

THE RETROSPECTIVE OF INCRIMINATION OF THE OFFENSE OF ILLEGAL ABORTION IN THE REPUBLIC OF MOLDOVA

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Abstract

In this article we will submit to a research the evolution of abortion liberalization as a tool for the protection of human rights and the evolution of the criminalization of the offence of illegal abortion in the Republic of Moldova.

The History is perhaps the only one way we have at our fingertips to truly verify the course of the crime and the criminalization of the offence of illegal abortion in the Republic of Moldova. Immoral, from the point of view of the church, illegitimate by the laws of some states, the right of abortion had a sinuous evolution, permanently controversial throughout history.

Regarding the history of the concepts of abortion, we think it's extremely important. So, we think it's essential to look at how people have seen abortion over time. In addition, throughout history, as we will see, abstaining abnormal attitudes have been adopted from the legislative point of view.

Keywords: *crime, the offence of illegal abortion, historical evolution, reproductive health, pregnancy, miscarriage, indictment of abortion, legalization of abortion*

JEL Classification: [K 14]

1. Introduction

The evolution of criminalisation and the model or repressive - prevention is essentially linked to the level of development, the type of the history of that society and the spirituality of each nation. Especially, this thesis is valid for the abortifacient labour at which social reaction has been and continues to be provoke for the spiritual factors, religious, political, and why not, the manner in which the society perceives the chances of life of the one who is not born.

Abortion, dictated by the woman's desire to deliver unwanted pregnancy, has appeared from the most ancient times, knowing during the various stages of human development, from a moral point of view and legal, contradictory even in some cases. The study of history – development to incriminate the illegal abortion, shows that in the Ancient Epoch and in the antiquity, society is more permissive with abortion than in subsequent ages its development.

The oldest legal regulations on abortion can be found in the Code of Hammurabi. Through this judgment has been punished with the monetary compensation whoever provoke the miscarriage of a woman. Written information with reference to the abortion we have remained from the

Egyptians, for example, those contained in the Egyptian Ebers manuscript, in 1550 B.C. In Republic of China has kept a document showing the number of abortions carried out by official concubines of the king during the period 515-500 B.C (Hayes et al. 2003).

In the ancient Greece abortion was allowed in certain circumstances. It is considered that the fetus is alive a long time before the birth, but that the interest of the society and of the family was more important than the right to life of the unborn child. Plato, in "Theaetetus", describes the skills of midwives to induce abortion in the early stages of pregnancy. Also, in "The Republic" of Plato, abortion or infanticide was presented as compulsory if the mother had more than 40 years (Clero, 2015).

Aristotle considers that abortion must always be in the families of more than a certain number of members. Also, Aristotle has launched the concept of "quickenings late", according to which the soul does not enter into the body of the fetus than when it was completely formed. He considered that "quickness" of the boys shall be 40 days from inception, and the girls in the 80 days. The distinction made was pure philosophical one, without influence on the permissive abortion, which had to be made whenever it is deemed necessary (Frant 2011).

Early in the Roman Empire there were no laws against abortion. The fetus was not considered as an entity distinct from the body of the mother, and living human being, it is considered that begins only at birth, according to the stoic conception, embraced by the Romans. In ancient Rome abortion was a frequent practice, carried out to check the increase in the population or to hide adultery (Gorman, 1982: 15-20).

Later, the Roman Empire, has adopted the law by which the abortion was limited. For example, in the year 211 A.D., abortion for a period of time has been removed outside the law, on the grounds that it was contrary to the parental rights and punished by temporary exile. (Ward, 2002: 35-38).

The laws that forbade or limited abortion have not been followed for recognition of the right to life of the unborn child, but the consequence of policies on population and, to a certain extent, watched the ever-increasing concerns for the life and health of women subject abortive practices. As noted Michael J. Gorman, the Roman Empire was paradoxical "Pro-family, but not fundamentally anti-abortion" (Gorman, 1982:17).

The prohibition of the abortive during the end of the Roman Empire was dictated by the need to increase the number of soldiers for conquest the new territories as well as the number of slaves, which were used as labor free of charge. Thus, the Cicero asked the punishment of women who "kidnapped from the Republic the citizens what were predestinate for them" (Лазанович, 2004: 32).

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There are no sources that would come up with direct findings concerning the punishment of the abortion in Geto-Dacian space. In such considerations, the author Ancuta-Elena Frantz, starting from the idea that men were allowed discretion to his family, concludes that the infanticide at the Geto-Dacian could be allowed. Concerned, it is noted that if infanticide was allowed, then the attitude toward abortion was one permissive. The same assumption the author becomes detached from the custom of the Geto-Dacians, the attestation of historical source, to complain at the birth, concerned to be cheerful at the funeral. Under this aspect is comes with a finding that when they were forced to resort to an abortion, the Geto-Dacians did not suffer, thinking that the unborn child will go directly in the world of Zamolxe (Frant 2014).

The vision of the Church to not tolerate and to sever punish the facts of the abortion influenced by a large enactment of criminal proceeding in all European States. Thus, the death penalty has been established in several criminal enact: France (1562), England (1524), Germany (1533), Russia (Pravila's (Rules) of Alexei Mihailovici in 1649) etc. (Лазанович, 2004: 34).

In Wallachia had been certified earlier criminal arrangements to criminalize abortion. Thus, in glava 374 shall provide that the woman who used various herbs with effect abortive was punished similar to a murderer, being punished as such, after the church rules (Rădulescu, 1962:350).

In the book on the doctrine of the royal rules (pravilele), printed in 1648 to the Three Hierarchs Monastery in Iasi was concerned the parricid deed, which shall consist of the killing of parents, children, brothers, his wife, and were punishment with more terrible "death", the judges with the discretion to appreciate the manner of execution of this sentence (Dobrinescu, 1987:15).

Later, in the modern right, hence the tendency for the attenuation of the penal liability for the deed of abortion. Developments in science, criminal proceedings in this period were marked by the emergence of new principles, such as the one of the legality of the criminalisation and the tame punishment principle. In the 18th century were made the theory of the autonomy of the punishment, according to which, the penalty has stand-alone value and it is an imperative definite reason, deriving from the idea of justice and of the atonement for any deed.

From this point of view, the modelling of legal thinking has brought the emergence of new ideas and sentences in criminal doctrine, which is justified by the behavior of the woman who had caused abortion. The promoters of this idea, were declared against the punishment of infanticide like an aggravated form of murder.

Thus, in the 18th – 19th century, in connection with new processing dictated by the social conditions, the problem of the miscarriage did not become a religious problem, but a social one, which has occasioned by the attempt of penal liability for abortion.

2. Historical evolution of the offence of illegal provokes of abortion in the current territory of the Republic of Moldova

One of the founders of the social concept on the abortion punishment was *Cesare Beccaria*, stating: the establishment of the punishment for abortion should be taken into consideration a vulnerable situation which requires the woman to take such a decision, and the fight with abortion will be more efficient if instead of severe punishment will take measures for the improvement of the situation, the granting of aid material and moral, building orphanages etc. (Beccaria: 2001: 117).

In the Russian criminal law, the end of the century 19th, beginning of the 20th, in Pravilele (Rules) from 1845 and 1903, uterine life of the unborn child was appreciated as the object of protection juridical-criminal, and the action was appreciated as a form of murder with the designation of the destruction (expulsion) of the fetus. Thus, in accordance with article 1461 of Pravila (Rules) from 1845: “the one who without the knowledge or without the consent of the woman, whether intentionally or through certain means causes the expulsion of the fetus is punishable by forced-labor camp from 4 to 6 years; if through the committing of the deed were causing a serious injury to the victim, the penalty was 6 to 8 years; if the death - 8 to 10 years”. On the basis of Article 1462 person who carries out an abortion with news and with the consent of the victim is punishable by imprisonment from 5 to 6 years, and the woman from 4 to 5 years by the deprivation of rights. The penalty laid down in Article 1461 or Article 1462 shall be increased, if the offense is committed to the involvement of a doctor, nurse, midwife, the pharmacist or a person who has been guilty of committing such crimes. (Лозанович 2004: 35).

In the penal code of Romania from 1864 the incrimination of abortion was the incriminating established in article 246, the normative text in which a distinction is made between a net of danger abortion committed by another person and by pregnant woman. According the align (1) *which ever, by things to eat, drink, doctors violence, or by other means, will make, with the knowledge, the pregnant woman to disown, even the ones didn't mean to, would be punished with minimum imprisonment.*

According the align (3), *the woman, by itself, have done some way the disown, or will be received to use other means of disown which will be shown her will give to this end, would punish with imprisonment from six months to two years, if results the denied baby².*

According with aligning (3) of Article 246 Penal Cod of Romania from 1864, doctors, and surgeons, officers of health, apothecarys and midwives who will show, or will give or facilitate these means, will punish with

² Romanian Penal Code from (1864). In: Monitorul Official Gazette of Romania from 30 October (1864).

imprisonment, if denial will take place. If the disown would cause the death of the mother, the penalty shall apply to a degree above³.

In the context of the adoption of the Penal Code in 1936, it was claimed that, through the abortion incrimination, it is primarily for removing the danger of demography which it creates abortion. Secondly, it is considered that the abortion incrimination protects the health and life of the pregnant woman (Rătescu, 1934: 158).

The incrimination was deployed in the article 482 Penal Code, having the following legislative forms: that by any means causes of an interruption of the normal course of pregnancy, committing the offense of abortion and is punishable as follows:

1. When the offence is committed without the consent of the pregnant woman, were punished with correctional imprisonment from 2 to 5 years. If it has caused the pregnant woman any injury to health or an infirmity from those referred to in Article 47, were punished with correctional imprisonment from 3 to 6 years, and if it has caused her death correctional imprisonment from 7 to 10 years.

2. When the offense is committed by unmarried pregnant women, or when she has consented that someone else to provoke him, correctional imprisonment from 3 to 6 months, if the pregnant woman is married, correctional imprisonment from 6 months to one year.

The same penalty and after the above distinctions, also are applied to the one who committed the facts with the consent of the women. If it has caused to the pregnant women any injury to health or an infirmity from those referred to in Article 473, were punished with correctional imprisonment from 1 to 3 years, and if it caused their death, the punishment were with correctional imprisonment from 3 to 5 years⁴.

In the Article 484 Penal Code of Romania in 1936 was provided certain abortion cases of unchanging:, „Do not count abortion, within the meaning of this law, the normal course of pregnancy carried out by a doctor with the Prosecutor's Office authorization. The prosecutor's office will not be able to agree intervention only:

1. To remove an imminent danger of the woman's life threatening danger that cannot be removed otherwise;

2. When the pregnancy aggravates a disease of suffering and life-threatening without could be removed by other means;

3. When one of the parents of permanent alienation is reached and it is sure that the child will have mental diseases⁵.

³ Ibidem.

⁴ Romanian Penal Code from (1836). In: Monitorul Official Gazette of Romania from 18 March (1936).

⁵ Ibidem.

In the following paragraphs was describing the procedure for abortion authorising, namely: “A representative of the prosecutor's office will be transported as soon possible, together with the coroner or his replacement at the location of the patient and will not intervene only if the coroner finds the threat of the imminent danger.

If it is extreme urgency and can not wait for the arrival of the representative of the prosecutor general's office, the doctor can make the intervention, even before the arrival of the representative, in accordance with the subsequently to establish the need for the operation. [alg. 484 alig. (4) Romanian Penal Code from 1936]. In other cases, the application shall be accompanied by a medical certificate of hospital office or a notice issued after a consultation between the doctor who will work and at least a specialist doctor in the disease that determines the intervention or a doctor with a similar practice [alg. 484 alig. (5) Romanian Penal Code from 1936]. The Prosecutor's Office will establish a committee composed of a coroner or his replacement, a specialist in the disease that determines the intervention or specialist doctor in 'regional city or county primary doctor, Who will proceed to a more thorough research as having the right to ask any examination or analysis for the determination of the precise specification of the disease and the need of intervention. The findings of the committee shall be recorded in a report motivated resting on evidence, which will be decisive for the authorisation granting⁶.

The penal laws of the Russian Empire and Romania in the modern period presents an interest essential for this study because they have had direct application and on the current territory of R. The Republic of Moldova. Thus, in Bessarabia, as a result of the annexed by 1812, in the sphere of criminal law has been applied to the laws of the Russian Empire up to the Great Union of 1918. In the south of Bessarabia, up to the year 1878 has been applied to the penal code of Romania in 1864 (Brînză, 2000).

After the Great Union of 1918, Romania, by Royal Decrees of June to August 1919, throughout the territory of the Basarabia to put into effect the Romanian Penal Code in 1864, which has been applied to the adoption and entry into force of the penal code in 1936.

As a result of the annexed Basarabia by the USSR and creating RSSM, changes in the rules relating to criminal illegal abortion was necessary linked to the Soviet criminal policy promoted in the field of reference. The evolution of the USSR criminal legislation in the field of regulating abortion was marked by substantial hesitations vis-à-vis the assessment of the degree of injurious dumping of this criminal deed.

As the author L. Lozanovici sustain that the evolution of the USSR criminal legislation in the field of the abortion criminalisation, beginning in the year 1917 and up to the dissolution of the USSR can be divided into three stages:

⁶ Ibidem.

1. The legalization of abortion (1920-1936);
2. The prohibition of abortion (1936-1955);
3. The legalization of abortion (in 1955) (Люзанович, 2004:34).

In the Soviet Russia, even after the Great Revolution in 1917 was notarised "abortion at the request". One of the founders of the Soviet system of health care Z.P. Solovieov has appointed, „historical document” the common order of the Health and Justice Department in 18.11.1920, according which, „it is allowed to perform artificial interruption of pregnancy under the conditions of the soviet hospitals, where shall be granted the maximum innocuity (Dallin 2015).

In the decree about the protection of the health of the woman drawn up by the Health and Justice Department as a basis for the legalization of abortion awoken that artificial abortion has its right causes economic and social conditions, the standard of living and cultural conditions, and the life and health of women who are exposed to danger due to the clandestine abortion represents a more important and more precious than the keeping of the fetus. To mention that in recent years is increasing the number of women who resort to artificial interruption of pregnancy. The legislators in the whole world fight with this bad by recourse to criminal punishment of women and doctors. Didn't bring positive results, this method puts de woman in the sphere of illegalities and have turned her into a victim to some petty interests and the mean. Consequently about 50% of the women get sick, and 45% of these were dying. Therefore, the government considered that the repressive laws is not effective and decided to allow performing no cost abortion in hospital conditions granted by the soviet state, able to ensure a maximum protection. It shall be forbidden in categorical terms that the abortion surgery carried out by persons other than the specialized doctor. Therefore, the main objective of the *Decree about the protection of the health of the woman* in the 18.11.1920 it was the protection of life and health of the woman. (Люзанович, 2004:34).

As a result of these legislative processing, in the Penal Code of RSFSR in 1922 in Article 146 illegal abortion was concerned for those who could be pulled to the criminal responsibility by two categories of persons: 1) the persons who do not had a special medical training; 2) the persons who had a proper medical training, but who achieved operations of abortion in illegal conditions. The deed was punished with prison or with correctional labour up to 1 year. When the deed was committed in the form of side business, without the consent of the woman or if the deed itself attracted after the death of the woman, be able to apply the imprisonment penalty of up to 5 years (Люзанович, 2004: 41).

The same model reprimaded of criminal abortion was implemented in Penal Code of RSFSR (Russian Soviet Federative Socialist Republic) in 1926. According to the Article 140 shall be deemed to be committing criminal abortion with the consent of the mother of expulsion of the fetus by persons who do not have a proper medical training or by persons who have the

appropriate studies, but anti-humanitarian conditions. Similar deed were punished with prison or correctional labour up to 1 year or fine in size up to 5000 roubles. (Кацева, 1957: 66).

The second stage of the development of the USSR criminal legislation in the row of material abortion was formed in the 1936 – 1955 period, the prohibition of abortion took place.

The article 140 penal code of RSFSR in 1926 has been submitted. In its new editorial the article 140 provide the penal responsibility for carried out of abortion by the doctor in the hospital or maternity, except the cases when continuation of the pregnancy represented a danger to life or health of the woman whenever there is a danger of transmission through heredity of serious diseases. In Article 140 (2) in the RSFSR Penal Code it got worse the criminal liability for performing abortion by the doctor in out-of-hospital or maternity either by persons who had no specialized medical studies. Constituted a criminal offence and the deed a self – inflicted abortion by woman. This could be pulled to the criminal responsibility when the woman gives the consent that the abortion may be caused by another person (Лозанович, 2004:41).

Practice has shown that excessive abortion incrimination during that period (1936-1955) did not lead to an improvement of the situation, but on the contrary it has worsened dramatically.

On the basis of empirical research carried out by the distinguished criminal M. Sargorodschii it has been found that if in the year 1935 the percentage of abortions outside medical institutions constituted 15% of the number of registered abortions, then in 1937 they accounted for 97%. But in fact, non-medical abortion balance was much larger, whereas they were recorded admit only cases of women as a result of the aggravation of health right after a surgical abortion. (Шаргородский, 1948:421).

In addition, increased the number of infanticide. On the basis of the research carried out on the times by the author A. Ghertenzon it was found that in report for the year 1935, in the year 1936 the infanticide increased by 81% in 1937 – 117% in 1938 – 69% (Герцензон, 1938¹). This situation is a great crisis has not been able to do, not influence the legislation of those times.

So, by Ucaz of the Supreme Soviet of the USSR was excluded from 5.08.1954 the criminal responsibility of the woman for a self – inflicted of miscarriage or the recourse to other persons. A pregnant woman could no longer be the subject of criminal abortion.

On 23.11.1955 by the Chair of the Supreme Soviet of the USSR was issued the Ucaz *About the removal of the ban on abortion*. That law reoriented criminal policy, regarding ended with the dissolution of the soviet state. This radical change was spurred by the need to prevent the risks implied abortion committed outside the hospital for women's health institutions. The woman has been offered the possibility to decide by itself on the problems of maternity or not to have recourse to the abortion. Only the doctor

offense of abortion represented terminating the pregnancy by whatever means, outside the conditions permitted by law. The terminating pregnancy with the consent of the woman were punished with correctional imprisonment from 1 to 3 years and correctional ban between 1 and 3 years.

Subsequently, by the Penal Code of RS Romania in 1968, the repressive policy toward the artificial abortion has been metered to a maximum indictment thus, several offenses related to the abortion illegal, namely:

- article 185 the miscarriage of the pregnancy course outside the conditions of the law, by any means, both when the deed was committed with the consent of the pregnant woman, and when it was committed without the consent. As aggravated forms, Romanian Penal Code penalizes the deed of illegal abortion provoke, that result in serious personal injury or the death of a pregnant woman. It was a form of aggravated, and the achievement of the abortion in order to obtain a material good;

- article 186 prosecutes the abortion performed by pregnant woman. The deed was punished with imprisonment from 6 months to 3 years or fines. With the same punishment was penalized and the woman who consent that the pregnancy to be interrupted by another person;

- article 187 was punished the holding, outside the specialized institutions of health, of any special tools for the terminating the pregnancy. Such a deed was punished with imprisonment from 3 months to 1 year or a fine. With same punishment were penalized and the deed of holding outside specialized Health institutions, regarding the course interruption, any other means of abortion, established by the competent organ;

- article 188 incriminated doctor's deeds who, after having carried out in the event of extreme urgency, the interruption of the pregnancy, without legal authorisation, did not notify the competent organ, within the time limit set by law. Such deed were punished with imprisonment from 1 month to 3 months. (Vasiliu, 1975: 140-161).

Subsequently, after the dissolution of the socialist camp, through the first Decree Law (C.P.U.N. Decree of 27 December 1989) done after the Revolution in December 1989, have been repealed all provisions of the Penal code who forbade abortion, i.e stated indictment in the Article 185 – 188 of the Romanian Penal Code in 1989.

In these conditions, in the period after the revolution in the Romanian society understand that the legalization of abortion could be achieved by anyone, anywhere. Although abortion was legal, were still many abortions by non-specialised persons, the empirical conditions, in this way the health of the woman was in danger, who choose such practices.

Therefore, by the Law no. 140/1996 (published in the Official Gazette No 289 of 14 November 1996) in the Romanian Penal code in 1968 abortion was incriminated. In the Criminal Code have been introduced only one article of the four repealed. Thus, article 185 incriminated the deed the pregnancy

interruption course, by any means, in the following circumstances: outside the medical institutions or medical consultancy cabinets authorized for the purpose of achieving the abortion (art. 185, alig. 1, let. a), if the abortion shall be carried out by a person who does not have the quality of specialist doctor (art. 185, alig. 1, let. b), and if the gestational age beyond 14 weeks (art. 185, alig. 1, let. c). It was sanctioned and abortion, under any circumstances, without the consent of the pregnant woman. Aggravated forms consist in the production of serious personal injury or death of the woman, as a result of the abortion (Franț 2014).

Throughout the duration of the existence of RSSM, constituted in 1940 that the Union Republic, abortion was concerned under the influence of the soviet legislation. Initially, RSSM has not had its own criminal legislation, on its territory by applying the penal code of the RSS Ukraine in 1927.

The evolution of the regulations of the Penal Code of RSSU in 1927 were practically identical with those of Article 140 of the RSFSR Penal Code in 1926, the provisions that have been examined above⁸.

In the result of the legislative changes-criminal incurred in the basic UCAZ about the removal of the ban on abortion in 1969 - 1955, article 143(1) Penal Code of the RSSU to *perform the abortion outside hospitals or other medical institutions* is apply deprivation of liberty from 1 year to 2 years. In accordance with paragraph (2) to perform abortion in anti – human conditions or by persons who do not have specialized medical studies shall apply to the imprisonment penalty of not less than 3 years old. (Кацева, 1957:66).

A specific offense was punishable under Article 143¹ of the RSSU Penal Code. According to the indictment text shall penalize with imprisonment of up to 2 years of stress to the deed of women carrying abortion.

Application of the temporary admission of Ukrainian criminal legislation in the territory of RSSM lasted until the adoption and implementation of the force of the Penal Code from 24.03.1961, the lever on the establishment of a similar pattern of the truth and punish the illegal deed of abortion to the Penal Code of the others Union Republic.

Under the name of the marginal *performing the illegal abortion* in Article 108(1) of the 1961 Penal Code, the legislator provide penal liability *for carrying out the illegal abortion by a physician*, and in Article 108(2) Pen. Code. *for carrying out the illegal abortion in anti-human conditions or by a person without proper medical studies*. The deed provided in paragraph (1) were punished with fines ranging in size up to seventy-five minimum wages with the prohibition to practice medicine for a period of up to two years or

⁸ Уголовный кодекс УССР в редакции (1927) года :Текст с постатейными разъяснениями из циркуляров и постановлений Наркомюста и Верховного Суда УССР и определений УКК Верховного Суда УССС (по 1 июля 1927 г.) с сопоставительной таблицей статей УК старой и новой редакции и алфавитно-предметным указателем /Сост. И. И. Курицкий, Харьков: Юрид. изд-во НКЮ УССР,(1927).

without such a prohibition, and the deed provided in paragraph (2) were punished with deprivation of freedom for a term from 2 to 8 years and the prohibition to practice medicine for a period of up to four years.

In the Penal Code of the Republic of Moldova in 2002 the incrimination regarding abortion is enshrined in Article 159 Pen. Code, with the name of **the offence of illegal abortion**.

In accordance with article 159 (1) shall be incriminated, interruption course of pregnancy, by any means, committed: a) outside the medical institutions or consultancy medical cabinets authorized for this purpose; b) by a person who has no special medical studies; c) in the case when pregnancy exceeding 12 weeks, in the absence of medical indications, established by the Ministry of Health; d) in the case of medical contraindications for the carrying out of such operations; e) in anti – human conditions. The deed is punishable by fines ranging in size from 550 to 850 conventional units or depriving them of the right to occupy certain functions or the exercise of an activity for a period of up to 3 years in prison, or up to 2 years⁹.

In Article 159(2) Penal Code in force is metered penal liability for two aggravated forms of crime: a) which caused from the imprudence a serious personal injury or average bodily integrity or to the health; b) from the imprudence which caused the death of the victim. In the aggravating circumstance variant deed is punishable by prison from 1 to 6 years, with (or without) deprivation of the right to occupy certain functions or to exercise an activity for a period of up to 5 years¹⁰.

Conclusion:

Making a comparison between the indictment provisions of the old criminal legislation (Article 108 P.C of RSSM in 1961) and criminal law in force (Article 159 C.P. of the RSSM.) we can make the following differentiation of a general nature:

1. In the previous wording was a gradual differentiation of danger of illegal abortion committed by a doctor and illegal abortion committed by another person, the facts being complained to the different paragraphs (Article 108(1) - *abortion illegally committed by the physician*, and Article 108 (2) - *abortion illegally committed by a person without specialized medical studies*). The established penalties shall be deferred after the severity, for the act referred to in paragraph 1 shall provide for fine, and for the purposes of paragraph (2) imprisonment from 2 to 8 years. In the Penal Code of the Republic of Moldova in 2002, the legislator makes a legal customization of the punishment between two normative ways, this mission recovering already to

⁹ The Penal Code of the Republic of Moldova (in force from 24.05.2009) //Official Gazette 128-129/1012, 13.09.2002).

¹⁰ Ibidem.

the judge through judicial customization within limits imposed penalties established in the article 159 (1) Penal Code.

2. The provision of Article 108(1) Penal Code in 1961 have a simplistic character, in the sense that the legislator referred only to the illegal character of the deed, without to describes the assumptions on which abortion committed by a doctor becomes illegal. In the indictment provision of Article 159 of the 2002 Penal Code the legislator autochthonous was already on the other way, in the sense that he described the situations in which abortion committed by the physician becomes illegal; outside the medical institutions or consultancy medical cabinets authorized for this purpose; in the case when pregnancy exceeding 12 weeks, in the absence of medical indications, established by the Ministry of Health; in the case of medical contraindications for the carrying out of such operations; in anti-human conditions. In our vision, the solution adopted in the Penal Code in 2002 corresponds more fully to the criteria of accessibility, predictability and clarity, the conditions that must be satisfied by a standard incriminating-criminal and which are claimed by the European Court of Human Rights case – law¹¹ and the Constitutional Court¹².

3. In the context of this approach, we said that historical retrospective of the abortion criminalisation reveals the legal appreciation of the seriousness of the wrapping it in the report directly with the evolution of the legal concepts and thinking human axiological points. The increase of justified causes and abortion legalization committed by women is noticed only during the period of the legislation or social law. In the present can talk about a criminal abortion, when it is done in conditions of illegality mildly dangerous for life and health of the woman, which is attributable to other persons who committed abortion procedure, only pregnant woman.

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¹¹ The judgment of ECHR Silver vs Regatul Uni. <http://swarb.co.uk/silver-v-united-kingdom-echr-1980>, accessed [18.12. 2017].

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