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REGULATION OF REPRODUCTIVE RIGHTS UNDER EUROPEAN CONVENTION ON HUMAN RIGHTS

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Açar sözlər: insan hüquqları, reproduktiv hüquqlar, abort, şəxsi həyat və ailə həyatı

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Introduction

This article deals with regulation of reproductive rights under scope of European Convention on human rights and exactly where these rights include which notion of the Article 8. Also it deals with case-law of the European Court of Human Rights under this right. Although the Convention must be regarded as a whole and the rights in the Convention do not operate in isolation. So, human rights are interrelated with one another. There are also specific links between specific articles – “Respect to private life and family life”, between the Article 2 of convention.

General approach

Reproductive rights are human rights and relating to other human rights and freedoms. These rights are regulated by scope of European convention on human rights and freedoms and especially include the article 8. European court finds that the application of Article 8 is extensive and may even include specific rights not covered by its text. The Article 8 as following: Everyone has the right to respect for his private and family life, his home and his correspondence. (European convention on human rights Article 8) This article contain four category: “the right to respect for his private” “right to respect to family life” “right to respect to his home” and “right to respect to his correspondence”. Although this Article is extensive, its application is not limited. For example, Botta is disabled person and went on holiday to the seaside resort. There he discovered that the bathing establishments were not equipped with the facilities needed to enable disabled people to gain access to the beach and the sea (particularly special access ramps and specially equipped lavatories and washrooms), in breach of Italian legislation, which required a clause obliging private beaches to facilitate the access of disabled people to be added to the relevant concession contracts and made provision for compliance to be enforced by the competent local authorities. Botta claim that violation of Article 8. But this Article is not applicable. In the instant case, however, the right asserted by Mr Botta, namely the right to gain access to the beach and the sea at a place distant from his normal place of residence during his holidays, concerns interpersonal relations of such broad and indeterminate scope that there can be no conceivable direct link between the measures the State was urged to take in order to make good the omissions of the private bathing establishments and the applicant’s private life. (Botta v Italy par 35)

Reproductive rights are included both of them right to respect for his private and family life. “Private life” is a very broad concept which it is not possible to bring a complete definition. This concept is dynamically interpreted by the European court and the scope of the concept is expanded in parallel with social and technological developments.

What are the reproduction rights and what these rights include. According to World Health Organization:

“...Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.”

European court define reproductive rights may include the following: the right to legal and safe abortion; the right to birth control; freedom from coerced sterilization and contraception; the right to access good-quality reproductive healthcare; and the right to education and access in order to make free and informed reproductive choices. Pregnant woman's ability to choose the method of birth under the sub-category of the right to respect for private life in Article 8 of the European court of human rights. The Article 8 also applies to sterilization procedures. Because it is associated with one of the most important functions of the human body, sterilization can affect many aspects of personality. The court found that states have a positive obliga-

tion to have effective legal safeguards to protect women from sterilization that they do not consent to. The court emphasizes the protection of reproductive health of Gypsy women in particular. Several cases have found that required protection of Gypsy women from sterilization, because there have been numerous cases unintended sterilization that they are unprotected situation.

Besides, a woman has right to legal and safe abortion. Abortion has been a controversial subject in many societies through history on religious, moral, ethical, practical, and political grounds. It has been banned frequently and otherwise limited by law. However, abortions continue to be common in many areas, even where they are illegal. Human rights instruments provide the basis for the right of women to make decisions regarding their own bodies. In particular, they require the right to freedom in decision-making about private matters. Such provisions include protections of the right to physical integrity, the right to decide freely and responsibly the number and spacing of one's children and the right to privacy. Women have the right to decide whether or not to bring a pregnancy to term. When a pregnancy is unwanted, its continuation can take a heavy toll on a woman's physical and emotional well-being. Decisions one makes about one's body, particularly one's reproductive capacity, lie squarely in the domain of private decision-making.

1.1. European norms regulating reproductive rights

There are no international or multinational treaties that deal directly with abortion but human rights law touches on the issues. Actually this right is human right as other important rights (right to life, right to health and etc). States have two obligation: 1) Positive obligation (provide safe and legal abortion) 2) Negative obligation (not interfere abortion) States focused on informed consent abortion. When the abortion, are provided protection of foetus and on the other, the women' interests. The Court has given its most detailed attention to the issues raised by abortion in the subsequent case of *Vo v. France*. In this case, the applicant was a woman who had been pregnant, who intended to carry her pregnancy to term and whose unborn child was expected to be viable, or at least in good health. However, on a visit to hospital, she was mistaken for another woman with a similar name and had a coil inserted in the uterus which caused leaking of the amniotic fluid, as a result of which she had to undergo a therapeutic abortion, resulting in the death of the foetus. Mrs Vo claimed that the doctors had acted negligently and that they should have been prosecuted for unintentional homicide. Although, the court joins to the merits unanimously the Government's preliminary objections of the application's incompatibility ratione material with the provisions of the Convention and of failure to exhaust domestic remedies, according to in my mind there is violation of the Article 8 in this case. (*Vo v France*) The other case related to the violation of the Article 8, as follows:

The applicant, a nurse by profession, fell pregnant and the development of her pregnancy was monitored by Dr P.C., a gynaecologist working in the Covasna Town Hospital, the same hospital as the applicant. While she was in the sixteenth week of pregnancy, the foetus was diagnosed with hydrocephalus. Following a consultation with her doctor, it was decided that the pregnancy should be interrupted. She was admitted to the Covasna Town Hospital. On the first day of admission she was put on a drip and medication was infused in order to induce abortion, but to no avail. The next day, concentrated glucose was injected into her stomach with the same purpose of inducing abortion. After the injection, the foetus stopped moving. Around midnight, she began to have a fever (39 degrees) and shivers, which lasted until the morning. She was not seen by a doctor during this time. She was only given painkillers. In the morning, while she was still in bed in the ward and without being taken to the surgery room, she expelled the foetus. She then started bleeding profusely. Despite the fact that two curettages were performed on her, the bleeding would not stop and she was diagnosed with disseminated intravascular coagulation (DIC). The doctor then decided to transfer her urgently to the County Hospital, located in Sfântu Gheorghe, some thirty kilometres away. Although she was in a critical condition, during the transfer she was assisted only by a nurse. When she arrived at the County Hospital, the doctors there had to proceed with a total hysterectomy and bilateral adnexitomy in order to save her life. As above cases there are the doctors had acted negligently. The court unanimously that there has been a violation of Article 8 of the Convention. (*İ.G. and others v Slovakia*)

The European Court of Human Rights has underscored the connection between pregnancy and a woman's private life, which includes her physical and psychological integrity. It has recognized that States have a positive obligation to effectively secure the physical integrity of pregnant women. This obligation requires them to establish procedural safeguards to ensure that women can make an informed decision about whether or not to terminate a pregnancy and access safe and legal abortion services in a timely manner. Women's ability to access safe and legal abortions is restricted in law or in practice in most countries in the world. In fact, even where abortion is permitted by law, women often have severely limited access to safe abortion services because of lack of proper regulation, health services, or political will.

Whether abortion is legally restricted or not, the probability that a woman will have an abortion for an unintended pregnancy is about the same. Legal restrictions on abortion do not result in fewer abortions, nor do they result in significant increases in birth rates. However, a lack of legal reach to abortion services is likely to increase the number of women seeking illegal and unsafe abortions, leading to increased morbidity and

mortality. Legal restrictions lead many women to seek services from unskilled providers or under unhygienic conditions, exposing them to a significant risk of death or disability. Legal restrictions also lead many women to seek services in other countries/states, which is costly, delays access and creates social inequities. Conversely, laws and policies that facilitate access to safe abortion do not increase the rate or number of abortions. The principle effect is to shift previously clandestine, unsafe procedures to legal and safe ones. The accumulated evidence shows that the removal of restrictions on abortion results in a reduction of maternal mortality from unsafe abortion and, thus, a reduction in the overall level of maternal mortality.

At the same time, only a very small minority of countries prohibit all abortion. In most countries and jurisdictions, abortion is allowed at least to save the pregnant woman's life, or where the pregnancy is the result of rape or incest.

Abortion is a highly emotional subject and one that excites deeply held opinions. However, equitable access to safe abortion services is first and foremost a human right. Where abortion is safe and legal, no one is forced to have one. Where abortion is illegal and unsafe, women are forced to carry unwanted to term or suffer serious health consequences and even death. Approximately 13 percent of maternal deaths worldwide are attributable to unsafe abortion. In particular, the right to abortion and fetus to live is a controversial issue because there is no consensus between European states. Forced abortion and cancellation of abortion are violation of the Article 8.

1.2. Conclusion

Reproductive rights are *interdependent* and *interrelated*. Each one contributes to the realization of a person's human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfillment of one right often depends, wholly or in part, upon the fulfillment of others. For instance, fulfillment of the right to health may depend or right to life in certain circumstances, on fulfillment reproductive rights. States have positive obligations regulation of reproductive rights and state provide access and informed these rights. Also states adopted "law on regulation of reproductive rights" and change current legislation for these rights.

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Rəyçi: h.f.d. G.Rzayeva