

Research Article

## CRIMINAL, CIVIL AND SOCIO-ECONOMIC ASPECTS OF THE PROTECTION OF UNBORN LIFE IN THE REPUBLIC OF KOSOVO

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### ABSTRACT

**Background:** Human life is a natural right, and as a fundamental right, its loss entails the loss of all other rights. Consequently, human life is protected by international and national legal acts. This study will approach the chosen topic from a critical thinking angle. Its purpose is to present the basic notions of life, tackle the protection of life through positive legal norms, examine the legal treatment of the unauthorised termination of pregnancy, and provide an overview of data related to such terminations. Furthermore, we will examine whether current legal provisions in Republic of Kosovo effectively safeguard life or, instead, permit the termination of unborn life.

The topic will be approached from the perspectives of civil law and the socioeconomic aspect of this phenomenon. Given that Kosovo was once an Autonomous Region of the Socialist Federal Republic of Yugoslavia, we will draw a comparative parallel in terms of legal reforms. The importance of this study will be evident based on the fact that studies of this interrelated nature of such a topic are lacking. Consequently, such a study will be relevant to legislation and legal practice.

**Methods:** The selected topic will be treated by applying the historical-legal method, the normative method, the comparative method, the method of analysis and the synthesis method. Through the application of these study methods, an effort will be made to achieve the goal and the study objective, always with the aim of providing concrete answers to the research questions and validating the raised hypotheses.

**Results and Conclusions:** While it must be accepted that termination of pregnancy is not murder, it is crucial to recognise that if it occurs at advanced stages of fetal development, it cannot be called anything other than murder. In addition to the legal fragility facing Kosovar society, there is also a notable weakness in the punitive policy. This policy, in its effort to be humane towards the perpetrators of criminal offences, may fail to achieve its intended objectives. Consequently, there is an urgent need for a shift in legislative policy concerning certain anti-social phenomena. Such a change would inherently lead to a reevaluation of punitive measures, especially considering that the criminal offence of unauthorised termination of pregnancy continues to be present in our society.

## 1 INTRODUCTION

Human life is undeniably an absolute and natural right, foundational to all other rights. The right to life takes precedence as the most important right, for with the loss of life, all other rights and human existence are lost.<sup>1</sup> In this context, the right to life is ranked first because it is the most fundamental human right of all: if someone is arbitrarily deprived of his right to life, all other rights will become unrealistic. This primacy is underscored by the fact that it is not “derogable”; it cannot be denied even in “time of war or other public emergency that threatens the life of the nation” – although, as discussed later, “deaths caused by legal acts of war” do not constitute a violation of the right to life (Article 15 (2)). This principle was reinforced by the European Court of Human Rights in the Grand Chamber decision of *McCann and Others v. the United Kingdom*.<sup>2</sup>

Meanwhile, given that women’s sexual and reproductive rights and health care are integral to human rights,<sup>3</sup> a pressing question arises: how can health and legal protection for both a potential mother and future life be achieved? In seeking to legally protect a mother and an unborn life, the Kosovar legislature establishes legal limits on the permissible period of termination of pregnancy and the conditions under which termination may be allowed. This raises concerns about whether, in regulating these terms, the Kosovar legislator, in a conscious way, legitimises dangerous actions, especially in cases where the mother’s circumstances or the risks involved are not fully understood, potentially endangering both the mother and the unborn life inside her.

While the possibility of termination of pregnancy is influenced by different factors and viewed differently across countries, this study will examine several aspects. It will cover the basic notions that are related to the topic, particularly the notion of life, protection of life through positive legal-penal “criminal” norms, the legal treatment of unauthorised termination of pregnancy, present reflective data on unauthorised termination of pregnancy, and address whether current legal provisions effectively protect or inadvertently extinguish unborn life.

Furthermore, it will explore the legal-civil impact of unauthorised termination of pregnancy, the legal reforms in Kosovar society due to the shift from a socialist to a democratic legal system, and the approximating tendencies with European Union law. The study will also present an independent critical position on the chosen topic and offer recommendations based on the analysis conducted.

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1 Ismet Salihu, *E drejta penale: Pjesa e posaçme* (Kolegji Fama, Fakulteti Juridik 2014).

2 Douwe Korff, *The Right to Life: A Guide to the Implementation of Article 2 of the European Convention on Human Rights* (Human Rights Handbooks no 8, Council of Europe 2006) 6 <<https://www.refworld.org/reference/research/coe/2006/en/92032>> accessed 15 July 2024.

3 Daniela Antonovska, ‘The Right to Abortion in North Macedonia’ (2021) 7(1) *Women's Health Open Journal* 1, doi:10.17140/whoj-7-139.

## 2 METHODOLOGY OF THE STUDY

Various study methods have been applied to address the chosen topic. The substantive features of the study, as well as the most realistic and meaningful presentation of the data, have made it necessary to apply a diverse methodology. In fact, beyond the methods used, this study combines both qualitative and quantitative approaches. On the qualitative side, the study includes analysis and interpretation of the data of documents and concrete materials related to the topic. On the quantitative side, it incorporates processed and analysed data, aiming to validate hypotheses and provide answers to the research questions.

*The historical-legal method* was also directly applied to examine how unborn life has evolved from earlier periods to the present day. *The normative method* was primarily used to monitor the legal treatment of unauthorised pregnancy termination according to the incriminations from the current legal framework in the country. *The comparative method* enabled the presentation and comparison of statistical data across time periods where official data was available. *The method of analysis* was applied throughout, enabling the systematic breakdown and detailed exploration of each aspect of the subject. Also, *the synthesis method* facilitated the collecting and handling of all study-related information, ultimately allowing for a general and concrete conclusion on the treated topic.

## 3 RESEARCH QUESTIONS

Through the treatment of the topic chosen for study, we will try to answer the following:

1. With the current legal framework, is the unborn life being adequately protected?
2. Are appropriate measures being taken to protect both the life of the unborn and the health of the potential mother?
3. Is the phenomenon of unauthorised termination of pregnancy present in our society, and in what proportion is it present?
4. What are the legal-civil impacts of an unauthorised termination of pregnancy?
5. How does post-socialist doctrine address the issue of unauthorized termination of pregnancy?
6. What is Kosovo's current legal status as it pursues EU membership and seeks alignment with EU law?

Consequently, answering the questions posed above, we consider that the topic treated is even more interesting, comprehensive, and, of course, of special importance, given that studies of this nature are currently extremely few in our country.

## 4 HYPOTHESES

From the treatment of the topic chosen for study, we argue that:

1. The life of the unborn and its rights, in principle, are specified according to the legal framework;
2. The unborn life must be protected even in the special circumstances according to which, currently and at a more advanced stage of its development, its termination is allowed;
3. The unborn life has its implications in the criminal, civil and socio-economic fields;
4. The unborn life had protection even when Kosovo was the *Autonomous Region of the Socialist Republic of the Former Yugoslavia* and
5. In the current period, the number of people convicted for the unauthorised termination of pregnancy is rapidly increasing, which manifests a rise in awareness and social and legal reaction when such a future life is threatened or extinguished.

## 5 LITERATURE REVIEW

### 5.1. General Aspects of the Notion of Life

Referring to the notion of life, when it is considered that life begins when a child is born, opinions differ. According to the oldest concept, a child is considered born once the umbilical cord is cut, fully separating the child from the mother's body. Others believe that birth occurs when part of the child emerges from the mother's body. A further perspective holds that the child is born from the moment when the breathing of the placenta stops. However, a third group of authors argue that life begins from the onset of the birth process itself, namely the duration of the birth. This third opinion is generally considered the most accurate.<sup>4</sup>

However, one fact remains clear: the embryo represents the beginning of a new human being,<sup>5</sup> which we consider the beginning of life itself and the indispensability of legal protection and its respect.

Consequently, the protection of the right to life compels states not only to refrain from the intentional causation of the death of a person but also to fulfil a positive obligation to take appropriate measures to ensure the effective protection of the life of every human being.<sup>6</sup> In this context, beyond the institutional obligation to protect the life of the person, it is

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4 Ismet Salihu, Hilmi Zhitija dhe Fejzullah Hasani, *Komentari i Kodit Penal të Republikës së Kosovës* (Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH 2014).

5 Keith L Moore, TVN Persaud and Mark G Torchia, *The Developing Human: Clinically Oriented Embryology* (Elsevier 2015).

6 Luminita Dragne, 'The Right to Life: A Fundamental Human Right' (2013) 2(2) *Social Economic Debates* doi:10.2139/ssrn.2408937.

precisely the state that, through the legal framework and in the circumstances of the protection of life, sets behavioural limits in the interest of protecting life. However, in certain situations, the elasticity, fragility or lack of severity of these legal provisions can put at risk precisely this fundamental right – the right to life – including that of the potential mother and the unborn.

Moreover, although it is really difficult to balance the right of the woman to terminate a pregnancy within certain legally permitted periods and the obligation to respect the concrete legal provisions, the vital aim should be to prevent this legal framework from inadvertently legitimising the actions by the potential mother or even health personnel who, by utilising the elastic legal framework, can justify actions that cause damage to future life.

## 5.2. Protection of Unborn Life and Women's Rights

Under the Criminal Code of Kosovo (2018),<sup>7</sup> the protection of unborn life is tackled in the chapter on criminal offences against life and body. Specifically, unborn life is protected by incriminating illegal actions that constitute the criminal offence named the *Unauthorised Termination Of Pregnancy*. This offence is of a blanket nature and applies in cases where the committed violates the *Law on Termination of Pregnancy*.<sup>8</sup> According to the relevant legal provisions, any individual who, contrary to the law on the termination of pregnancy and with the consent of the pregnant woman, terminates the pregnancy, initiates the termination of the pregnancy or helps her to terminate the pregnancy, shall be punished with imprisonment from six (6) months to three (3) years.<sup>9</sup>

Consequently, from the highlighted provision, it is observed that the commission of the criminal offence can be realised by undertaking any of the alternative actions for the commission of this offence. These actions are manifested as *termination of pregnancy, initiation of termination of pregnancy, or even providing assistance in termination of pregnancy*. Moreover, within this legal definition, emphasis should be placed on two important issues. Initially, *acting knowingly and contrary to the legal provisions*, which is clearly an illegal action, and on the other hand, the existence of the *pregnant woman's consent*, which is also illegal.

From the legal provision and its interpretation, it becomes clear that any person can be a perpetrator of this criminal offence – be a doctor, midwife, any other health worker, or any other person. However, this criminal offence cannot be committed solely by a pregnant woman, even in cases where she terminates the pregnancy by herself or in collaboration with another person.<sup>10</sup> However, the lack of consent from the pregnant woman significantly

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7 Code no 06/L-074 of 23 November 2018 'Criminal Code of the Republic of Kosovo' [2019] Official Gazette of the Republic of Kosovo 2/71, ch 16.

8 Salihu (n 1).

9 Code no 06/L-074 (n 7) art 178, para 1.

10 Salihu (n 1).

intensifies the severity of this criminal offence, leading to a stricter penal policy. Thus, anyone who terminates or begins to terminate a pregnancy without the consent of the pregnant woman shall be sentenced to imprisonment from one (1) to eight (8) years.<sup>11</sup>

On the other hand, the law explicitly upholds every woman's right to freely decide on the termination of pregnancy according to the criteria defined by the law. Women are entitled to counselling and information regarding pregnancy termination, and legally capable women are not subject to termination of pregnancy without their consent.<sup>12</sup>

Furthermore, women over the age of eighteen (18) have the right to request an elective termination of pregnancy. Minors aged sixteen (16) or older may request termination of pregnancy, providing they have obtained the consent of the parent or legal guardian.<sup>13</sup> Elective termination of pregnancy can be done until the end of the tenth (10) week of pregnancy, calculated from the first day of the last menstrual cycle. Any termination beyond the tenth (10) week is against the *Law on Health* and requires the approval of a health commission professional.<sup>14</sup>

Beyond the highlighted legal provisions, the protection of unborn life and the well-being of the potential mother are prioritised, particularly through specific legal provisions that permit termination for medical reasons. In cases where it is determined that the continuation of the pregnancy or the birth of the child endangers the life or health of the woman, it can be done at any period of the pregnancy, provided that the Medical Commission authorises it. The pregnant woman gives informed consent if she is capable. Similarly, termination is permitted at any point if severe fetal malformations incompatible with life, diseases, serious untreatable conditions, or disabilities are confirmed, with the Medical Commission's approval and the patient's consent as long as she is aware.<sup>15</sup>

Although it should always be borne in mind that abortion is not good for health, it affects not only the woman's health but also future pregnancies.<sup>16</sup> Furthermore, unsafe abortion is one of the causes of maternal mortality and morbidity, particularly in developing countries.<sup>17</sup>

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11 Code no 06/L-074 (n 7) art 178, para 2.

12 Law no 03/L-110 of 6 November 2008 'On Termination of Pregnancy' [2009] Official Gazette of the Republic of Kosovo 48/2, art 4, paras 1, 2, 3.

13 *ibid*, art 5, paras 1, 2.

14 *ibid*, arts 6, 7.

15 *ibid*, art 15, para 1, 2.

16 Rajeev Shukla, 'An Abortion: A Bless or a Sin for a Society' (2020) 8 International Journal of Research in Humanities, Arts and Literature 61.

17 Jasmina Begum, Sunita Samal and Seetesh Ghose, 'Unusual Complication of Surgical Abortion with Pelvic Extrusion of Fetal Head: A Case Report' (2015) 9(11) Journal of Clinical and Diagnostic Research QD11, doi:10.7860/JCDR/2015/15759.6780.

### 5.3. Analytical Thoughts about the Unauthorised Termination of Pregnancy According to the Legal-Penal Provisions of the Criminal Code

Based on the legal-penal (criminal) provisions, it can rightly be concluded that legally, both the future life and the life and health of the potential mother are fully protected under the law. However, beyond this legal protection, the critical focus lies in the permissible grounds for pregnancy termination, as outlined in specific legal provisions. These provisions establish *the permitted period* (in special cases of termination of pregnancy) where future life can only be terminated if the potential mother faces severe physical or psychological challenges, and only with her informed consent.

Asserted even more clearly, expressly defined by legal provisions, it is emphasised that termination of pregnancy for criminological reasons can be carried out in the 22nd week of pregnancy, with induced labour permitted even later upon medical recommendation and confirmation by competent institutions. These authorities are authorised to determine if the pregnancy is a consequence of one of the following criminal acts: rape, forced sexual relations involving trafficked and exploited women, sexual relations with minors or cases of incest.<sup>18</sup>

Consequently, the criminological grounds for the termination of pregnancy are justified even though legal provisions are very reasonable, without dispute. However, termination at an advanced stage of pregnancy, regardless of the circumstances in which it began, remains a serious matter. Moreover, we must make it clear that the legislator, within the framework of the legal provision, has emphasised that even after the 22nd week of pregnancy, a so-called induced birth can take place involving the extraction of the foetus under the influence of drugs or with surgical intervention.<sup>19</sup>

Such an action, in the context of allowing termination of pregnancy even after the 22nd week, effectively legitimises a harmful and potentially dangerous action because, above all, it places both the coming life and the life and health of the potential mother at risk. The mother, facing serious physical, health and psychological challenges, may undergo severe strain where the loss of a future life, which, regardless of how it began (it can be a healthy life that is above all innocent), is legitimised by creating a legal space for the possibility of terminating this life and putting the potential mother in a dangerous situation.

However, we consider that in such a situation, the mother must be helped, protected, and offered care and any support that contributes to her psychological and physical well-being. However, looking for alternative solutions is crucial instead of resorting to termination.

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18 Law no 03/L-110 (n 12) art 16, para 1, subss 1.1, 1.2, 1.3.

19 *ibid*, art 2.

Moreover, looking at the human dimension, future life originated in circumstances that have already victimised the mother; she, too, is a victim in this context. Thus, we must prioritise and care for both lives when making any decisions that could lead to further victimisation of either the mother or the unborn child.

#### 5.4. Protecting, Harming or Extinguishing of Unborn Life

Until now, legal provisions indicate that it is possible to terminate a pregnancy without incurring criminal liability, provided that specific legal situations are met. Beyond such a legal definition, even in a general context, there are several broader arguments in support of a right to abortion, which often focus on three different sets of circumstances.

The first is when the mother invokes her right to life over that of her unborn child. The second set of circumstances occurs when a mother invokes her abortion rights for the preservation of her health. In such situations, the mother's interest in her well-being competes with the unborn child's right to life. The third situation in which abortion rights have their strongest hold in international law is when the woman seeks an abortion for a pregnancy resulting from rape or incest. In such cases, the focus is on voluntary motherhood and the mother's right to reproductive health,<sup>20</sup> and consequently, the tendency and focus is the protection of the mother, both psychologically and physically.

Abortion, often perceived as the termination of a pregnancy of a child who is incapable of living,<sup>21</sup> is not limited to such cases in the legal framework. Current legal provisions include an even broader dimension of the possible situations in which termination of pregnancy may be legally permitted, even when the foetus is fully capable of life. In such cases, termination may be carried out without imposing criminal liability for extinguishing the potential life of a future child.

In this regard, while the right to terminate a pregnancy exists everywhere<sup>22</sup> in our society and is generally governed by legal provisions, these laws aim to protect the life, health and general physical and emotional state of the potential mother. The legal flexibility provided for these purposes allows for a range of actions that may directly or indirectly impact potential future life.

In such a situation, the dilemma is inevitably raised as to whether we are consciously protecting future life or legally legitimising actions that violate it. This question is particularly pressing when laws permit *induced labour* after the 22nd week under special circumstances. Moreover, beyond such legal frameworks, instances of so-called *criminal*

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20 Tom Venzor, 'Protecting the Unborn Child: The Current State of Law Concerning the So-Called Right to Abortion and Intervention by the Holy See' (2010) 89(4) *Nebraska Law Review* 1132.

21 Nedžad Korajlic, Driton Muharremi dhe Xhemajl Ademaj, *Fjalori terminologjia kriminalistike* (Ministria e Punëve të Brendshme 2016).

22 Fejzulla Berisha, *Hyrje në të drejtën: (Fillet e së drejtës)* (Universiteti "Haxhi Zeka", Fakulteti Juridik 2015).



*failures* – where pregnancies are terminated outside or inside health institutions, beyond legal criteria and without medical indications<sup>23</sup> – further place the future (unborn life) in constant jeopardy, despite efforts to protect it. We consider that future (unborn) life remains in permanent danger.

## 5.5. Criminal, Civil and Socio-Economic Aspects of the Protection of Unborn Life

Unborn or future children require wider legal protection than they do today. Basic human rights, starting with the right to life, dignity, health protection, and protection from all forms of violence, are tied to the concept of legal subjectivity, which, by carefully reading international and regional documents, today has a different dimension than before.<sup>24</sup> So, it is considered that today, unborn life enjoys even more precise legal protection than before.

Consequently, although we have already made it clear that the protection of unborn life in the country is done exclusively by legal-criminal provisions, unborn life is also protected by legal-civil provisions. In other words, the unauthorised termination of pregnancy has its own implications in the legal-civil sphere, with which unborn life is also protected.

Although criminal law clearly states that unauthorised termination of pregnancy is a criminal offence, legal-civil provisions also protect issues directly related to unborn life. These include the rights and obligations of parents, compensation for the damages caused, and other legal-civil obligations and responsibilities.<sup>25</sup> Furthermore, civil law addresses the fundamental rights of children, starting from the determination of fundamental principles of their protection.<sup>26</sup> This includes matters directly related to the family as an institution, the civil rights and obligations of spouses, and the protection and care of children.

In some cases, civil law even restricts certain actions, such as the prohibition of divorce until the child reaches the age of at least one year.<sup>27</sup> These provisions ensure comprehensive legal-civil and socio-economic care and protection for both the unborn life and the mother.

Beyond the legal definitions highlighted above, it is important to clarify that the protection of unborn life was established even during the period when Kosovo was the *Autonomous Province of the Socialist Republic of the Former Yugoslavia*. At that time, legal protection was explicitly defined by legal-penal (criminal) provisions. According to these legal provisions, termination of pregnancy was permitted for almost the same reasons for

23 Flamur Blakaj dhe Sokrat Meksi, *Mjekësia Ligjore* (Universiteti i Prishtinës, Fakulteti i Mjekësisë 2019).

24 Zoran Pavlović, 'Protecting the Rights of the Unborn Child' (2022) 5 Yearbook Human Rights Protection: From Childhood to the Right to a Dignified Old age Human Rights and Institutions 257.

25 For more, see: Law no 2004/32 of 20 January 2006 'Family Law of Kosovo' [2006] Official Gazette of the Provisional Institutions of Self-Government in Kosovo 4/1.

26 For more, see: Law no 06/L-084 of 'On Child Protection' [2019] Official Gazette of the Republic of Kosovo 14/1.

27 For more, see: Civil Code of the Republic of Kosovo <<https://md.rks-gov.net/desk/inc/media/CA329C18-55CA-4A85-8233-947C48FEDF38.docx>> accessed 15 July 2024.

which such termination is still allowed today. However, the time aspect of such a termination was given great importance, and the supervision of this situation was strictly required in terms of legal and medical.<sup>28</sup>

However, compared to the previous period, the contemporary legal framework is more relaxed and likely to support women's rights and autonomy in making decisions about their pregnancies. Today, there is also a strong trend of harmonising the current legislation with the *acquis communautaire*.

## 6 RESULTS AND CONCLUSIONS

The abortion debate is an emotional, sensitive and complicated issue that interests society and religion.<sup>29</sup> However, when examining statistical data related to the phenomenon of unauthorised termination of pregnancy, we must first emphasise that, on the eve of the changes and the difficulties that have come from the impact of the COVID-19 pandemic, Kosovo has been experiencing a degree high level of uncertainty in different dimensions such as health, economy, education.<sup>30</sup> In this regard, there is a lack of basic data on the presence and impact of unauthorised terminations of pregnancy from 2020 onwards.

The first two confirmed cases of COVID-19 in Kosovo were reported on 13 March 2020.<sup>31</sup> Typically, statistical data on antisocial phenomena, including unauthorised abortions, are published in September each year. However, the disruptions caused by the pandemic are considered to be the main factor in the non-publication of concrete data from 2020 onwards.<sup>32</sup>

Despite this data gap, an analytical perspective – based on the available statistics, currently considered the clearest, safest and most reliable statistics in our country – reveals that even the recorded data on this issue arouse distrust and uncertainty regarding the numerical trends.<sup>33</sup>

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28 For more, see: Decree PS no 011-25/77 of 28 June 1977 'Criminal Law of the Socialist Autonomous Province of Kosovo' <<https://www.yumpu.com/en/document/read/42192773/criminal-law-of-the-socialist-autonomous-eulex>> accessed 15 July 2024.

29 Oktay Kadayifçi, Orellana Kadayifçi and Ibrahim Ferhat Ürünsak, 'Ethical and legal aspects of abortion' (2007) 14(1) Reproductive BioMedicine Online 61, doi:10.1016/S1472-6483(10)60729-8.

30 Friedrich Ebert Stiftung, *The Effect of Covid-19 Pandemic in Kosovo: Outlook of Municipal Budgets* (Kosovo Local Government Institute 2020) 4.

31 *ibid* 5.

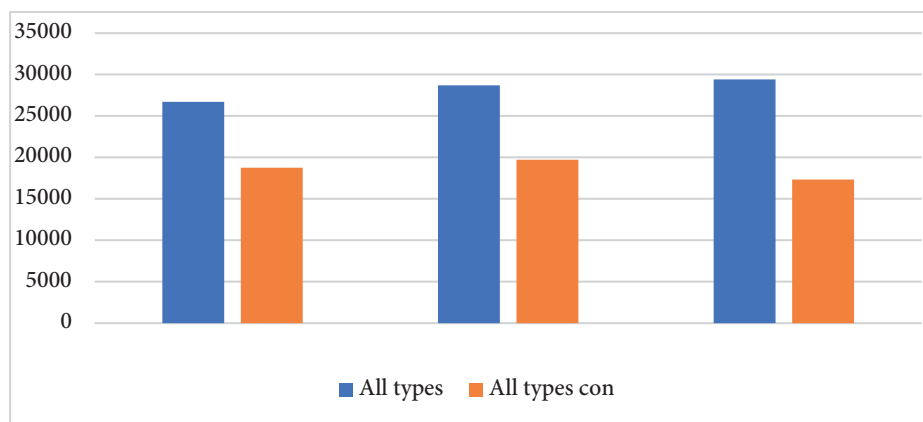
32 Muharrem Bunjaku, Roberta Bajrami and Gezim Jusufi, 'ARIMA Modelling of Economic Variables in the COVID-19 Era: A Study of the Consumer Price Index' (2023) 4(2s) Corporate & Business Strategy Review 296, doi:10.22495/cbsrv4i2siart9.

33 Fatmire Krasniqi and Gezim Jusufi, 'Tax Evasion as a Criminal Offense in Developing Countries: Some Perception from Business Organizations' (2022) 6(4s) Corporate Governance and Organizational Behavior Review 314, doi:10.22495/cgobrv6i4sip12.

Viewed from a phenomenological point of view, during the period from 2017 to 2019, a total of 81 individuals were convicted for the criminal offence called *Unauthorised termination of pregnancy*. This number represents a percentage of about 0.1% of the total of 55,789 persons convicted of various criminal offences during the same period. Further details are presented below in Table 1 and Figure 1.<sup>34</sup>

**Table 1. Unauthorised termination of pregnancy during the period 2017-2019**

Time Period:	The number of persons accused of all types of criminal offences	The number of persons convicted for all types of criminal offences	Expressed in %	Number of persons convicted of the criminal offense: Unauthorised termination of	Expressed in %	Complicity	Expressed in %
2017	26.706	18.753	70.2	1	0.005	-	-
2018	28.696	19.721	68.7	1	0.005	2	0.01
2019	29.405	17.315	58.8	79	0.4	31	0.17
Total:	84.807	55.789	65.7	81	0.1	33	0.05



**Figure 1. The number of persons accused and convicted of all types of criminal offences 2017-2019**

34 Kosovo Statistics Agency, Prime Minister's Office, Social statistics, Jurisprudence statistics for adults, 2018-2020, see: *Agjencia e Statistikave të Kosovës (ASK)* <<https://ask.rks-gov.net/>> accessed 15 July 2024; *Zyra e Kryeministrit* <<https://kryeministri.rks-gov.net/>> accessed 15 July 2024.

Examining the analytical tabular data with a critical eye, we observe a notably high numerical disproportion of persons convicted for the specified criminal offence. More specifically, in 2017, only one person was convicted for this offence, with no cases in the form of complicity – a more serious form of cooperation in committing the offence. In the following year, namely 2018, the data reveal a similar trend, with just one person convicted for unauthorised termination and two others convicted for committing the offence in the form of cooperation, namely co-perpetration.

A different situation compared to the previous two years is seen in 2019. From the data found, it appears that a total of 79 people were convicted for the criminal offence of *Unauthorised termination of pregnancy*, while 31 people were convicted for committing the criminal offence highlighted in the most severe form of cooperation, namely in the form of co-perpetration. Consequently, if we make a logical comparison of the numerical data reflected in the table presented above, we clearly observe a situation that cannot correspond with the social reality of the phenomenon of unauthorised termination of pregnancy in our society. Although the data suggest a growing awareness of the need for punishment and criminal prosecution of the perpetrators, they do not accurately reflect the true prevalence of this issue in our country.

In this regard, these statistical figures may not fully capture the *dark number* of illegal cases directly or indirectly related to the studied criminal offence, especially given the insufficient awareness surrounding this topic. This lack of awareness hampers efforts to prevent and combat such illegal actions. Thus, we can conclude that discussions regarding unauthorised terminations are treated vulnerably, both from a legal and social perspective.

Beyond such a situation, there is generally little factual information in Kosovo regarding this topic, even though abortion has been legal and has never been politically contested since the time of Yugoslavia.<sup>35</sup> Although numbers reported by the *University Clinical Center of Kosovo* (UCCCK) may show a decrease in induced abortions, this does not accurately reflect the reality. Many women seek abortions at private clinics or resort to self-induced methods by buying medications in pharmacies. Reports suggest that over the years, private clinics have illegally performed abortions without proper permits and often after the tenth week of pregnancy.

The outcomes of unintended pregnancies are influenced by many factors<sup>36</sup> outside the realm of the health sector. As mentioned, many women in Kosovo engage in self-induced abortions in various forms, from using traditional methods to purchasing *contraceptive pills*

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35 Fatmire Krasniqi, Saranda Leka and Gezim Jusufi, 'Crime and Firm Performance: Empirical Evidence from the Balkan Region' (2022) 3(2s) *Corporate & Business Strategy Review* 230, doi:10.22495/cbsrv3i2siart4.

36 David L Eisenberg and others, 'Factors Associated With Unintended Pregnancy Outcome Among CHOICE Participants [243]' (2015) 125(1) *Obstetrics & Gynecology* 78S, doi:10.1097/01.AOG.0000463220.05568.8a.

at pharmacies. The reasons for seeking abortions extend beyond unwanted pregnancies to include gender preferences. Over the years in Kosovo, there has been no correlation between high knowledge of modern contraceptive methods and their relatively low use.<sup>37</sup> By increasing awareness of various methods of contraceptives among society; we can help prevent unintended pregnancy and, ultimately, unsafe abortions.<sup>38</sup>

Moreover, cultural norms in Kosovo place a strong emphasis on having sons, who are the priority and honour of the family and inheritors of the family name and, in most cases, the family wealth. In contrast, girls are considered 'foreign persons' who will marry and be someone's wife and leave their families. As brides, they are expected to make children. After the second daughter is born, family members usually worry about whether they will have a son/grandson. Women may face pressure to ensure the birth of a boy, and given that this issue is not up to her, she may be forced to abort female fetuses until she becomes pregnant with a boy.

While gynaecologists report a decrease in the number of women opting for gender selection, they acknowledge that this practice still exists and is not rare. In most cases, women are forced to abort female fetuses if there is pressure from the family to have a son.<sup>39</sup>

The prevalence of abortion around the globe belies considerable diversity in the social, political, and ethical meanings of terminating a pregnancy, as well as the practices surrounding it. All of these vary from locale to locale, from one historical time to another, and among various social.<sup>40</sup>

In discussing the topic, we have incorporated data not only from the legal normative field but also from the practical dimension of the presence and consequences resulting from the process of unauthorised termination of pregnancy in certain developmental stages of future life. However, we consider it important to emphasise several essential points to inform our recommendations.

Currently, both future (unborn) life and potential mothers lack adequate legal protection. This legal fragility is evident in provisions allowing for terminating the pregnancy after the 22nd week, which may only occur under special circumstances. We reiterate that such interventions should be carefully regulated to ensure the protection of both the unborn and the mother's rights.

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37 Iliriana Banjska, *Abortions in Kosovo: An Analysis of Induced Abortions and Reproductive Health in Kosovo from 1999 to 2019* (Artpolis 2019).

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At this advanced development period, the absence of a clear time limit for intervention raises concerns. Even in cases of pregnancy resulting from criminal offences, we consider that they do not justify the termination of pregnancy at this stage or after it unless there are circumstances where the unborn's life is severely compromised, i.e. with extremely serious defects, or when the life of the mother is directly at risk.

Certainly, a concrete legal definition is necessary because, above all, future life, in addition to having careful medical protection, must inevitably also have legal protection, which is currently insufficient. While it is important to recognise that termination of pregnancy is not equivalent to murder, it is also crucial to acknowledge that such terminations in advanced stages of development cannot be called anything other than murder.

Moreover, Kosovar society is currently experiencing a dual fragility: a legal system that lacks robustness and a punitive policy that, in its effort to be humane towards the perpetrators of criminal offences, may not achieve its intended objectives. So, legislative policies towards certain anti-social phenomena must change, and with this, in a derivative way, the punitive policy will also change.

We assert with conviction that the current statistical data do not provide reliable data on the presence and consequences of the criminal offence called *Unauthorised termination of pregnancy* in Kosovo. Many factors affect such data, particularly the Kosovar tradition of greater appreciation and desire for males, for the abovementioned reasons. This selective bias often leads to selective abortions, the number of which can never be verified and presented in the official records on this criminal phenomenon.

Such a fact becomes even more worrying as a result of the work and irresponsibility of private clinics, where monetary interests in certain situations are more valuable than the sanctity of future life and the well-being life of potential mothers. Therefore, private clinics should be held accountable for such activities and forced to operate under strict supervision.

Ultimately, life is sacred and must be protected more rigorously from its start. We must recognise the fragility of unborn life, which is vulnerable to the fragility of existing laws.

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## АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

### КРИМІНАЛЬНО-ПРАВОВІ, ЦИВІЛЬНО-ПРАВОВІ ТА СОЦІАЛЬНО-ЕКОНОМІЧНІ АСПЕКТИ ЗАХИСТУ НЕНАРОДЖЕНОГО ЖИТТЯ У РЕСПУБЛІЦІ КОСОВО

**Фатміре Краснікі\* та Гьозим Юсуфі**

#### АНОТАЦІЯ

**Вступ.** Право людини на життя є природним, і як фундаментальне право, його втрата тягне за собою втрату всіх інших прав. Відповідно, життя людини охороняється міжнародними та національними правовими актами. У цьому дослідженні ми підійшли до обраної теми під кутом критичного мислення. Мета статті – представити основні поняття життя, розглянути питання захисту життя через позитивні правові норми, розглянути правове трактування самовільного переривання вагітності та надати огляд даних, пов'язаних із такими перериваннями. Крім того, ми оцінимо, чи чинні законодавчі положення Республіки Косово ефективно захищають життя та ненароджене життя.

Тема розглядатиметься з погляду цивільного права та соціально-економічного аспекту цього явища. З огляду на те, що Косово колись було автономним регіоном Соціалістичної Федеративної Республіки Югославія, проведемо паралель щодо правових реформ. Важливість цієї праці є очевидною, адже досліджень взаємопов'язаного характеру такої теми бракує. А отже, це робота буде актуальною для законодавства та юридичної практики.

**Методи.** Обрана тема розглядатиметься із застосуванням історико-правового, нормативного та порівняльного методу, а також методу аналізу та синтезу. Завдяки застосуванню цих методів було зроблено спробу досягти мети та виконати завдання дослідження, що передбачають надання конкретних відповідей на дослідницькі питання та підтвердження висунутих гіпотез.

**Результати та висновки.** Хоча переривання вагітності не є вбивством, важливо визнати, що, якщо воно відбувається на пізніх стадіях внутрішньоутробного розвитку, його не можна назвати інакше, як вбивством. На додаток до правової нестабільності, з якою стикається косовське суспільство, існують також помітні прогалини у каральній політиці. Ця політика, яка намагається бути гуманною стосовно осіб, що вчинили кримінальні злочини, може не досягти поставлених цілей.

Отже, є нагальна потреба у зміні законодавчої політики щодо окремих антисуспільних явищ. Така зміна за своєю суттю призведе до перегляду заходів покарання, особливо з огляду на те, що кримінальне правопорушення за самовільне переривання вагітності і надалі присутнє у нашому суспільстві.

**Ключові слова:** ненароджене життя, самовільне переривання вагітності, права жінок, постсоціалістична правова доктрина, Кримінальний кодекс, Цивільний кодекс.