without her consent: *risk conditions* such as poverty, social discrimination, social inequality, poor housing, stressful work or a polluted environment; *risk groups*: immigrants, ethnic minorities, lesbians, isolated persons, single parents, unemployed; *risk behaviours*: smoking and excessive alcohol consumption, physical inactivity and unhealthy diet, drug use or unprotected sex; and *social learning* which includes behaviours performed by imitation, that do not always produce the same result as that which is imitated. It is based on information transmitted through the media and advertising messages which are sometimes unverified but intended to manipulate a vulnerable group, as well as on mutual determinism due to unhealthy social interaction.

Mythologically speaking, abortion was known since the time of the Sumerians, when it was believed that the gods had a close relationship with humans, and even had children with earthly women; and that they shared their secrets to them, including the practice of abortion, the god Kasedeya being responsible for the spread of this secret.

From a religious perspective, the fertilized cell is alive, abortion being considered a sin, a murder, and the punishment for whoever commits it, regardless of whether it is the future mother or another person, should be similar to that for a person who has committed a murder.

St. Anthony the Great shows that sin is an act committed willfully, by choice. And we, as people of faith, are supposed to keep the body alive without having any bad thoughts, and our hands must work mercifully, not kill³.

Abortion was and still is considered by Christianity as one of the worst sins. In the ancient and sacred books there are teachings which must be observed by believers: “do not make poisons, do not murder a child by abortion or kill a newborn infant” according to *The Teachings of the Twelve Apostles*⁴, or “those who give drugs for procuring abortion, and those who receive poisons to kill the fetus, are subjected to the penalty of murder”, according to Canon 91 of the Synod in Trullo⁵.

2. The criminal offence of abortion, under the Hungarian Criminal Code vs. the criminal offence of termination of pregnancy under the Romanian Criminal Code

² Băban, A.,(2013), *Psihologia Sănătății (Health Psychology)*, Suport de curs (Course support), Facultatea de Psihologie și Științele Educației, Universitatea Babeș Bolyai (Faculty of Psychology and Educational Sciences, Babeș Bolyai University), Cluj Napoca, pp.13-23.

³ Sf. Antonie cel Mare (St. Anthony the Great), *Învățăturile despre viața morală (Teachings about Moral Life)*, Chapter 60, translated from Greek by Stăniloae, D., (1998), *Filocalia sau culegere din scrierile Sfinților Părinți care arată cum se poate omul curăți, lumina și desăvârși (The Philokalia or a Collection of the Writings of the Fathers Which Shows How Man Can Purify, Enlighten and Perfect Himself)*, Volume I, Editura Humanitas (Humanitas Publishing House) Bucharest, p.147.

⁴ Fr. Fecioru, D., (1979), *Învățăturile celor Doisprezece Apostoli (Teachings of the Twelve Apostles)*, II, in the volume P.S.B., Editura Institutului Biblic și de Misiune al Bisericii Române (*Publishing House of the Bible and Mission Institute of the Romanian Church*), Bucharest, p.26.

⁵ Vlad, V., (2013), *Consecințele avortului și spovedania (The Consequences of Abortion and Confession)*, Studia UBB Biotehnica, LVIII, p 88.

The *legal basis* for the criminal offence of abortion in the Hungarian Criminal Code (HCC) is Chapter XV entitled *Crimes against Life, Limb and Health*, in Section 163: *Abortion*, and it expressly includes four paragraphs; whereas, in the Romanian Criminal Code (RCC), the criminal offence of termination of pregnancy is found in Title I: *Criminal Offences against the Person*, Chapter IV: *Aggressions against the Fetus*, Article 201: *Interruption of Pregnancy*, and includes seven paragraphs.

In terms of the legal basis, there are similarities in the sense that they are regulated in the special part, but there are also differences in the name given to the crimes: *abortion* vs *termination of pregnancy*, the place where they are provided and the number of paragraphs contained.

In terms of the *legal content* under Article (1) of the HCC, *abortion* is the action produced by any person who resorts to removing or expelling a fetus while RCC gives a more complex definition in Article (1), paragraphs a), b) and c) of the *termination of pregnancy* as being committed outside medical institutions authorized for this purpose, by a person who is not a physician specialized in obstetrics and gynecology and does not hold a practice licence in this specialty, and if the pregnancy has exceeded fourteen weeks of development.

The *legal object* contains the general object of the criminal offence of *termination of pregnancy* vs. *abortion* which, according to the HCC and the RCC is represented by the social relations which protect the life, integrity, status and fundamental values associated with the fetus or the pregnant woman, against illegal actions of interruption of pregnancy. The specific object provided by both the RCC and the HCC as the special legal object of the crime of *termination of pregnancy / abortion* refers to the social relations that protect a person's life, the attributes of integrity, status and fundamental values associated with the fetus or the pregnant woman, against illegal actions of interruption of pregnancy.

The *material object* is represented in both the HCC and the RCC by the body of the fetus in simple forms of the criminal offence, but also the body of the pregnant woman who is alive, under paragraph (2) letter c) of the HCC, and paragraphs (3) and (6) of the RCC, as well as the death of the pregnant woman, as reflected in paragraph (3) of the HCC and paragraph (3) of the RCC.

The *subjects of the criminal offence* are represented by: the *active subject* who in the HCC, in paragraphs (1), (2) and (3) is not circumstantial and in paragraph (4) is circumstantial and represented by a woman. In the RCC the active subject is usually non-circumstantial but this is not the case according to paragraph (1), letter b) when an interruption of pregnancy is committed by a person who is not a physician specialized in obstetrics and gynecology and paragraph (4), where the active subject is represented by a physician; and the *passive subject* – both in the HCC and the RCC, the passive subject is circumstantial, being the pregnant woman on whom the abortion was performed illegally or whose bodily injury or death was caused because of the action of abortion.

The *objective side* is presented in both codes: the RCC and the HCC have as a material element an action that is likely to interrupt the course of a normal pregnancy. Under the RCC, there are certain essential requirements on the objective side, namely: under paragraph (1), letter a) the *termination of pregnancy* must be committed outside medical institutions or medical offices authorized for this purpose, especially under paragraph (1) letter c) if the pregnancy has exceeded fourteen weeks of development. In the HCC, the objective side of the crime of *abortion* is represented under paragraph (2) letter b) by the committing of abortion on a commercial scale.

The *subjective side*, in the form of guilt, is characterized, both in the RCC and the HCC, by direct intent. According to the RCC, in paragraph (1), letter c), the victim's pregnancy which has exceeded fourteen weeks is known to the perpetrator, the action or inaction is performed according to the HCC in paragraph (2) letter b) and the RCC, in paragraph (2), without the consent of the pregnant woman and the purpose is to produce the result. Under the RCC paragraph (3) and the HCC paragraph (2) letter c) and paragraph (3), the form of guilt takes the

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form of surpassed intention, the aim being to produce the abortion but resulting in the more serious effect of bodily injury or even death of the pregnant woman.

Forms of the criminal offence. According to the RCC, paragraph (5), the attempt of the criminal offence of *termination of pregnancy* is punishable when: (1) letter a) the interruption of pregnancy is committed outside medical institutions specialized in this field, b) by a person who is not a physician in obstetrics and gynecology and does not hold a practice licence in that specialty, c) if the pregnancy has exceeded fourteen weeks of development under paragraph (2), is carried out without the consent of the pregnant woman. According to the HCC, paragraph (4), the woman who induces another person to deliberately prejudice the fetus shall be punished.

Methods of the criminal offence – under the HCC, in paragraph (1), which provides that any person resorting to the removal or expulsion of a fetus is guilty, respectively paragraph (1) letters a), b) and c) of the RCC, which provides for the termination of pregnancy outside medical institutions specialized for that purpose, by a person who is not a physician in obstetrics and gynecology and does not hold a practice licence in that specialty, if the pregnancy has exceeded fourteen weeks of development – all these are characterized as simple forms of the crime.

According to paragraph (2) letters a) the *abortion* committed on a commercial scale, b) without the consent of the pregnant woman and c) by causing severe bodily injury or danger to life, and paragraph (3) when the *abortion* has as a consequence the pregnant woman's death, both paragraphs belonging to the HCC – represent aggravated forms of the crime.

Under the RCC, paragraph (2), when a termination of pregnancy is committed under any circumstances, without the consent of the pregnant woman, and paragraph (3) if, through the termination of pregnancy outside medical institutions specialized for that purpose, performed by a person who is not a physician in obstetrics and gynecology and who does not hold a practice licence in that specialty, when the pregnancy has exceeded fourteen weeks of development or without the consent of the pregnant woman, a bodily injury or the death of the pregnant woman was caused, or (4) if the termination of pregnancy was performed by a physician, whose specialty was not specified – all three paragraphs concern aggravated forms of the crime.

Paragraph (4) of the HCC states that any woman who deliberately prejudices the fetus or induces another person to do so, has mitigating circumstances.

The *penalties for the criminal offence* include the *simple forms* of the crime which are punishable by a maximum of 3 years in prison. These forms are represented: in paragraph (1) any person who engages in the removal or expulsion of a fetus is guilty of a felony punishable by imprisonment not exceeding 3 years, contained in the HCC, as well as paragraph (1) the termination of pregnancy committed in the following circumstances: a) outside medical institutions specialized for this purpose, b) by a person who is not a physician in obstetrics and gynecology and does not hold a practice licence in that specialty, and c) if the pregnancy has exceeded fourteen weeks of development or without the consent of the pregnant woman, all of which shall be punished by imprisonment from 6 months to 3 years or a fine and denial of the exercise of certain rights.

The *aggravated forms* of the criminal offence are punishable by imprisonment between 1 and 10 years. These aggravated forms are represented: in paragraph (2) of the HCC, where a punishment of imprisonment between 1 and 5 years is provided for the abortion committed a) on a commercial scale, b) without the consent of the pregnant woman, c) by causing severe bodily injury or danger to life; in paragraph (3) HCC, which provides for the punishment by imprisonment for 2-8 years, if the abortion results in pregnant woman's death, respectively, paragraph (2) RCC, which provides the punishment by imprisonment for 2-7 years and deprivation of certain rights, for the termination of pregnancy committed under any circumstances, without the consent of the pregnant woman, paragraph (3) RCC, which provides the punishment by imprisonment from 3 to 10 years and deprivation of certain rights, when a bodily injury was caused to a pregnant woman or imprisonment between 6 and 12 years and deprivation of certain rights, when the act results in the pregnant woman's death; both exercised

when the act of termination of pregnancy was performed outside medical institutions specialized for that purpose, by a person who is not a physician in obstetrics and gynecology and who does not hold a practice licence in that specialty, if the pregnancy has exceeded fourteen weeks of development, and paragraph (4) RCC, which provides the situation where the termination of pregnancy was committed by a physician, in which case, in addition to the penalty of imprisonment, the denial of the right to exercise the medical profession shall be enforced.

The *mitigating form* is represented by paragraph (4) of the HCC, which provides that any woman who deliberately destroys her fetus or induces another person to do so is guilty of a misdemeanour punishable by imprisonment not exceeding one year. According to the RCC, there is also a punishment enforceable for the attempt of the crime performed under paragraph (1) termination of pregnancy committed in the following circumstances: a) outside medical institutions specialized for that purpose, b) by a person who is not a physician in obstetrics and gynecology and who does not hold a practice licence in that specialty, and c) if the pregnancy has exceeded fourteen weeks of development, and paragraph (2) when the termination of pregnancy is committed under any circumstances, without the consent of the pregnant woman.

Causes of non-punishment are found only in the RCC, which expressly stipulates in two paragraphs causes of non-punishment for the *criminal offence of termination of pregnancy*, namely: in paragraph (6), which provides that the following are not criminal offences: the termination of pregnancy for therapeutic purposes performed by a physician specialized in obstetrics and gynecology, until the age of twenty-four weeks of the pregnancy, or the subsequent interruption of pregnancy for therapeutic purposes in the interest of the mother or of the fetus, and paragraph (7), which provides that a pregnant woman who interrupts her pregnancy is not subject to punishment.

Conclusions

The more advanced the stage of pregnancy at the time of committing the crime of termination of pregnancy, the harder it will be to accept for the woman who was a victim or for the family, or greater the chances for severe bodily injuries or even death, at the worst.

Physical, mental and somatic post-abortion recovery may take a long time and most often requires the assistance of specialists, to avoid risks or complications such as depression, abnormal menstruation, bleeding, injuries or infections.

Pregnant women who are vulnerable to being victims of terminations of pregnancy performed without their consent need several types of social support: emotional support, which includes feelings of fondness, care and empathy; appreciative support, which consists of appreciation, personal recognition and strengthening of their self-esteem; informational support, through advice, suggestions, counseling and guidance, and instrumental support, through material aid.

Religion considers abortion a sin, which is a violation of the divine law and causes sorrow and bitterness, harming the health of the body and soul, a wall built between man and God, as the man takes other paths than those meant for him⁶.

In the Christian view, the person who has caused abortion should have great repentance, to match the pain they have caused, because lost children are missed by the new generation, bearing in mind that God sends everyone with a purpose on earth.

On the side of religion as well, abortion *is punished* by means of a canon established by the confessing priest within the Holy Confession, to be fulfilled by the one who committed the sin. This, in addition to the teachings and repentance, leads to the person's reintegration in the spirit of Christianity.

⁶ Petcu, L., (2008), *Desfrânarea și avortul – răni de moarte ale iubirii (Fornication and Abortion – Deadly Wounds of Love)*, Editura Fundației Academice Axis (Axis Academic Foundation Publishing House), Iași (Jassy), p.10.

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Codes:

1. Romanian Penal Code;
2. Hungarian Criminal Code.