

# LEGAL MEANS FOR PROTECTION OF PREGNANT WOMAN AND HER PRIVATE LIFE FROM THE PERSPECTIVE OF HEALTH LAW, CRIMINAL LAW AND ECHR CASE LAW \*

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## Abstract

*Having as background the desiderata for protection of human beings, a series of regulations which have in view pregnant women, ensure their protection through corroborated legal means from the field of health law, criminal law and European Court of Human Rights case law. The means of protection emerging from the three sources represent the object of this study, by carrying out an analysis of each domain. Following this analysis we could ascertain that each of the three domains ensures protection at different levels which interdepend. If health law concentrates on the protection of pregnant women by stressing on the importance of women receiving adequate information so they make well-informed decision whether to terminate or not a pregnancy, the additional level of protection ensured by ECHR case law refers to the private life of the pregnant woman and her family, and then criminal law is centered on protecting life per se.*

**Key Words:** *pregnant woman, legal means of protection, prenatal genetic testing, abortion, persons with disabilities.*

JEL Classification: [K14, K15, K38]

## 1. Introduction

The decision to give birth to a human being is one of the most complex and at the same time the most wonderful we are given to make. Hence it not surprising the emotional and spiritual weight that precedes and succeeds such decision. Considering the social state's desiderata for protection of human beings, a series of regulations that target the pregnant woman come to assure her status during the period of transition of the human being from embryo to fetus and then to

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newborn. This protection, which is fully justified, multiplies in cases where during pregnancy arise signals that the normal evolution of the being is threatened or may even be compromised.

The means for protection of pregnant women, studied in the present paper consist of obligations pertaining to medical staff, obligations under health law, obligations that are embodied in specific means in practice, to be carried out during pregnancy, since we are talking about a patient with special needs, these obligations being complemented by the means of protection established by criminal law. By granting prevalence to the life of the woman over the life of the human being she is pregnant with, the legal means of protection from the criminal matter regulate the right to terminate the pregnancy in cases expressly determined in which the life of the pregnant woman is in danger. The European Convention of Human Rights<sup>1</sup> and the ECHR case law,<sup>2</sup> contours also the sphere of protection of pregnant women focused on respecting her and her family's private life.

## **2. The right to information and to the protection of the pregnant woman's private life**

### **2.1. National regulations in the field of health law**

The premise from which we set off in the present study, based on legislation and doctrine, is that health law regulates and analyzes a number of rights of the patient as well as the obligations of medical staff carrying out their medical activity.

The doctrine<sup>3</sup> determines the essential rights of the patient in accordance with Law no.46/2003 on the rights of the patient<sup>4</sup>, as being the following: the right to treatment and medical care; the right to medical information; the right to give/refuse explicit consent for the medical intervention; the right confidentiality of information and the right to private life; rights concerning reproduction.

The doctrine<sup>5</sup> took also the role to explain the obligations of the doctors in their relations with the patients, and they were identified as follows: "the doctor's obligation to care to the patient, the obligation of security in relation to the patient, the obligation to inform the patient, the obligation to advise the patient, the obligation to confidentiality and access to medical file.

The Order of the Minister of Health no.1410 of 12 December 2016 approved the implementing regulations for Law no.46/2003 on the rights of the

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<sup>1</sup> Hereinafter called the "Convention".

<sup>2</sup> Hereinafter called the "Court".

<sup>3</sup> Bălan G., Bulgaru I.D., 2015, *Răspunderea juridică medicală în România. Malpraxisul și infracțiunile medicale*. București, Hamangiu, p. 27.

<sup>4</sup> Published in the Of. Gazette no. 356 din 22 aprilie 2004, hereinafter called Law no.46/2003.

<sup>5</sup> Lacrima R.B., *Physician's liability towards the patient in the light of the provisions of law no. 95/2006, on healthcare reform*, Fiat Iustitia, no.2/2016, <http://fiatiustitia.ro/ojs/index.php/fi/article/view/256>, accessed on 05.07.2017

patient<sup>6</sup>, and abrogates the Order of the minister of health no.386/2004<sup>7</sup> on the approval of previous implementing regulations for Law no.46/2003 on the rights of the patients. In accordance with the provisions of the Implementing regulations of 12 Decemeber 2016, medical units, the medical service suppliers, both in the public and private sector, who provide medical care or terminal care, and which imply carrying out medical interventions, have the obligation to provide their patients with information on: available medical services and means to access these; the identity and professional status of employees within the medical facility, the supplier of medical services; the rules that must be followed during hospitalization in facilities with beds; the patient's health status; the proposed medical interventions; the potential risks of each procedure that is to be applied; the alternatives to the proposed procedures; the available data resulted from scientific research and technological innovations concerning the patient's diagnosis and treatment of the condition; the consequences of not carrying out the treatment and not following the medical recommendations; the diagnosis established and the projected evolution of the conditions that were diagnosed.

Moreover, art.2 of the Implementing regulations of 12 December 2016 stipulate the obligation of each health care facility to comprise in its own organisational and operational rules, provisions on the obligations of its medical staff in relation to the patient's rights to respect as human beings.

The doctor's obligation to inform the patient, as key point in their relation, is provided expressly by the implementing rules indicated *ut supra*, and with regard to this aspect, the doctrine<sup>8</sup> advocates that "In order to have the obligation to inform, firstly there must be the patient's right to be informed, which can be then corelated to the obligation." Besides this, the same doctrine<sup>9</sup> constantly approaches two themes recurring in the field of health law: the duo right/obligation as regards to information and the patient's consent. The relevance of the patient's consent is explained as follows: "Thus, consent becomes a right that determines the destiny of the entire health care provided in the relation between the individual patient and the health care provider. This equals to recognizing the patient as being an active participant to the destiny of his/her health care."<sup>10</sup>

Patient information, as a right, correlated with the medical staff's obligation to inform the patient, materializes in various situations in which the patient is provided health care services of different types, both the right and the obligation being expressed in specific forms if we are talking about the case of a pregnant woman. Not fulfilling the obligation to inform the pregnant woman may represent

<sup>6</sup> Published in the Of. Gazette no.1.009 of 15 December 2016, hereinafter called *Implementing regulations of 12 December 2016*.

<sup>7</sup> Published in the Of. Gazette no.356 of 22 April 2004, subsequently amended.

<sup>8</sup> Mangu, I.F., *Malpraxisul medical. Răspunderea civilă medical*, Bucuresti, Wolters Kluwer, p. 364.

<sup>9</sup> Mangu, *op.cit.*, p. 365.

<sup>10</sup> Turcu, I., 2010, *Dreptul sănătății. Frontul comun al medicului și al juristului*, București, Wolters Kluwer, p. 90.

medical malpractice and the domain of obstetrics – gynecology is one of the most risky medical speciality if we consider the criteria of incidence, gravity and costs of malpractice, the doctrine<sup>11</sup> acknowledges.

The doctor's responsibility in relation to the patient, considering the incidence of medical malpractice, is materialised as an obligations of means and not as an obligation of result, and the doctrine<sup>12</sup> concludes that "the doctor has the obligation to care for the patient with the attention and caution conferred by his/her professional training and by his/her objective level of knowledge in the field, held at that date". Considering the evolution of medical science in what concerns the protection of pregnant women, in recent years medical practice, the use of prenatal genetic screening is recommended in order to track down potential abnormalities during pregnancy, these tests having a non-invasive character and also conclusive results.<sup>13</sup>

The patient's rights in the matter of reproduction have in view mainly the woman's right to life in the case where her pregnancy represents a major and immediate risk factor for her life. This right is guaranteed by Law no.46/2003, art.28, para.1, which, as the doctrine<sup>14</sup> mentions, regulates "*the prevalence of the woman's right to life*". The Implementing regulations of 12 December 2016, provides the woman's right to decide whether to keep or not to keep the baby/babies, similarly to art.28, para.1, of Law no.46/2003. "In situations where pregnancy represents a a major and immediate risk factor for the health of the pregnant woman, priority shall be given to saving the mother's life" according to art.11.

The pregnant woman's right to information and her right to decide, following this information, whether to keep the baby/babies or not, is corroborated also with the right to protection of her private life and her family's private life. Regarding the concept of protection of private life, the doctrine<sup>15</sup> mentions that "Alongside the protection of the life of any person, are protected also the physical and psychological integrity of the person, thus creating an

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<sup>11</sup>Perju-Dumbravă, D., Mureşan, D., Radu, C. C., Chiroban, O., Sîntămărean, R., Ureche, D., Davidescu, R.B., *Malpractice in obstetrics and gynecology case report and literature review*, Fiat Iustitia no. 2/2016, accessed on <http://fiatiustitia.ro/ojs/index.php/fi/article/view/276/259> on 08.07.2017.

<sup>12</sup> Năşui, G.A., *Malpractice in the activity of doctors and lawyers comparative study*, Fiat Iustitia no.2/2016, accessed on <http://fiatiustitia.ro/ojs/index.php/fi/article/view/271> on 12.07.2017. Medical malpractice is defined by Law no.95/2006 as being „the professional error committed in carrying out medical procedures of medical-pharmaceutical, generating damages to the patient, attaching the civil liability of the medical staff and of the provider of medical services and products.”

<sup>13</sup> The medical term is "prenatal maternal serum marker screening" used for identifying fetal abnormalities and determine Down syndrome (trisomy 21), Edwards syndrome (trisomy 18) and neural tube defects – anencephaly, spina bifida, encephalocoele. Prenatal screening shall be carried out in due time, so that any procedures that might impose following its results would not put the patient's life in danger. <https://www.synevo.ro/screening-prenatal-pentru-sindromul-down-si-alte-anomalii-fetale/on> 12.07.2017.

<sup>14</sup> Turcu, *op.cit.*, p.90.

<sup>15</sup> Bălan, Bulgaru Iliescu, *op.cit.*, p. 25.

inseparable system of elements meant to protect the person in its integrity – hence from legal point of view it is impossible to separate the person’s physical dimension from its psychological one”.

Law no.46/2003 provides in art. 23, para. 1, that any interference in the patient’s private or family life is forbidden, except for the cases where this interference is meant to have a positive influence on the diagnosis, treatment of health care provided, and only having the patient’s consent. Should the medical staff not respect the confidentiality of the data regarding the patient and regarding the medical intervention, as well as the other rights of the patient provided by Law no. 46/2003, attracts the disciplinary, contraventional or criminal liability, in accordance with art. 37.

## 2.2. Regulations from the French Code of Public Health

In French legislation, art.20 of Law no.2011 – 814 of 7 July 2011 on bioethics amended the French Code of Public Health<sup>16</sup>, art. L.2131-1. Following this amendment, the “prenatal diagnosis” is defined as being those medical practices, including obstetric and fetal ultrasound, conducted with the purpose of detecting *in utero* whether the embryo or the fetus is affected by a serious condition.

The process of informing the pregnant woman on the occasion of a medical examination, has the following characteristics in accordance with the current provisions of the French Code of Public Health: it must be clear; adapted to the situation of the patient; adapted in particular to the possibilities to resort, on her demand, to examinations of medical biology and imaging that would allow the evaluation of the risk of the embryo or fetus to present a condition that could influence the development and aftereffects of the pregnancy. If the risk is proven, the pregnant woman, and if she wishes so, the other member of the couple, are guided towards a multidisciplinary prenatal diagnosis center. When the obstetric and fetal ultrasound is carried out on the pregnant woman, it is compulsory to specify that even if no abnormality is detected at this point, it cannot be ascertained that the fetus is free from any condition and that possible abnormality may be confirmed further on.

## 2.3. International regulations

### (i) Convention on Human Rights and Biomedicine, adopted in Oviedo<sup>17</sup>

The right to information and the right to private life of the patient are regulated by the Convention on Human Rights and Biomedicine, adopted in Oviedo, Spain, on 4 April 1997. This convention stipulates that any intervention in the health field, may only be carried out after the person concerned has given

<sup>16</sup> <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072665>, accessed on 13.07.2017.

<sup>17</sup> <https://provitabucuresti.ro/docs/bioetica/conventia.oviedo.pdf> accessed on 07.07.2017.

free and informed consent to it, and also that the patient shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks.<sup>18</sup>

At the same time, any person has the right to respect for private life in relation to information about his or her health and is entitled to know any information collected about his or her health.<sup>19</sup> The Ovideo Convention provides that wishes of individuals not to be informed in this regard shall be observed.

**(ii) Recommendation no. R (90) 13 on Prenatal Genetic Screening, Prenatal Genetic Diagnosis and Associated Genetic Counselling**

Recommendation no. R (90) 13 on Prenatal Genetic Screening, Prenatal Genetic Diagnosis and Associated Genetic Counselling was adopted on 21 June 1990 by the Committee of Ministers of the Council of Europe.<sup>20</sup> The recommendation contains 10 principles, and principle 1 is that: No prenatal genetic screening and/or prenatal genetic diagnosis tests should be carried out if counselling prior to and after the tests is not available. Counselling is a wide, integrative concept and it refers not only to medical counselling but also to psychological and social counselling and the associations and social services partly take over this duty.

**(iii). Statement on Ethical Issues Concerning Prenatal Diagnosis of Disease in the Conceptus, issued by the Committee for the Study of Ethical Aspects within the International Federation of Gynecology and Obstetrics**

The statement reveals that there are serious ethical questions with regard to the degree of abnormality of the fetus and that it is impossible to draw a report on the reduction in quality of life which may justify the woman's decision to terminate the pregnancy. The attitude of the parents, particularly the woman, after counseling, is of major importance in reaching a decision. It is unethical for anyone to bring pressure to bear on the couple with a view to their accepting a particular option. It is therefore considered that termination should be discouraged when the disorder is treatable and will not necessarily affect the future quality of life.

However, the Commission underlines that it is not to neglected the effect which the birth and life of a disabled child may impose on the mother and on the

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<sup>18</sup> See art.5 of the Ovideo Convention.

<sup>19</sup> The doctrine determines that "the signing of it (i.e. Ovideo Convention) marked an important step towards the unification of the legislations of signatory states, in what concerns the legal and ethical principles applicable to "classical" medical relations but also to current progress registered by means of biotechnology and research, concerning the human being. This is placed in the context of the Convention on the Protection of Human Rights, but it is more precise (as it is focused on a well-determined objective) and broader (as it is focused on the protection of human dignity and identity in general)." Ponchon F., 1999, *Les droits des patients a l'hospital*, Paris: Presses Universitaires de France, p.39.

<sup>20</sup> <http://hrlibrary.umn.edu/instree/coerecr90-13.htm> accessed on 10.08.2017.

entire family, this aspect pertaining to their private life, and not lastly, a relevant concern is for the availability of resources and support for long-term care.

Nevertheless, in the same statement it is observed that prenatal genetic tests serve various purposes and they should not be identified with encouraging pregnant women to seek an abortion, but just as a means of information regarding the pregnancy. Tests can dispel the suspicion that the foetus was affected with some malformation, and even if certain suspicions about the pregnancy are confirmed, the pregnant woman carrying the foetus concerned can well choose to carry the pregnancy to term and have the baby. Prenatal diagnosis of an ailment makes it possible to embark on prenatal treatment.

The declaration determines that if the fetus's anomaly is confirmed, the decision of the woman regarding the course of the pregnancy pertains to her private life and her family's private life, and the tests grant the woman and her family time to prepare for the birth of the baby, to benefit from adequate counselling and support in what concerns bringing up the child.

#### **(iv). United Nations Convention on the Rights of the Persons with Disabilities, adopted on 13 December 2006<sup>21</sup>**

The Convention defines *the persons with disabilities* as being the persons with long-term physical, mental, intellectual or sensory impairments that, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.<sup>22</sup>

In accordance with the International Classification of Functioning, Disabilities and Health – CIF, drawn by the World Health Organization – WHO in 2001<sup>23</sup>, persons with disabilities are no longer viewed as *objects* of charity, that need medical treatment, but they are considered “subjects” who have rights and are capable of claiming them and make well-informed decisions regarding their life based on their free consent. It is obvious that the existence of persons with disabilities should be approached through combined perspectives of health, from biologic point of view, as well as individually and socially. The rights of persons with disabilities would be valued in the case where, after receiving adequate information regarding the fetus's malformation, the pregnant woman still decides to give birth to the baby.

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<sup>21</sup> <http://infoeuropa.md/handicapati/conventia-natiunilor-unite-privind-drepturile-persoanelor-cu-dizabilitati/> accessed on 13.08.2017.

<sup>22</sup> Extensively on the rights of persons with disabilities, as comprised by the Convention, see Apan, R.D., *Discipulus vulnerabilis; reflections on the right to education of persons with disabilities within the third level education*, Drept și Educație - interferențe, Pronuniversitaria, Bucharest, 2016. p.242-293 and Apan, R.D, Miff, A., *Homo vulnerabilis; institutions and mechanisms created to oversee, at national level, the enforcement of the U.N. convention on persons with disabilities*, Annual Review (Yearbook) - Series Humanistica, 2017, <http://www.humanistica.ro/engleza/index.htm>;

<sup>23</sup> Entitled International Classification of Functioning, Disabilities and Health, accessible at [http://apps.who.int/iris/bitstream/10665/42407/5/9241545429\\_rum.pdf](http://apps.who.int/iris/bitstream/10665/42407/5/9241545429_rum.pdf), accessed on 10.07.2017.

### **3. The right to respect the private and family life, provided in the European Convention on Human Rights and reflected in the case law of the European Court of Human Rights**

The doctrine<sup>24</sup> indicates the following articles of the Convention as being at the base of this paper: the right to life (art.2 of the Convention), the rights to respect for private and family life (art.8 of the Convention), freedom of thought, conscience and religion (art.9 of the Convention).

Art. 8 of the Convention provides the following: “1. *Everyone has the right to respect for his private and family life, his home and his correspondence.* 2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*”

Protection of the private life of pregnant woman is required both in the case where in the evolution of pregnancy, the signs revealing a problem were not known and analyzed in order to make a well-informed decision regarding the pregnancy, and also in the case where the symptoms were analyzed, the weaknesses of pregnancy were revealed and the pregnant woman, with full knowledge, decides to keep the pregnancy. In the latter case, the woman assumes the birth, upbringing and education of the child with possible disabilities, and makes the decision to become mother, a decision with multiple implications for the woman and for the family she may be part of.

One case brought before the Court was built around the enforcement of art.8 of the Convention, with particular view on prenatal genetic screening and the time between the moment of information and its actual carrying out, in order to allow the pregnant woman to make a decision on whether to become the mother of a disabled child or to choose those means that allow her to terminate the pregnancy in due time, if she decides so. The provisions of the Convention were applied in the following cases judged by the Court.

#### **3.1. Case R.R. v. Poland (Application no.27617/05; ECHR Judgement of 28 November 2011)<sup>25</sup>**

RR was born in 1973, a Polish national and living in Poland<sup>26</sup>, married and at the time, in 2004, was 29, mother of two children and pregnant with the third

<sup>24</sup> Ponchon, *op.cit.*, p.33.

<sup>25</sup> [http://hudoc.echr.coe.int/eng#{"fulltext":\["27617/05"\],"documentcollectionid2":\["GRANDCHAMBER", "CHAMBER"\], "itemid":\["001-123583"\]}](http://hudoc.echr.coe.int/eng#{), accessed on 22.07.2017.

<sup>26</sup> In Poland, while trying to institute a regulation that interdicts abortion in general, there has been a wide movement, having the following slogan “hands off my uterus”, requesting “property right and right of autodetermination over one’s own body and own organs” [http:// www.dw.com/ro/proteste-%C3%AEn-polonia-corpul-meu-alegereamea/a-37836735](http://www.dw.com/ro/proteste-%C3%AEn-polonia-corpul-meu-alegereamea/a-37836735), accessed on 22.07.2017.

child. Hence, following several unsuccesses with national courts, R.R. complained before the Court for having been refused access to prenatal genetic screening that she was entitled to during her pregnancy, by lack of advice from her doctors, became victim of their prevarications and procrastinations. For these reasons R.R. exceeded the legal time-limit for abortion – the 22nd week of pregnancy, and consequently gave birth to a girl with Turner syndrome.<sup>27</sup> Her husband left her soon after the birth of the baby girl. In her application, R.R. invokes the violation of art.3, 8 and 13 of the Convention.

The main aspect of the case was identified by the Court as being that of R.R. individual access to information on her health state, meaning timely access to a service of medical diagnosis that would make it possible to establish whether the conditions for obtaining a lawful abortion had been met in her situation. The right to access information on the health state falls under the scope of the notion of private life. The effective exercise of the right to information was considered decisive by the Court and it is directly connected with the woman's possibility to exercise personal, autonomous choice, based on information, concerning the future evolution of the pregnancy, a particularly relevant aspect for the quality of the woman's life.

The Court determined through Judgement issued in 2011 that there was a breach of art.8 of the Convention, based on the following grounds:

- the concept of "private life" is a broad concept, encompassing, inter alia, the right to personal autonomy and personal development, including also gender identification, sexual orientation and sexual life, a person's physical and psychological integrity;
- this concept is applicable to decisions on whether to keep or terminate the pregnancy or whether to become parents and includes the pregnant woman's decision to keep or terminate the pregnancy, as integrating part of the right to respect the physical integrity and freedom of control over one's own body. R.R. dealt with a lot of anxiety and suffering, considering her fears regarding the situation of her family and the fact that she would have to deal with raising a child who is potentially affected by a serious condition throughout its entire life.

The Court determines also that if the national law allows abortion in cases of fetus malformation, there must exist an adequate legal and procedural framework to ensure that relevant, complete and viable information on the health state of the fetus are available in timely manner to the pregnant woman. Another ground is that in a woman's decision to terminate the pregnancy, the time factor plays a critical role, therefore information must be carried out in due time, by performing the prenatal genetic screening within the time-limit for the abortion to remain an option. Or in this case, the Court notes that there would have been

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<sup>27</sup> Pluriformative syndrome generated by the cromosomal disorder X0, instead of XX, cromosomal pattern with 45 cromosomes, gonadal dysgenesis with female phenotype. Soare, I., *Nume proprii în medicină*, București, Editura Etna, 2003, p.76.

enough time to carry out genetic examinations between week 18, when the first suspicious signs appeared, and week 22, when it is generally accepted that the fetus is capable of surviving outside of the mother's body and hence is considered to be the time limit for the legal abortion, but these examinations were not carried out because of reasons pertaining to the medical staff.

The court notes also that by applying the legal procedures in the matter, the Polish State had not complied with the positive obligation to safeguard the applicant's right to respect for her private life in the context of a controversy as to whether she was entitled to a legal abortion, as she was not granted timely access to prenatal genetic screening. The Court awarded the applicant EUR 45.000 euro on equitable basis for non-pecuniary damages.

### **3.2. Case A.K. v. Latvia (Application no.33011/08, ECHR Judgement of 24 June 2014)<sup>28</sup>**

A.K. in June 2002, gave birth to a baby girl with Down syndrome<sup>29</sup>, the mother being aged 40. Before the Court she alleged to have been denied adequate and timely medical care in the form of prenatal genetic screening test that would have indicated the risk of her fetus to present genetic abnormality and would have allowed her to choose whether or not to continue with her pregnancy. Hence, from procedural perspective, there was a breach of her right to private life. Another case in which the Court notes also the breach of art.8 of the Convention is case P. and S. v. Poland, application no.57375/08, ECHR Judgement of 20 March 2007.<sup>30</sup>

### **3.3. M.P. and others v. Romania (Application no. 39974/10, ECHR Judgement of 15 April 2014)<sup>31</sup>**

The application was submitted by the parents and their child, who was conceived through artificial insemination and born without the tibia. In this case the Court notes the "parents' desire to conceive a child unaffected by a genetic disease, this choice being a form of expression of their private and family life" and the Court ruled that the breach falls under art.8 of the Convention.<sup>32</sup>

<sup>28</sup> A.K. v. Letonia, C-33011/08, <http://www.globalhealthrights.org/wp-content/uploads/2014/10/CASE-OF-A.K.-v.-LATVIA.pdf>, accessed on 02.07.17.

<sup>29</sup> Down syndrome – malformative condition generated by a chromosomal disorder- trisomy 21 or the translocation of a part of this chromosome. Soare, I., 2003, *Nume proprii în medicină, op.cit.*, p.78.

<sup>30</sup> [http://hudoc.echr.coe.int/eng# {"fulltext":\["57375/08"\],"documentcollectionid2":\["GRAND CHAMBER","CHAMBER"\],"itemid":\["001-114098"\]}](http://hudoc.echr.coe.int/eng#{) accessed on 22.07.2017. An analysis of the Court's case law sees on Aluaş, M., Gherman, C.D., Dumitrescu, C.I., 2017, *Is the human embryo legally defined and protected? Causes and consequences*, Romanian Journal of Morphology and Embryology vol. 58, no.2, in press.

<sup>31</sup> Accessed on 09.07.2017 [http://hudoc.echr.coe.int/eng# {"itemid":\["001-144329"\]}](http://hudoc.echr.coe.int/eng#{).

<sup>32</sup> Considering the measures ensuring the protection of the right to life and respectively to private life, provided by the Convention and by the Court's case law, the doctrine reveals the role of the Court: "We should not forget that the fundamental rights may be the subject of complex

#### 4. Abortion in the context of protecting the right to life

It was previously specified that the regulations in the matter of health law grant prevalence to saving the mother's life, in the situations where the pregnancy represents a serious and immediate risk for the health of the pregnant woman. In this context emerges the question on whether we can speak about an authentic right to life of the unborn child? The question around which gravitate all theoretical and practical aspects that are continuously brought under attention, is "when should commence the judicial protection of life?"

It was stated that the notion *life* has a double meaning, representing at first stage a synthesis of biological, physical, chemical and mechanical processes, specific to live beings and which constitutes the premise for the second aspect of life, respectively the social existence of the human being, the materialisation of the possibility to take part in social relations, to exercise his/her rights and interests and to fulfill his/her obligations. It is obvious the fact that in the context created by the theme brought under attention here, we understand that to be referring to the physical aspect of life and to the moment from which it should be regulated the protection of life through specific legal regulations.

Is is obvious that the moment of birth can certainly represent a moment when we can speak with certainty about the existence of life. However, the question raised is to what extent should the regulations on the protection of life be applicable previously to this moment. This context leads us to examine also the issue of abortion, an issue that continues to be in the center of numerous controversies.

Art.2 of the Convention stipulates the fact that the right to life of all persons is protected by the law. The cited text, however, avoids defining the notion of person or make any reference to the moment when this fundamental right debut.

In the science of law, there are two conceptions regarding the moment when life begins. According to the first one, a person's life begins at the moment of conception, while in accordance with with the second conception, the life of the person begins at the moment of birth, respectively at the moment when the product of conception emerges from the mother's body and lives on its own, from fetus becoming child.

The interpretation given by the case law to the matter in discussion, in the context of art.2, para.1 of the Convention, is different from state to state. Neither the case law of the European legal bodies offers a solution of principle.

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manipulation, as we are talking about flexible terms and their meaning is continuously developing – in accordance with the socio-political, judicial and moral concepts in force in a certain state at a certain moment – hence, being susceptible of going into conflict with one another (such as the case of the right to physical integrity versus the right to private life). Their conciliation involves delicate tempering efforts made by the builder and protector that is the European Court of Human Rights, and in the national judicial system – the Constitutional Court." Genicot, G., 2010, *Droit medical es biomedical*, Éditions Larcier, p.31.

Nevertheless, it was considered<sup>33</sup> that on the whole, the case law allows two conclusions to be drawn.

**First of all**, it may be noticed that, in principle, the Court omits to rule *in abstracto* whether a national law on abortion is compatible with art.2 of the Convention.<sup>34</sup> Hence, in several cases, it was stated<sup>35</sup> that the Court is not called to determine whether in the Convention it is guaranteed the right to abortion, or whether the right to life, stipulated by art. 2, is equally valid for the fetus.

Similarly, it was noticed<sup>36</sup> that, in a case versus France, the Court refused to address the problem of applicability of art. 2 of the Convention in the case of the fetus. In that case it was noted that, due to confusion, the applicant miscarried the fetus in the 12<sup>th</sup> week of pregnancy. The death of the fetus was accidentally provoked by the applicant's doctor, through a procedure of extraction of a contraceptive coil that the doctor was supposed to apply to another patient with a similar name. In front of the Court, the applicant claimed the breach of art. 2 of the Convention, because the doctor was not held liable for manslaughter. The European Court was called to rule on whether by not incriminating the involuntary disposal of the fetus, the French state breaches the right to protect by law, the right to life of every person.

The Court notes that, in this case, the French State respected the exigencies related to the protection of life in the field of public health. Moreover, in the situation presented, it was considered that the fetus does not need autonomous protection, as its life is intimately bound to the life of the mother, and so the protection granted by the state to the mother would be sufficient in this case. Therefore, the Court concluded that the French State had not breached the positive obligation of defending the right to life and further considered that it is not necessary to examine the legal status of the fetus, leaving this matter to the interpretation of each state, even more as in the comparative law these is not a generally accepted definition of the person or of the beginning of life.

Similarly, in another case<sup>37</sup>, the applicant and her partner used the procedure of *in vitro* fertilisation following which resulted 6 embryos that were deposited. Being approached with an application by the woman, generated by the failure suffered before the national courts in trying to prevent the embryos from being destroyed on the donor's request, the Court stated that it was not possible for the the right to life which is protected by art.2 of the Convention to be claimed for embryos.

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<sup>33</sup> Deleanu, I., *Instituții și proceduri constituționale*, Arad, 2001, Servo-Sat, p. 237.

<sup>34</sup> Chiriță, R., *Dreptul constituțional la viață și dreptul penal*, S.U.B.B. no. 2/2001, p. 128 and the following.

<sup>35</sup> ECHR case law, case *Open Door and Dublin Well Woman v. Ireland*.

<sup>36</sup> Petruș, A., *Debutul protecției dreptului la viață*, C.D.P., no. 4/2006, p. 92.

<sup>37</sup> *Evans v. United Kingdom*, [http:// hudoc.echr.co e.int/eng# {"dmd ocnumber": \["8151 66"\], "itemid": \["001-80046"\]}](http://hudoc.echr.co.e.int/eng#{) accessed 16.08.2017.

**Secondly**, the Court's case law remains consistent in the meaning that, in the situation where there is a conflict of interests between a born persons' right to life and the right to life of a human being in the stage of embryo, the right of the first prevails over the latter. Thus, the Court decided that if the fetus would have the same rights as to a born person, this fact would abusively limit the rights of the born persons. Equally, the Court<sup>38</sup> estimated that it was not called to rule whether art.2 regards the fetus or if by contrary, the article recongizes its right to life accompanied by default limitations. The court assesses that the endorsement for termination of pregnancy granted by the British authorities and incriminated in the case, is compatible with art.2 of the Convention, because if the abortion procedures take place in the initial stage of pregnancy then they are covered by an implicit limitation of the right to life of the fetus, to protect at that stage, the life and health of the pregnant woman.

Also, in the situation where the right to life of the unborn baby comes in contradiction with the parents' right to private life, regulated by art.8 of the Convention<sup>39</sup>, in the case law of the Court it is stated that right of the latter prevails. Consequently, it was considered that regulating abortion, in the meaning of outlawing them, would represent an interference with the protection of the right to private life. An ECHR judgement<sup>40</sup> established that there had been a violation of art.8 of the Convention, in the situation of the applicant, a 35-year-old woman, suffering from severe myopia, mother of two children she was raising and educating by on her own. Given the condition she was suffering from – which qualified her to be in the category of persons with a moderate degree of disability, and the fact she had given birth to the two children through caesarians – the doctors having recommended her to undergo sterilization procedure to avoid a possible future pregnancy and implicitly an accentuation of the disability from which she was suffering. However, in 2000 the applicant became pregnant. We should mention that Polish legislation provided that every human being had the right to life from the moment of conception. Also, abortion was possible only in the situation where the pregnancy endangered the life or health of the mother, if the prenatal examinations revealed an increased risk for the fetus to be affected by an incurable condition, or if there is proof that pregnancy is the outcome of rape. In the first and last case, termination of pregnancy may take place up to the 12<sup>th</sup> week.

Becoming worried by the possible impact that pregnancy might have on her health state, the applicant consulted several doctors. She was examined by three ophthalmologists, each of them concluding that, due to pathological modification of the retina, going through pregnancy and giving birth represent increased risk for the sight of the applicant. All the same, doctors refused to issue a certificate for

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<sup>38</sup> See Decision on Applicatio.no.8416/1979.

<sup>39</sup> Full text of art.8 is present above at point 3.

<sup>40</sup> ECHR case law, case of *Tysiack v. Poland*, <https://wcd.coe.int/ViewDoc.jsp?p=&id=1108539&Site=COE&direct=true> accessed 16.08.2017.

the termination of the pregnancy motivating that retinal detachment caused by pregnancy was not a clear fact. Despite this fact, the applicant went to be seen by a general practitioner, who issued a certificate stating the risks of uterine rupture because giving two births previously by caesarean. Also, the certificate mentioned the applicant's myopia had already deteriorated in each eye.

In the second month of her pregnancy, the applicant went to the gynaecology and obstetrics department of a public hospital in Warsaw, with a view to terminating the pregnancy on medical grounds. The gynaecologist briefly examined the patient, in a room improper for a medical examination of the kind and together with the endocrinologist disapproved the termination of the pregnancy motivating that neither the severe myopia nor the previous caesarians represent solid grounds for therapeutic abortion to be performed in this case. As a result, the applicant continued with the pregnancy and gave birth through caesarian. Following the delivery, the applicant's eyesight deteriorated considerably because of what was diagnosed as a retinal haemorrhage, and no surgical intervention could improve the state of the applicant, which was irreversible. Furthermore, there still exists the possibility for the applicant to suffer total loss of sights. Consequently, the degree of her disability was changed to severe disability. At the date of the trial, the applicant was not able to discern objects found at greater distance than 1,5 m. and was unemployed, receiving a monthly disability pension equivalent to 140 euros.

Following the facts mentioned above, the Court determined that the refusal to perform therapeutical abortion represents a breach of the applicant's right to private life, which in this case prevails over the right to life of the unborn child.

As previously mentioned, in criminal legislations, the matter on the protection of the life of the fetus is regulated divergently. In this meaning, we can speak about the two diametrically opposing conceptions, shaped in time, influenced by the social and religious factors, respectively the one regarding the interdiction of abortion procedures to protect the life of the unborn child and the one according to which the mother has the right to decide whether to terminate the pregnancy by considering her right to private life, in compliance with the requirements on the age of the embryo. Between these two limits oscillate also the current regulations in force in different states.

The extreme where abortion is absolutely interdicted, except for a few situations expressly and restrictively provided by the law, is made up of states such as Northern Ireland, Ireland and Poland. Hence, in Ireland<sup>41</sup> the right to life of the unborn baby is enshrined by constitution since 1983, abortion being absolutely forbidden. The protection guaranteed by the Irish legislation for the unborn babies owes also to the strong influence of the Catholic Church, which is founded on profound moral values concerning the nature of life. According to

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<sup>41</sup> Berger, V., *Jurisprudența Curții Europene a Drepturilor Omului*, Institutul român pentru drepturile omului, București, 1998, p. 476.

Irish Criminal Law, it *represents an offence to intentionally destroy unborn human life*. In other words, the birth represents just the moment when the new life becomes autonomous from the psysical point of view, but the life exists from the moment of conception. The exceptional situations under which abortion procedures are permitted only when they intervene to save the mother's life, or when there is a medical condition incompatible with pregnancy, or based on solid indications that the mother could commit suicide.

The same situation is found in Northern Ireland and Poland, where among the exceptional situations that allow for abortion, are also those in which the fetus suffers from severe abnormalities, as well as that in which pregnancy is the outcome of rape or incest. But unlike other legislations that prohibit abortion, the Polish law does not punish the mother who caused abortion on herself, incriminating in return, the mother's determination to have the abortion performed by a third party.

Similarly<sup>42</sup>, in numerous American states, the life of the fetus is protected almost to the same extent as the life of a born person,<sup>43</sup> except for voluntary abortion.<sup>44</sup> Nonetheless, in case law, the issue is treated in a totally nuanced manner. It was determined that in the first trimester of pregnancy, the state may impose only the condition that abortion is performed by a doctor, in order to protect the health of the mother, and in the second trimester we notice the state's interest in protecting potential life by imposing a series of additional conditions (abortion procedure shall be carried out in a hospital, after the approval of a medical commission), while starting from week 28, when the fetus becomes viable, the state's interest in protecting the potential life prevails over the woman's right to private life, for which reason abortion may be forbidden, except for the case where the mother's health of life are in danger.

In Spain<sup>45</sup>, the right to life of the unborn baby was explicitly recognized by the constitutional court, which stated that the right to life exists not merely from the moment of birth, but from the moment of conception. In the same way, the criminal law dedicated a distinct chapter to the injuries on the fetus, included here is the offence of abortion. However, in the light of Spanish legislation currently in force, abortion represents offence only if the age of pregnancy exceeds 14 weeks. Therefore, even if the Spanish law recognizes the fetus' right to life, in the case

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<sup>42</sup> Chiriță, *op.cit.*, p.126.

<sup>43</sup> Hence, after the Supreme Court of Justice ruled that the murder of a fetus using a knife does not qualify as murder because the law does not provide expressly the difference between the passive subjects and the human embryo, the lawmaker amended the incriminating rule by including the fetus among the passive subjects of murder.

<sup>44</sup> The exception was justified by the fact that the reason for amending the incriminating rule was not to recognise the right to life of the unborn child, as the life of the fetus was fully protected only when it does not interfere with the rights and freedoms of the mother wishing to abort.

<sup>45</sup> Petruș, *op.cit.*, p.87.

where this right interferes with the mother's right to life or to private life, the latter is protected by priority.

And so, we arrive to the second cornerstone of concepts, according to which abortion is permitted provided that certain requirements are fulfilled. The Canadian Supreme Court established that the regulation that allowed only therapeutical abortions is in violation of the woman's rights and freedoms, constituting a profound interference about the woman's body and consequently an interference with the person's security and private life, which guarantees each person wide personal autonomy over important decisions concerning the intimacy of the person's life. In addition, the procedural requirements to be fulfilled for obtaining the certificate for therapeutic abortion were significantly delaying the woman's access to medical treatment, putting in danger her health, which constitutes another breach of the right to personal security. Therefore, the Canadian Supreme Court refused to recognize the right to life of the unborn baby.

In England<sup>46</sup>, although case law allows abortion up to the limit of viability, the fetus does not benefit of the same statute as the born child, determining that the viability on which depends the protection of life, does not consider only the possibility of living but also that of the newborn living independantly, the abortion being permitted in case the child was suffering from a severe condition, for example.

In German case law<sup>47</sup>, it was decided that criminal law must protect human life in the making, at least if this protection does not involve excessive interference with the mother's psysical or psychological health, abortion being limited to the moment when the fetus reaches 12 weeks.

Lastly, we could not leave out the situation existing in France<sup>48</sup>, where on the one hand the constitutional court approved the disincrimination of self-induced abortion, fact that signifies that through the offence of abortion the health of the woman is mainly protected, while in the case of the human embryo it is protected not so much the right to life but rather the interest over the statute of a potential person.

On the other hand, in a particularly interesting case<sup>49</sup>, an unusual judgement was delivered, which tends to include also the fetus in the group of passive subjects of murder. It was determined that the defendant, while driving a car, slid of the road in a curve on the wet road and collided with a car driven by the victim, which was coming from opposite direction. Following the accident, the victim who was pregnant in 8 months was seriously injured, and the fetus deceased *in utero*, death which imposed carrying out emergency caesarian. It was assessed

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<sup>46</sup> Chiriță, *op.cit.*, p.128.

<sup>47</sup> Petruș, *op.cit.*, p.90.

<sup>48</sup> Chiriță, *op.cit.*, p.130.

<sup>49</sup> Reims, C.Ap., 2000, *Chambre des Appels Correctionnels*, 3 feb. SUBB no.1/2000, p.106 and the following.

that because of the trauma suffered by the mother, especially the hip fracture, the death of the unborn baby was caused by the accident.

The Public Ministry demanded the conviction of the defendant for cumulative offences, among which the murdering of the baby and manslaughter on the mother. The first court convicted the defendant for manslaughter, and ruled for the murder accusations to be written off. The court of appeal however, changed the decision of the court of first instance, in the meaning that it ruled for convicting him on both offences. The decision was motivated on the grounds that after the 8<sup>th</sup> month of pregnancy the fetus exceeds the limit of viability, being up to birth, able to survive on its own. Consequently, even if it was not separated from its mother, the unborn child was a human being, benefiting from the protection of criminal law.

In the Romanian criminal legislation, art.201 of the Criminal Law incriminates the act of termination of pregnancy, deed that consists of *termination of pregnancy committed under any of the following circumstances*:

- a) *outside medical facilities or offices authorized for this purpose;*
- b) *by a person who does not have the capacity as physician specialized in obstetrics and gynecology and a license for medical practice in this specialty;*
- c) *if the length of pregnancy exceeded fourteen weeks, the punishment shall be of no less than 6 months and no more than 3 years of imprisonment or a fine and a ban on the exercise of certain rights.*

(2) *Termination of pregnancy, committed under any circumstances, without the consent of the pregnant woman, shall be punishable by no less than 2 and no more than 7 years of imprisonment and a ban on the exercise of certain rights.*

(3) *If the acts set under par. (1) and par. (2) caused bodily harm to a pregnant woman, the penalty shall be no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights, and if such acts resulted in a pregnant woman's death, the penalty shall be no less than 6 and no more than 12 years of imprisonment and a ban on the exercise of certain rights.*

(4) *When such acts were committed by a physician, in addition to the imprisonment penalty, a prohibition to practice their profession shall apply.*

(5) *The attempt to commit the offenses set under par. (1) and par. (2) shall be punishable.*

(6) *Termination of pregnancy for therapeutic purposes performed by a physician specialized in obstetrics and gynecology, up to the pregnancy length of twenty-four weeks, or subsequent termination of pregnancy for therapeutic purposes, in the interest of the mother or of the fetus, shall not constitute an offense.*

(7) *A pregnant woman who terminates her own pregnancy shall not be punishable.*

It was considered that<sup>50</sup> by incriminating this act, the lawmaker intended to protect the health, physical integrity or the life of pregnant woman, as well as the

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<sup>50</sup> Bogdan, *op.cit.*, p.93 and following.

normal *in utero* development of the product of conception. In this context it was raised<sup>51</sup> the question to establish which of the two values is the main object of the offence of abortion. Given the obvious contradiction between these values, in case of abortion on demand or self induced, it was considered that they cannot be situated on the same level of legal protection. For this reason, it was considered that in the case of the offence of abortion, the value that the lawmaker considered to protect first is the *in-utero* life, motivating that this is and must continue to be a state protected interest, at least on the grounds of demographic policies and from respect for the morals protecting potential life. It is true that the way in which the lawmaker understood to incriminate abortion, allows to draw the conclusion that up to 14 weeks potential life is not protected. This situation is justified by the need to establish a balancing line between the right to life of the fetus and the mother's right to life.

On the other hand, art.200(1) of the Criminal Code incriminates the offence of *killing or a newly-born baby by their mother*, as being the (1) *killing of a newly-born baby immediately after birth, but no later than 24 hours, committed by a mother who is in a state of mental disorder*. Therefore, the Romanian Criminal Law enshrines and protects the right to life from the moment the birth has taken place, the baby is discharged and begins its life outside the womb.

In other words, the Civil Code, regulating the legal capacity of the natural person, specifies in art.36 the fact that *the rights of the child are recognized beginning from the moment of conception, but only if it is born alive*. Therefore, from the perspective of civil law, the fetus is considered a person, if it is born alive.

### Conclusions

Following the analysis carried out, we can ascertain that the protection of pregnant woman is ensured through a series of legal means, belonging to the field of health law but also from the field of criminal law, as well as means provided by the Convention and by the case law of the Court. All these legal means join together in order to gain the necessary efficiency imposed to the subject.

The analysis of the stages of pregnancy, from the beginning of the status of pregnancy as well as throughout the pregnancy evolution up to birth, reveals the following means for protection of the pregnant woman:

- from the scope of health law the woman benefits from the right to information consisting in running all the relevant genetic examinations necessary to determine possible malformations in due time so as to be able to terminate the pregnancy within the time-limit that does not pose danger to the life of the pregnant woman.
- from the scope of criminal law we can extract the fact that the fetus' right to life as such is not actually recognized, but rather the state

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<sup>51</sup> Chiriță, *op.cit.*, p.131.

protects its interest in relation to a potential life.<sup>52</sup> Given the obvious rigidity of this solution, it was proposed<sup>53</sup> to be instituted a system of differential protection of the fetus, in accordance with the age of the pregnancy. Consequently, if in the first trimester of pregnancy, prevails the mother's right to private life, in the second trimester, beginning with week 14, intrauterine life benefits from increased level of protection through the incrimination of abortion. However, when the fetus becomes viable – more precisely as science today allows the correct estimation of the debut of this stage – and is capable of living on its own, becoming a human being that the the law must protect as such.

- from the scope of the Convention and the Court case law, the right to respect the private life of the pregnant woman and her family, by giving her adequate and timely information so that she can make with full knowledge the decision to give birth to a child with disabilities, considering that this decision will have an impact on the quality of her life and her family's life.

These legal means of protection complement the general framework under which works one of the most exclusive (up to now) rights of women, the right to give life.

Finally, in a cyclical approach of the theme studied herein, to highlight the idea stated in the introduction we turn to the perspective launched by Jose Saramago on the miracle of pregnancy: *“I'm pregnant. After all, it happens to nearly every woman, becoming pregnant is no earthquake. Ricardo Reis decides, he must know her intentions, there is no point in evading the issue any longer, are you thinking of having the child. Just as well that there is no one eavesdropping, otherwise Ricardo Reis would find himself accused of suggesting an abortion, but before the witnesses have been heard and the judge passes sentence, Lydia steps forward and declares, I am going to have the baby. For the first time, Ricardo Reis feels a finger touch his heart. It is not pain he experiences, or a twitch or chill, but a sensation like no other, like the first handshake of men from two different planets, both human beings yet completely alien to each other.”*<sup>54</sup>

## Bibliography

1. Aluaş, M., Gherman, C.D., Dumitrescu, C.I., 2017, *Is the human embryo legally defined and protected? Causes and consequences*, Romanian Journal of Morphology and Embryology vol. 58, no.2, in press, <https://www.ncbi.nlm.nih.gov/pubmed/28730264>.

<sup>52</sup> Nevertheless, the solution adopted by the lawmaker in the matter of manslaughter, in the case where the passive subject is a pregnant woman, means the tacit recognition of the unborn baby's right to life, by regulating this hypothesis alternatively with murder of two or several persons.

<sup>53</sup> Petruş, *op.cit.*, p. 93, Chiriţă, *op.cit.*, p.131.

<sup>54</sup> Saramago, J., *The Year of the Death of Ricardo Reis*, Ed. Polirom, 2008, p. 345.

2. Apan, R.D., *Discipulus vulnerabilis; reflections on the right to education of persons with disabilities within the third level education*, Drept și Educație - interferențe, Ed. Pro Universitaria, Bucharest, 2016.
3. Apan, R.D., Miff, A., *Homo vulnerabilis; institutions and mechanisms created to oversee, at national level, the enforcement of the U.N. convention on persons with disabilities*, Annual Review (Yearbook) - Series Humanistica, 2017, <http://www.humanistica.ro/engleza/index.htm>.
4. Bălan G., Bulgaru I.D., 2015, *Răspunderea juridică medicală în România. Malpraxisul și infracțiunile medicale*, București, Ed. Hamangiu.
5. Berger, V., 1998, *Jurisprudența Curții Europene a Drepturilor Omului*, Institutul român pentru drepturile omului, București.
6. Bogdan, S., 2006, *Drept penal. Partea specială*, vol. I, Sfera juridică, Cluj-Napoca, case Open Door și Dublin Well Woman v. Ireland, available at <http://www.echr.coe.int/>
7. Boilă L.R., *Physician's liability towards the patient in the light of the provisions of law no. 95/2006, on healthcare reform*, Fiat Iustitia, nr.2/2016 <http://fiatiustitia.ro/ojs/index.php/fi/article/view/256>, accesat la 05.07.2017.
8. Chiriță, R., *Dreptul constituțional la viață și dreptul penal*, S.U.B.B. no. 2/2001.
9. Deleanu, I., 2001, *Instituții și proceduri constituționale*, Arad, Ed. Servo-Sat.
10. Genicot, G., 2010, *Droit medical es biomedical*, Éditions Larcier.
11. Mangu, I. F., *Malpraxisul medical. Răspunderea civilă medicală*, București, Ed. Wolters Kluwer.
12. Năsui, G. A., *Malpractice in the activity of doctors and lawyers comparative study*, Fiat Iustitia no. 2/2016, accessed on <http://fiatiustitia.ro/ojs/Index.php/fi/article/view/271> la 12.07.2017.
13. Perju-Dumbravă, D., Mureșan, D., Radu, C.C., Chiroban, O., Sîntămărean, R., Ureche, D., Davidescu, R.B., *Malpractice in obstetrics and gynecology case report and literature review*, Fiat Iustitia no.2/2016, accessed on <http://fiatiustitia.ro/ojs/index.php/fi/article/view/276/259> la 08.07.2017.
14. Petruș, A., *Debutul protecției dreptului la viață*, C.D.P., no.4/2006, p.92.
15. Ponchon F., 1999, *Les droits des patients a l'hospital*, Paris: Presses Universitaires de France.
16. Reims, C.Ap., 2000, Chambre des Appels Correctionnels, 3 feb. SUBB no.1/2000.
17. Soare, I., 2003, *Nume proprii în medicină*, București, Ed Etna.
18. Turcu, I., 2010, *Dreptul sanatatii. Frontul comun al medicului si al juristului*, București, Ed. Wolters Kluwer.
19. Judgement on Application no.8416/1979 <http://www.juspedia.ro/>.

## Legislation

1. Law no. 95/2006, of 14.04. 2006 on healthcare reform, published in Official Gazette no. 372/28.04.2006, consolidated version of 07.07.2017.
2. Law no. 46/2003 of 21.01.2003 on the rights of patients no. 46/2003 of 21.01.2003, published in Official Gazette no.51/29.01/2003, consolidated version of 07.04.2016.
3. Order of the Minister of Health no. 1410 of 12 December 2016 approved the implementing regulations for Law no. 46/2003 on the rights of the patient, published in Official Gazette no. 1.009 of 15.12.2016.
4. Law no. 286/2009 Criminal Code, published in Official Gazette no. 510 of 24.07.2009, consolidated version of 23.05.2016.