



## The Nasciturus at the Intersection of the Protection of Life and Self-Determination: A Comparative Analysis of Constitutional Conflicts

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**Abstract:** This thesis examines the legal status of the nasciturus at the intersection of state protection of life and a pregnant woman's right to self-determination in Germany and Hungary. The point of departure is the constitutional conflict of interests between the protection of unborn life and the woman's autonomous decision-making. While German law seeks to achieve a structured balance through a combination of criminal prohibition and systematic exceptions, Hungarian law exhibits an increasingly life-protection-oriented trajectory, characterized by constitutional court restraint and political influence. The analysis demonstrates that, despite similar starting points, both legal systems pursue different doctrinal approaches and ultimately do not conclusively resolve the conflict, but instead assign it differing normative and political weight. The thesis concludes that abortion remains an expression of a persistent tension in both systems, one that can be resolved neither purely legally nor conclusively at the societal level.

**Keywords:** Nasciturus, abortion, protection of life, right to self-determination, constitutional law  
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### 1. Introduction

The legal assessment of unborn human life is one of the most complex and, at the same time, most sensitive issues in modern legal systems. Hardly any other topic touches upon fundamental ethical, social, and constitutional convictions in a comparable way.

The issue of abortion can be viewed as a coin: it has at least two sides. One side concerns a woman's right to self-determination and personal autonomy—a topic that is widely discussed. The other side, which often receives less attention, concerns unborn life, the nasciturus, and the question of the extent to which, and the manner in which, its protection can be legally guaranteed.

This thesis deliberately focuses on this second side of the coin: the protection of unborn life and the associated legal issues. The focus is not on a comprehensive analysis of a woman's personality rights, but rather on examining how two European legal systems—Germany and Hungary—deal with the same fundamental conflict arising from the simultaneous existence of two legally protected interests.

Although both countries are part of the European legal sphere and share similar historical and doctrinal roots, there are significant differences in their legal treatment of abortion. Both countries generally criminalize abortion but provide for exceptions under certain conditions. Crucially, the approach to protecting the nasciturus and the specific structure of access to abortion differ. (These aspects will be examined in detail in the following sections.) The constitutional courts of both countries—the German Federal Constitutional Court and the Hungarian Constitutional Court—have shaped the legal framework over decades, while at the same time highlighting the limits of purely normative solutions. To this day, there

is no uniform or definitive solution, and the balancing of the protection of life against self-determination remains a central legal and ethical tension.

Both legal systems face the task of striking a normative balance between the protection of unborn life and the rights of pregnant women, with the respective constitutional framework, historical development, and societal evaluation of this task playing a decisive role.

Against this backdrop, this thesis focuses on the legal structuring and justification of the protection of unborn life in German and Hungarian law. It aims to demonstrate how different doctrinal approaches and constitutional solutions constitute the status of the nasciturus in two European legal systems and what consequences this has for the normative assessment of abortion. The aim is not to provide a definitive normative assessment of the topic, but rather to offer a nuanced comparative legal analysis of the underlying lines of argumentation in the respective systems.

## 2. The Question of the Rights and Protection of the Nasciturus in Germany

The issue of abortion touches not only on a woman's right to the free development of her personality, but also on the embryo's right to life. Every decision in this context requires a careful balancing of interests to determine which of the legally protected interests should take precedence under the given circumstances and why. In doing so, it must not be overlooked that an abortion cannot be viewed in isolation: Within the framework of causation theory, every action can trigger a chain of consequences. Termination inevitably leads to the loss of life, which can entail further physical, psychological, and social consequences before, during, and after the procedure. A nuanced analysis must therefore take into account both the direct and indirect effects in order to adequately grasp the scope of such decisions.

In legal scholarship, it is regularly emphasized that this involves a classic conflict of interests between the pregnant woman's right to self-determination and the state's duty to protect life, which cannot be resolved through simple legal classification but only through a value-based balancing of interests in light of the Constitution.<sup>1</sup>

When addressing a woman's personal rights, including sexual and bodily self-determination, it is essential to also discuss the scope of those things. That is, where do personal rights end, and where does the protection of the nasciturus begin? How does the state position itself with regard to the protection of unborn life and the exercise of a woman's personality rights in relation to abortion?

Both the German Basic Law and its commentaries, as well as criminal law and civil law, together with their respective commentaries, contain protective provisions for life, albeit with different points of reference. (In addition to the principal statutes, ancillary legislation—such as the Embryo Protection Act<sup>2</sup> or the Maternity Protection Act—also plays a role).

Other ancillary laws are also of great importance. For example, the Embryo Protection Act (ESchG), specifically regulates the handling of human embryos in the context of reproductive medicine and prohibits certain forms of artificial insemination, embryo research, or selection. The aim of the law is to prevent the misuse of human life even in the earliest stages of development.<sup>3</sup>

The Embryo Protection Act thus gives concrete effect to the constitutional protection of life in the field of reproductive medicine and serves, in particular, to prevent the instrumentalization of human life for extraneous purposes.<sup>4</sup>

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<sup>1</sup> Dürig, Herzog, and Scholz, Grundgesetz-Kommentar [Basic Law Commentary] (C.H. Beck, Munich, 2022), 93.

<sup>2</sup> Gesetz zum Schutz von Embryonen (Embryonenschutzgesetz – ESchG) [Embryo Protection Act], entered into force on 13 December 1990, in its latest version dated November 21, 2011, available at: <https://www.gesetze-im-internet.de/eschg/BJNR027460990.html>

<sup>3</sup> Embryonenschutzgesetz [Embryo Protection Act]

<sup>4</sup> Laufs, Kern, and Rehborn, Handbuch des Arztrechts [Handbook of Medical Law] (5th ed., C.H. Beck, Munich, 2019), 3–8.

As will be shown, however, the primary focus lies on the protection of life; the most important question, however, is when an embryo is to be regarded as a living being. This is the most difficult issue, for while life is the greatest good to be protected, it is closely followed by the right of the free development of personality. It is more than evident that this continues to present legal scholars with a very difficult task to this day. In the literature, a distinction is sometimes made between biological, philosophical, and legal concepts of life, which are not necessarily identical.<sup>5</sup> Here we encounter, among other things, the controversial Section 218 of the German Criminal Code (StGB) et seq., as well as Section 5 of the German Pregnancy Conflict Act (SchKG), and many others. Section 218 StGB, in particular, is one of the most politically and socially controversial provisions of German criminal law. Since its introduction in the 19th century, it has been reformed several times and has been the subject of intense social debate, as well as several decisions by the Federal Constitutional Court.

From a constitutional perspective, the embryo is protected by Article 1(1) and Article 2(2), sentence 1 of the Basic Law (GG). While the scope of personal protection under Art. 1(1) GG encompasses the dignity of the “human being,” Art. 2(2), sentence 1 GG protects human “life.” The Basic Law not only prohibits direct state interference with human life; it also imposes a duty on the state to protect and promote every human life.<sup>6</sup> This includes unborn life. This duty to protect is grounded in human dignity under Article 1(1) of the Basic Law; its scope is defined in Article 2(2), sentence 1 of the Basic Law. In any case, the duty to protect begins with the implantation of the fertilized egg in the uterus (so-called nidation), as from that point on it constitutes an individual, genetically unique, and indivisible life. The unborn does not become a human being only during the process of development.<sup>7</sup>

This constitutional duty to protect has been further clarified, in particular, by the case law of the Federal Constitutional Court. In its landmark decisions on abortion from 1975<sup>8</sup> and 1993<sup>9</sup>, the Court made clear that unborn life enjoys independent constitutional protection in its own right and that the state is obligated to ensure this protection through appropriate legal measures.

The Federal Constitutional Court has left open the question of whether constitutional protection of human life begins as early as the fusion of the egg and sperm. Against the backdrop of scientific progress, which has made the extracorporeal development of human life possible without implantation, and the Federal Constitutional Court’s view that every human life is worthy of protection, a large portion of the literature accords unborn life constitutional protection from this point onward. The unborn life is thus already the holder of fundamental rights. A violation of its human dignity under Article 1(1) GG<sup>10</sup> cannot be constitutionally justified; an interference with Article 2(2), sentence 1, GG is subject to the ordinary legislative reservation of Article 2(2), sentence 3, GG.<sup>11</sup> Nevertheless, the precise determination of the starting point of constitutional protection of life remains the subject of ongoing scholarly debate. While some scholars argue that protection begins as early as fertilization, others base their views on developmental, biological, or medical criteria.

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<sup>5</sup> Roxin and Greco, *Strafrecht Allgemeiner Teil, Bd. 1: Grundlagen. Der Aufbau der Verbrechenslehre* [Criminal Law, General Part, Vol. 1: Foundations. The Structure of the Theory of Crime] (5th rev. ed., C.H. Beck, Munich, 2020), 17–20.

<sup>6</sup> Ipsen, *Staatsrecht II (Grundrechte)* [Constitutional Law II (Fundamental Rights)] (21st ed., Vahlen, Munich, 2018), 140–145.

<sup>7</sup> Federal Court of Justice (BGH), Judgment of 28 May 1993, 2 BvF 2/90, 2 BvF 4/92, 2 BvF 5/92, *Neue Juristische Wochenschrift (NJW)* (C.H. Beck, Munich, 1993), 1751.

<sup>8</sup> Federal Constitutional Court (BVerfG), Judgment of 25 February 1975, 1 BvF 1/74 et al., *BVerfGE* 39, 1 (“Abortion I”).

<sup>9</sup> Federal Constitutional Court (BVerfG), Judgment of 28 May 1993, 2 BvF 2/90 et al., *BVerfGE* 88, 203 (“Abortion II”).

<sup>10</sup> Ebbing and Hillgruber, *Kommentar zum Grundgesetz* [Commentary on the Basic Law] (2nd ed., C.H. Beck, Munich, 2013), Article 1, para. 4.

<sup>11</sup> Höfling, in Sachs (ed.), *Grundgesetz Kommentar* [Basic Law Commentary] (6th ed., C.H. Beck, Munich, 2011), Article 1, para. 60; Article 2, para. 145.

First, criminal protection of unborn life may be considered through offenses against life, in particular murder (Section 211 of the Criminal Code (StGB)), manslaughter (Section 212 StGB), as well as offenses against physical integrity under Sections 223 et seq. StGB. Sections 211 and 212 StGB each refer to a “human being” as the object of the act of killing, while the offenses against bodily integrity under Sections 223 et seq. StGB refer to “another person.” In German criminal law, the decisive point of differentiation between a fetus and a human being in the criminal law sense is generally recognized as the birth process, more precisely the onset of labor pains. This distinction could be justified dogmatically by the reference to the former version of Section 217 StGB, which codified the special treatment of the killing of a child by the mother during the birth process or immediately thereafter. It should be emphasized, however, that Section 217 plays a purely dogmatic and explanatory role in this context, illustrating the legislature’s reasoning. For the aforementioned “infanticide” provision applied only to children born out of wedlock. Accordingly, for Section 217 to apply, the prerequisite was the killing of a viable child during or immediately after birth, provided that the child was born out of wedlock. Needless to say, this means that for children born in wedlock, Sections 211 and 212 applied, with significantly higher penalties. Section 217 of the German Criminal Code (StGB) provided that “(1) A mother who kills her illegitimate child during or immediately after birth shall be punished by imprisonment for not less than three years. (2) In less serious cases, the penalty is imprisonment for a term of six months to five years.”<sup>12</sup> This remained the case until April 1, 1998, when Section 217 StGB was repealed by the aforementioned Sixth Act to Amend the Criminal Law for reasons of equality. However, the debate on this issue had already begun in 1997, in the context of the proposed amendment to Section 217 StGB (infanticide), aimed at ensuring legal equality between children born out of wedlock and those born within wedlock (January 29, 1997).<sup>13</sup>

This preferential treatment compared to other homicide offenses served as a basis for arguing that the legislature, for the purposes of the StGB, regards the birth process as the decisive point in time for the transition from the development of a human being during pregnancy to a “fully developed” human being. Similarly, it was assumed that offenses involving bodily injury also provide protection for the child only from the onset of labor. However, even after the repeal of Section 217 StGB (former version), it is widely recognized that homicide offenses and offenses against physical integrity require a born human being as the object of the offense. This is because the repeal of Section 217 StGB (former version) is not based on a changed understanding of the “human being” as the object of the offense, but rather on a changed assessment of the justification for exempting infanticide during or shortly after the birth process. This view is further supported by Section 218 StGB, which generally criminalizes abortion and thereby protects unborn life as a legal interest. A meaningful distinction between the homicide offenses under Sections 211 and 212 and the offenses of bodily injury on the one hand, and abortion on the other, can be drawn if the former apply only once the child has been born or labor has begun.<sup>14</sup>

In the Criminal Code, therefore, the prevailing view is that the life of the unborn is protected solely under the specific provisions of Section 218 StGB. Section 218(1), sentence 2 clarifies that the provision provides protection from the moment the fertilized egg implants in the uterine lining (nidation). From the converse of Section 218(3), which grants special consideration to abortion performed by the pregnant woman herself, it can be inferred that both self-induced abortion and abortion performed by a third party fall within the scope of the offense. Abortion under Section 218 StGB does not expressly criminalize negligent conduct; accordingly, negligent abortion cannot be subsumed under Section 15.<sup>15</sup>

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<sup>12</sup> Strafgesetzbuch (StGB) [German Criminal Code], Section 217 (former version, in force until 1 April 1998), version applicable from 1 January 1975 until repeal, available at: <https://lexetius.com/StGB/217.4>

<sup>13</sup> German Bundestag, Plenary Protocol 13/153, pp. 13798A–13798B, “Amendment to Section 217 StGB (Infanticide) in the Interest of Legal Equality between Children Born out of Wedlock and Those Born within Wedlock,” available at: <https://dip.bundestag.de/vorgang/%C3%A4nderung-des-217-stgb-kindest%C3%B6tung-im-sinne-der-gesetzlichen/127949>

<sup>14</sup> Schneider, in Joecks and Miebach (eds.), *Münchener Kommentar zum StGB* [Munich Commentary on the Criminal Code], Vol. 4 (3rd ed., C.H. Beck, Munich, 2017), preliminary remarks to Section 211, para. 7.

<sup>15</sup> Gropp, in Joecks and Miebach (eds.), *Münchener Kommentar zum StGB* [Munich Commentary on the

Section 218a StGB establishes provisions regarding the exemption from punishment, in particular concerning the absence of criminal liability for so-called “abortion following counseling.” Pursuant to Section 218a (1), the elements of the offense under Section 218 are not satisfied if a pregnant woman requests an abortion from a physician, presents the physician with a certificate confirming that she received counseling at least three days prior to the procedure, the procedure is performed by a physician, and no more than twelve weeks have elapsed since conception. Section 218a (2) and (3) provide that while an “indicated abortion” fulfills the elements of the offense, it is nevertheless justified; Section 218a (4) governs the personal exemption from punishment of the pregnant woman despite the unlawfulness of the abortion.<sup>16</sup>

Legal capacity under civil law begins upon the completion of birth. Section 1 of the German Civil Code (BGB) provides that “A person’s legal capacity begins upon the completion of birth.” Nevertheless, the unborn child is granted so-called conditional legal capacity even before birth, which takes effect retroactively provided that the child is born alive. From a doctrinal perspective, this does not constitute full legal capacity within the meaning of Section 1, but rather a legal effect in advance subject to the suspensive condition of live birth. In this respect, the nasciturus is treated as a potential legal subject even before birth (“nasciturus pro iam nato habetur”), insofar as rights accruing to his benefit are concerned.<sup>17</sup> This construction serves the purpose of avoiding contradictions in legal assessment and, in particular, of securing property-related positions—such as in inheritance law and tort law—even before birth. Without such anticipatory legal protection, there would be a risk that harmful events occurring during the prenatal stage would remain without legal consequence.<sup>18</sup>

Legal capacity refers to the capacity to be the holder of rights and obligations. Section 1 of the German Civil Code (BGB) applies to every natural person who has been born and is still alive. Legal capacity arises upon the completion of birth, that is, upon the complete separation of the child from the womb by natural or artificial means. However, civil law also grants rights to a child who has already been conceived but not yet born (nasciturus). Thus, the nasciturus may already be an heir (Section 1923(2) BGB), may be entitled to damages claims due to the killing of a person obligated to provide support (Section 844(2) sentence 2), and a contract in favor of the nasciturus is likewise permissible (Section 331(2)).<sup>19</sup>

Furthermore, according to the case law of the Federal Court of Justice (BGH), the nasciturus is also already entitled to claims under tort law of Section 823(1) for a damage to health during the prenatal stage. This covers, on the one hand, cases in which third parties, in particular physicians, have caused harm to the embryo’s health, thereby resulting in damage to the child’s health after birth. It also encompasses claims by the unborn child against the father. No special provisions apply in this regard; the father is liable after conception in accordance with the general rules and may be obligated toward his child in the same way as any other third party.<sup>20</sup>

The unborn child is also entitled to further claims for damages under tort law within the meaning of Section 823 et seq. against its parents, for example in cases of health impairments, malformations, genetic (hereditary) diseases. However, this does not mean that parents must refrain from conception if they are aware of a health condition or are obligated to minimize the risk through a healthier diet. Rather, it means that if the child is born alive, it may, upon reaching the age of majority, assert claims against its parents,

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Criminal Code], Vol. 4 (3rd ed., C.H. Beck, Munich, 2017), Section 218, para. 24.

<sup>16</sup> German Bundestag, Scientific Services, *Der Schutz des ungeborenen Lebens in Deutschland* [The Protection of Unborn Life in Germany], WD 7-3000-256/18 (Berlin, 2018), 6.

<sup>17</sup> Medicus and Petersen, *Bürgerliches Recht* [Civil Law] (27th ed., Vahlen, Munich, 2019), 34–36.

<sup>18</sup> Brox and Walker, *Allgemeiner Teil des BGB* [General Part of the Civil Code] (45th ed., Vahlen, Munich, 2021), 12–13.

<sup>19</sup> Spickhoff, in *Münchener Kommentar zum BGB* (Munich Commentary on the Civil Code, Vol. 1 (8th ed., C.H. Beck, Munich, 2018), Section 1, para. 5 et seq.

<sup>20</sup> Federal Court of Justice (BGH), Judgment of 11 January 1972, VI ZR 46/71, *Neue Juristische Wochenschrift* (NJW) (C.H. Beck, Munich, 1972), 1126.

subject to the burden of proof. (As a detailed discussion of this issue would go beyond the scope of this analysis, reference is made to the relevant literature).<sup>21</sup>

As can be seen, the legislature does not approach this issue lightly, particularly when determining which right takes precedence—the mother’s rights or those of the unborn child. Even though, in the author’s view, ultimate responsibility rests with the mother, the father is often effectively relieved of his responsibilities.

Abortion is thus “partially decriminalized” and, in accordance with the indication-based approach, permitted up to the twelfth week subject to strict legal requirements, which the pregnant woman alone must comply with.

The legislature addresses the question of human status cautiously by granting the nasciturus rights as soon as the fertilized egg implants in the mother’s uterus —rights that can, however, only take effect if the child is born viable. This solution may be regarded as acceptable both in terms of abortion regulation and the protection of life. It represents a balancing exercise between the rights of the mother (in particular personal development and sexual self-determination) on the one hand, and the rights of the unborn child on the other. However, the process, the associated obligations, and the procedural requirements in this regard are more than highly burdensome for women and relieve the father of virtually all responsibility; while he can assert claims and rights, he is subject to virtually no obligations. (This issue will be addressed further in the section on proposed solutions.)

### **3. The Question of the Rights and Protection of the Unborn in Hungary**

After World War II, unlike with the case of the death penalty, no uniform fundamental consensus developed in Europe regarding the legal permissibility of abortion. Rather, two equally well-founded yet opposing human rights positions have continued to exist to this day. On the one hand, so-called pro-choice positions emphasize the primacy of a woman’s right to self-determination, particularly with regard to her personal development and physical autonomy. On the other hand, pro-life positions focus on the nasciturus’s right to life and derive from this a corresponding duty of protection on the part of the state.<sup>22</sup>

This fundamental normative tension is reflected in the different regulatory models across European states. Despite significant divergences, two central models can be identified, each aiming for a balance. On the one hand, there is the so-called time-limit model, which is based on statutory time limits. Under this model, a woman may freely decide to terminate a pregnancy during the early stages—typically up to the tenth or twelfth week after conception. After this period has expired, termination is generally only permissible if certain legally defined indications are present. This regulatory model can be found, *inter alia*, in Austria, France, Greece, the Netherlands, Norway, Romania, Switzerland, Sweden, and Turkey.<sup>23</sup>

In addition, there is the indication model, under which a termination of pregnancy is permitted only where a legally defined justification exists. These indications include, in particular, a threat to the life or health of the pregnant woman (medical indication), the expected birth of a severely disabled child (genetic indication), a pregnancy resulting from a sexual offense (criminal indication), and serious social hardship faced by the woman (social indication). The specific content of these indications varies considerably between individual countries. The model is followed, *inter alia*, in England, Belgium, Denmark, Finland, Ireland, Luxembourg, Hungary, and Germany.<sup>24</sup>

At the supranational level, the European Court of Human Rights (ECHR) has thus far deliberately refrained from taking a definitive position on the legal status of the unborn. In particular, it has not expressly ruled

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<sup>21</sup> Staudinger, in *Kommentar zum Bürgerlichen Gesetzbuch (BGB)* [Commentary on the German Civil Code], Book 2: Law of Obligations, Section 823 A–D, para. 46 et seq. (new ed., Sellier / de Gruyter, Berlin, 2017).

<sup>22</sup> Tóth, “Az emberi méltósághoz való jog és az élethez való jog” [The Right to Human Dignity and the Right to Life], in Halmai and Tóth (eds.), *Emberi jogok* [Human Rights] (Osiris, Budapest, 2003), 328.

<sup>23</sup> Jobbágyi, *Orvosi jog: Hippokratésztől a klónozásig* [Medical Law: From Hippocrates to Cloning] (Szent István Társulat, Budapest, 2007), 116.

<sup>24</sup> *Ibid.*, 116.

on whether, and to what extent, the right to life under Article 2 of the ECHR applies to the fetus. Instead, the Court has repeatedly held that any protection of unborn life must, in any event, be balanced against the rights of the mother, in particular her right to life and her right to respect for private and family life.<sup>25</sup>

Article 2 of the ECHR—Right to Life, Paragraph I—provides that “(1) Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally except in the execution of a sentence of death imposed by a court in respect of a crime for which the death penalty is provided by law.”<sup>26</sup>

In its case law, the ECtHR has outlined three possible doctrinal approaches to the legal status of the fetus. First, Article 2 of the ECHR might not apply to unborn life at all; second, the fetus may be entitled to a right to life subject to certain limitations inherent in the Convention; third, the fetus may be entitled to an absolute right to life. The Court has expressly rejected the latter approach, particularly on light of the mother’s right to life. However, the ECtHR has not taken a definitive position between the two remaining approaches.<sup>27</sup> Rather, it has emphasized that the term “everyone” in Article 2 ECHR does not necessarily exclude the possibility that unborn human life may also fall within the scope of protection. At the same time, however, in the absence of a European consensus, the Court leaves the determination of when life begins to the discretion of the member states (margin of appreciation).<sup>28</sup>

At the same time, the ECtHR has also expressly denied the existence of a subjective right of women to undergo an abortion. In its subsequent case law, however, it clarified that state bans or significant restrictions on abortion may, under certain circumstances—particularly in cases of risks to health or situations of serious hardship—fall within the scope of protection of Article 8 of the ECHR, which guarantees the right to respect for private and family life.<sup>29</sup> Article 8(1) of the ECHR provides that “Everyone has the right to respect for his private and family life, his home, and his correspondence.”<sup>30</sup> This interpretation gives rise to a positive obligation on the part of states not only to enact abstract legal provisions but also to ensure, through concrete procedures and effective measures, that the rights guaranteed by the Convention are actually realized.<sup>31</sup>

Against this European and human rights backdrop, it becomes clear that the Hungarian legislature, too, has always had to shape its abortion regulations within a tension between the protection of women’s personal rights and the state’s duty to protect life. This conflict is by no means unique to Hungary but is equally evident in the development of German law as well as at the level of European and international law. Hungarian abortion legislation must therefore be understood as part of a broader European effort to balance competing fundamental rights. Parallel to the legislative developments described above, a constitutional doctrine strongly oriented toward the protection of life has become established in Hungary. From the outset, the Constitutional Court made it clear that unborn life is entitled to special constitutional protection. This protection has been understood as an objective state duty rather than as a derivative of the woman’s subjective rights. In its case law, although unborn life has not been recognized as an independent bearer of fundamental rights, it has been acknowledged as a constitutional value requiring legislative specification.<sup>32</sup>

Decision 64/1991. (XII. 17.) AB (Abortus I) represents one of the most complex and, at the same time, most ambivalent elements of early Hungarian constitutional jurisprudence. It documents not only the

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<sup>25</sup> European Commission of Human Rights, *X v. United Kingdom*, Application No. 8416/79, decision of 13 May 1980.

<sup>26</sup> Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended), 4 November 1950, ETS No. 5.

<sup>27</sup> ECtHR, *Vo v. France* [GC], Application No. 53924/00, Judgment of 8 July 2004.

<sup>28</sup> ECtHR, *Evans v. United Kingdom* [GC], Application No. 6339/05, Judgment of 10 April 2007.

<sup>29</sup> ECtHR, *A., B. and C. v. Ireland* [GC], Application No. 25579/05, Judgment of 16 December 2010.

<sup>30</sup> Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 4 November 1950, ETS No. 5, Art. 8(1).

<sup>31</sup> ECtHR, *Tysi c v. Poland*, Application No. 5410/03, Judgment of 20 March 2007.

<sup>32</sup> S lyom, *Az alkotm nyb r skod s kezdetei Magyarorsz gon* [The Beginnings of Constitutional Adjudication in Hungary] (Osiris, Budapest, 2001), 173–181.

Constitutional Court's attempt to address a fundamental conflict of constitutional rights from a doctrinal perspective, but also the conscious decision not to resolve this conflict normatively, but rather to leave it open and shift it into the political sphere. Characteristic of this line of case law is that it systematically marginalizes women's interests and self-determination from the center of consideration. Neither gender equality nor reproductive autonomy were developed as independent constitutional guiding principles. Instead, abortion remained subject to the requirement of protecting life to the greatest extent possible. The Constitutional Court's criticism was never directed against at the restrictive effects of the regulations, but exclusively at their perceived inadequacy with regard to the protection of unborn life. This approach culminated in Decision 64/1991. (XII. 17.) AB (Abortus I), which remains the central point of reference for Hungarian abortion case law to this day. Central to the Constitutional Court's reasoning is the reference to the earlier decision on the abolition of the death penalty (Decision 23/1990. (X. 31.) AB).<sup>33</sup> In that decision, the Constitutional Court described the right to life and human dignity as inseparable, absolute constitutional values. This so-called doctrine of indivisibility was thereby applied explicitly, for the first time, to the realm of prenatal life. The Constitutional Court made clear that the Constitution conceives of human life not merely as a defensive right, but as an objective constitutional value of the entire legal order. This value judgment also encompasses nascent human life, even if it is not yet recognized as the bearer of subjective rights. As a result, the focus of the analysis shifted away from the question of who is the bearer of a fundamental right toward the question of what the Constitution recognizes as a value worthy of protection.<sup>34</sup>

Article 8 (2) of the Hungarian Constitution provides that "In the Republic of Hungary, the provisions governing fundamental rights and obligations shall be established by law; however, the essential content of a fundamental right may not be restricted." (Original Hungarian: "A Magyar Köztársaságban az alapvető jogokra és kötelességekre vonatkozó szabályokat törvény állapítja meg; alapvető jog lényeges tartalmát azonban nem korlátozhatja.")<sup>35</sup>

As will be shown, this holds true only to the extent that overriding economic or social policy considerations of the state— particularly those already evident in the 1970s—do not require otherwise. Article 54(1) of the Hungarian Constitution provides that "In the Republic of Hungary, every person has the inherent right to life and human dignity, of which no one shall be arbitrarily deprived." (Original Hungarian: "A Magyar Köztársaságban minden embernek veleszületett joga van az élethez és az emberi méltósághoz, amelyektől senkit sem lehet önkényesen megfosztani.")<sup>36</sup>

Central to the entire argument is the observation that any regulation of abortion inevitably constitutes a decision concerning the fate of unborn life and thus engages the question of the legal classification of the fetus. Abortion is expressly not understood as a neutral medical procedure, but as an act that terminates unborn life and therefore has a constitutional dimension. At the same time, the Court emphasizes that pregnancy and motherhood are not merely temporary conditions, but have a lasting impact on a woman's body, her psychological integrity, and her social role.<sup>37</sup>

From this dual perspective—protection of life and the right to self-determination—the Constitutional Court develops its so-called "four fundamental lines of conflict" (TKL) in its reasoning in *Abortus I* and subsequently also in *Abortus II*. The first fundamental line of conflict (TKL 1), namely the classification of the decision regarding abortion within the scope of protection of self-determination derived from human dignity, is identified as the central starting point of the Constitutional Court's reasoning. Human dignity is

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<sup>33</sup> Tóth, "Decision 23/1990 (X. 31.) of the Hungarian Constitutional Court on the Death Penalty", in Gárdos-Orosz and Zakariás (eds.), *Az Alkotmánybírósági gyakorlat: Az Alkotmánybíróság 100 elvi jelentőségű határozata (1990–2020)*, Vol. 1 (HVG-ORAC, Budapest, 2021), 43–46.

<sup>34</sup> *Ibid.*

<sup>35</sup> Act XX of 1949 on the Constitution of the Republic of Hungary, Art. 8(2), as in force between 23 October 1989 and 31 December 2011

<sup>36</sup> Act XX of 1949 on the Constitution of the Republic of Hungary, Art. 54(1), as in force between 23 October 1989 and 31 December 2011.

<sup>37</sup> Constitutional Court of Hungary, Decision 64/1991 (XII. 17.) AB (*Abortus I*), reasoning.

not understood here as a merely abstract protected interest, but as the foundation of autonomous life planning. Control over one's own body, as well as decisions concerning reproduction and life planning, are thus regarded as core elements of this autonomy. Against this backdrop, it is repeatedly emphasized that a state prohibition or a significant restriction on abortion would constitute a serious interference with the core sphere of a woman's personality. In parallel, the second fundamental line of conflict (TKL 2) is developed with equal emphasis, namely the objective state duty to protect human life. This duty of protection is not derived from subjective rights, but is understood as an institutional obligation of the state to preserve life as a constitutional value. Crucially, this duty explicitly encompasses nascent human life as well. The state cannot evade its responsibility for unborn life by leaving its legal status open or unresolved.<sup>38</sup>

At this point, the internal tension in the argument becomes particularly acute. On the one hand, it is acknowledged that recognizing a subjective right to life for the fetus would preclude any balancing against the woman's right to self-determination from the outset. On the other hand, such recognition is explicitly rejected. This gives rise to a doctrinal construct in which unborn life is afforded objective protection while remaining devoid of subjective rights. This construct allows the protection of life to be emphasized without rendering it absolute, but it necessarily entails a degree of structural indeterminacy.

This ambiguity constitutes the third fundamental line of conflict (TKL 3), namely the question of the legal personality of the unborn, which is deliberately left open. It becomes clear that this issue is recognized, analyzed, and its implications carefully considered, yet ultimately left unresolved. The reasoning provided is that the Constitution does not contain a clear determination regarding the beginning of legal personality and that any binding definition would entail far-reaching normative consequences. Instead, the argument remains in a state of conceptual indeterminacy. This indeterminacy is further reinforced by the selective reception of foreign case law. While numerous foreign decisions are referenced, German case law essentially contributes only the concept of an objective duty to protect, but not its consistent substantive application. Although the German Federal Constitutional Court developed clear legislative guidelines on the basis of this duty of protection, comparable substantive requirements are deliberately omitted. Instead, the focus of the argument shifts to the fourth fundamental line of conflict (TKL 4), namely the legislative reservation. Given the fundamental importance of the legal interests at stake, it is emphasized that the regulation of abortion must remain within the exclusive competence of the legislature. This proposition is reiterated several times and forms the formal core of the decision. At the same time, it is made clear that this legislative reservation does not constitute a substantive solution, but rather a procedural requirement that does not resolve the conflict of fundamental rights, but merely defers it.<sup>39</sup>

A characteristic feature of the reasoning is the extensive use of negative delimitations. With remarkable precision, the decision elaborates on which conclusions are not to be drawn from its findings. It neither leads to a general prohibition of abortion nor to its unrestricted permissibility. Nor does it result in the recognition of the legal subjectivity of the fetus or in the absolute primacy of the woman's self-determination. This negative doctrinal approach permeates the entire reasoning and creates a state of structural provisionality. Furthermore, there is a deliberate avoidance of formulating concrete criteria for balancing interests. It is not specified what level of protection for life the legislature must ensure in individual cases, nor what core of self-determination must remain inviolable. Responsibility for the concrete formulation is thus entirely transferred to the legislature.

This structure is continued in the subsequent decision 48/1998 (XI. 23.) AB (Abortus II). While the indications model is accepted in principle, its core is effectively hollowed out. This core consisted in the legal recognition of a severe "crisis situation" of the woman as a valid justification for a non-criminal abortion. However, it is precisely the central definition of this "crisis situation" and its normative

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<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

formulation that are criticized for lacking sufficient specificity, as they do not contain objective and verifiable criteria.<sup>40</sup>

This effectively strips the indication model of its normative core. While its formal structure remains intact, its decisive substantive foundation—namely, the recognition of the woman’s subjective existential conflict as a legally relevant factor in the balancing of interests—is deprived of practical effect. Here, too, the reasoning refrains from providing substantive clarification and instead confines itself to formal requirements. Taken as a whole, it becomes apparent that the conflict between self-determination and the protection of life is analyzed with a high degree of doctrinal sensitivity, without, however, leading to a substantive resolution. The reasoning thus reflects not so much a solution as an institutionalized form of indecision, through which the conflict of fundamental rights is deliberately shifted into the political sphere.<sup>41</sup>

From a constitutional policy perspective, this line of case law appears highly ambivalent. The Constitutional Court’s deliberate restraint may be understood, in the context of the early 1990s, as an expression of institutional caution; however, its long-term implications raise concerns. By refraining from formulating substantive minimum standards for women’s self-determination, the Court has left the legislature with a broad margin of discretion. This discretion has not necessarily been used to develop a balanced equilibrium between autonomy and the protection of life, but has, in part, been shaped by shifting political priorities. Particularly since 2010, a development toward a more explicitly pro-natalist state policy can be observed, in which childbirth is increasingly framed in terms of social responsibility and national interest. In this context, women’s self-determination tends to recede and is not further elaborated as an independent constitutional value. From a societal perspective, this development may contribute to a depoliticization of female autonomy and a moral framing of motherhood. From a constitutional perspective, the concern lies less in any single regulatory measure than in the broader implication that the Constitutional Court has refrained from articulating substantive fundamental rights standards. The abortion case law thus illustrates how the absence of clear normative determinations (“non-decisions”) can, over time, exert significant structural effects.

In concrete legal, political, and societal terms, this has (to this day) entailed the following adverse consequences for women in Hungary—as discussed in detail above: Although the *Abortus I* decision compelled the legislature to reorganize the regulation of abortion at the statutory level, it by no means ended regulatory and political influence over access to abortion. Even before and after the entry into force of Act LXXIX of 1992 on the Protection of Unborn Life<sup>42</sup>, the Hungarian legislature—and, in particular, the executive branch—relied on sub-statutory regulatory instruments to further specify and reinforce the protection of life required by the Constitutional Court, often in a pro-natalist direction.

Immediately following the first abortion ruling, additional procedural requirements were introduced through ministerial decrees adopted in 1991 and 1993, particularly with regard to counseling obligations, medical documentation, and the regulation of time limits. These measures were aimed less at merely implementing the state’s objective duty of protection and more at influencing behavior in favor of carrying the pregnancy to term. In legal scholarship, such measures are frequently interpreted as an expression of state-driven pronatalism, which not only safeguards the constitutionally recognized protection of unborn life but also normatively reinforces it.<sup>43</sup>

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<sup>40</sup> Constitutional Court of Hungary, Decision 48/1998 (XI. 23.) AB (*Abortus II*), reasoning.

<sup>41</sup> Zakariás, “Decision 64/1991 (XII. 17.) AB (*Abortus I*): The Relationship between the Right to Life and Human Dignity in the Context of Abortion and the Requirement of Statutory Regulation”, in Gárdos-Orosz and Zakariás (eds.), *Az Alkotmánybírósági gyakorlat: Az Alkotmánybíróság 100 elvi jelentőségű határozata (1990–2020)*, Vol. 1 (HVG-ORAC, Budapest, 2021), 170–183.

<sup>42</sup> Act LXXIX of 1992 on the Protection of Unborn Life, as amended (notably in 2011), available at: <https://net.jogtar.hu/jogszabaly?docid=99200079.tv>

<sup>43</sup> Decree No. 32/1992 (XII. 23.) NM of the Minister of Welfare on the implementation of Act LXXIX of 1992 on the Protection of Unborn Life, available at: <https://net.jogtar.hu/jogszabaly?docid=99200032.nm>

Even the aforementioned Act LXXIX of 1992 on the Protection of Unborn Life—despite its formal classification as a compromise regulation following the *Abortus* case law—was, in its basic structure, clearly restrictive with regard to women’s self-determination. Although it nominally adhered to a time-limit model, it did not conceive of abortion as an expression of the pregnant woman’s autonomous right to decide, but rather as an exceptional situation requiring justification within a dense framework of counseling obligations, waiting periods, formal requirements, and state-directed protective measures. The pregnant woman was thus treated, in legal terms, not as a self-determining subject, but as the recipient of state guidance and normative direction.

This structure is continued in the subsequent decision 48/1998 (XI. 23.) AB (*Abortus II*).<sup>44</sup> While the Constitutional Court accepts the indications model in principle, it effectively deprives it of its normative core. This core consisted in the legal recognition of a woman’s “severe crisis situation” as a valid justification for a non-criminal abortion. However, the Constitutional Court declared the central definition of this “crisis situation” and its normative formulation unconstitutional on the grounds that it was too vague and lacked objective, verifiable criteria. In doing so, the Constitutional Court effectively strips the indications model of its substantive foundation: while its structure formally remains intact, the decisive substantive basis—namely, the recognition of the woman’s subjective existential conflict as a legally relevant factor in the balancing of interests—loses its practical significance. Here, too, the Constitutional Court refrains from providing substantive clarification and confines itself to formal requirements.

The structural restriction on women’s self-determination was not lifted by the legislative changes introduced in 2011 through Act CLXXVI of 2011 amending certain health-related laws;<sup>45</sup> on the contrary, the regulatory framework established in 1992 was further consolidated and given additional normative weight. The amendment did not alter the substantive core of abortion regulation—in particular, the time limits, indications, or formal access requirements. Rather, it explicitly reaffirmed the state’s informational and protective role with regard to unborn life. The changes were thus primarily of a doctrinal and procedural nature: they clarified the state’s obligations concerning information and education without addressing the underlying structural asymmetry between the protection of life and women’s self-determination.

The real qualitative turning point, however, did not occur until the constitutional paradigm shift under the Orbán government. With the adoption of the new Hungarian Fundamental Law (*Alaptörvény*), the protection of unborn life was, for the first time, explicitly incorporated into the text of the Constitution. Article II of the Fundamental Law now declares that unborn life is worthy of protection from the moment of conception. Article II of the Hungarian Fundamental Law states that “Human dignity is inviolable. Every person has the right to life and human dignity; the life of the unborn shall be protected from the moment of conception.” (Original Hungarian: “Az emberi méltóság sérthetetlen. Minden embernek joga van az élethez és az emberi méltósághoz, a magzat életét a fogantatástól kezdve védelem illeti meg.”)<sup>46</sup>

Although this provision did not formally constitute a direct change to abortion law, it permanently shifted the constitutional hierarchy of values to the detriment of the rights of the pregnant woman. From then on, her rights to personal autonomy, dignity, and self-determination were structurally subordinated to an abstractly formulated protection of life, which was no longer merely an objective duty of protection but became a guiding principle elevated under constitutional law.

The criminal law protection of the family, and in particular of the welfare of the child, is comprehensively established in Hungarian law and is primarily grounded in the relevant provisions of the Criminal Code (*Btk.*). The relevant offenses include, in particular, endangering a minor (Section 208 *Btk.*), child labor

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<sup>44</sup> Decision No. 48/1998 (XI. 23.) AB (Hungarian Constitutional Court) – *Abortus II*, available at: <https://njt.hu/jogszabaly/1998-48-30-75>

<sup>45</sup> Act CLXXVI of 2011 on the Amendment of Certain Health-Related Acts (Hungary), available at: <https://mkogy.jogtar.hu/jogszabaly?docid=a1100176.TV>

<sup>46</sup> Hungary’s Fundamental Law (2011), adopted on 25 April 2011, available at: <https://net.jogtar.hu/jogszabaly?docid=a1100425.atv>

(Section 209 Btk.), obstruction of contact rights (Section 210 Btk.), unlawful alteration of a minor's placement (Section 211 Btk.), violation of maintenance obligations (Section 212 Btk.), domestic violence (Section 212/A Btk.), violation of family status (Section 213 Btk.), and bigamy (Section 214 Btk.). These provisions serve to protect the family order and, in particular, to ensure the legal protection of the child's welfare as a central protected legal interest.<sup>47</sup>

In addition, criminal law protection already extends to unborn life. Section 163 of the Criminal Code establishes such protection by criminalizing the unlawful termination of pregnancy where it occurs outside the legally prescribed framework. This demonstrates that the legislature recognizes the protection of human life even before birth as an independent and particularly significant legal interest.<sup>48</sup>

Complementing this, there are further criminal law and criminal procedure safeguards, particularly in the form of measures such as restraining orders, which serve to directly protect persons at risk—especially within family relationships—while simultaneously ensuring the effectiveness of criminal proceedings.

Taken as a whole, it is evident that the Hungarian legislature safeguards the protection of the family—and, in particular, the welfare of the child as well as unborn life—not only under civil and administrative law, but also, to a significant extent, under criminal law. The welfare of the child and the protection of fetal life thus constitute central guiding principles, ensured through a coordinated system of substantive criminal law provisions and procedural safeguards.<sup>49</sup>

This doctrinal shift paved the way for later, significantly more intrusive interventions, particularly measures such as the so-called “heartbeat regulation.” This development has continued—within a changed political landscape—up to the present day. It is particularly evident in the redesign of the mandatory form for pregnancy termination, which was amended by a ministerial decree issued in 2022 to require the pregnant woman to confirm in writing, prior to the procedure, that she has been informed of the presence of fetal heart activity. This regulation, referred to in public and academic discourse as the so-called “heartbeat regulation,” does not constitute a substantive tightening of abortion law, but it exerts a significant psychological and normative effect.<sup>50</sup>

This development reveals a pattern of continuous tightening: The 1992 law and, as previously discussed, the regulations of the 1950s and 1970s—were already restrictive with regard to self-determination; the 2011 amendments further entrenched this approach at the doctrinal level; and the measures adopted during the Orbán era have rendered the framework increasingly restrictive and burdensome. The formal retention of the time-limit model obscures the fact that abortion is increasingly framed not as a legally permissible decision, but as an exceptional situation subject to state disapproval. The legal position of women has thus been eroded not abruptly, but gradually—and most recently, to a significant extent.<sup>51</sup>

At the same time, this development raises new constitutional questions, particularly concerning the limits of state influence on the autonomous decision-making of pregnant women. There is growing debate in the literature as to whether such regulations should still be classified as a permissible manifestation of the duty to protect or rather as an indirect infringement of women's human dignity and self-determination. A renewed clarification by the Constitutional Court in this regard remains pending.<sup>52</sup>

#### 4. Conclusion and Summary

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<sup>47</sup> Herger, Cs., & Katonáné-Pehr, M., *Hungarian Family Law*, Novissima Publishing, Budapest, 2021, 24–27.

<sup>48</sup> *Ibid.*, 24–27

<sup>49</sup> *Ibid.*, 24–27

<sup>50</sup> Decree No. 29/2022 (IX. 12.) of the Minister of Interior (Hungary), available at: <https://njt.hu/jogszabaly/2022-29-20-22>

<sup>51</sup> Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Observations on Hungary, noting that certain abortion regulations—such as mandatory waiting periods and counseling requirements—constitute discriminatory barriers to access to safe and legal abortion, disproportionately affecting women in vulnerable situations.

<sup>52</sup> Kiss, *On Abortion: Arguments and Counterarguments*, Cserépfalvi Verlag, Budapest 1992, 171–188

A comparative analysis of the German and Hungarian legal systems regarding abortion confirms that both countries face the constitutional challenge of striking a balance between the protection of unborn life and a pregnant woman's right to self-determination. Despite differing historical developments and political priorities, the respective regulatory approaches exhibit structural parallels, which, however, diverge significantly in their concrete legal design and political impact.

In the Federal Republic of Germany, abortion remains formally codified as a criminal offense in the Criminal Code (Section 218 StGB), although the legislature has effectively decriminalized it through a structured system of exceptions and conditions. Under the current legal framework, abortion is generally unlawful and punishable under Section 218 StGB; however, in conjunction with Section 218a StGB and other provisions, the law provides for exceptions under which abortions are not punishable, with the counseling requirement constituting a central element. Furthermore, abortion may also remain non-punishable beyond the general time limit where a medical indication exists (e.g., danger to the life or health of the pregnant woman) or a criminological indication (e.g., in cases of rape). This framework of criminal provisions, exceptions, and institutionalized counseling forms a comprehensive statutory system shaped by both legal and sociopolitical considerations and aimed at addressing the various dimensions of the conflict of norms. Critics in the academic debate emphasize that, despite formal non-punishability, the inclusion of abortion in the Criminal Code may still have stigmatizing effects and that, in particular, the mandatory counseling requirement and waiting periods constitute barriers to access.<sup>53</sup> In Germany, there are also ongoing political discussions about reforming the criminal law framework in favor of a model regulated under civil or health law; expert commissions have proposed repealing the existing criminal provisions for abortions within the first twelve weeks and regulating later procedures more restrictively.<sup>54</sup>

This structure has been historically institutionalized in Germany through decades of case law and parliamentary legislation. The decisions of the Federal Constitutional Court have repeatedly affirmed the legislature's duty to protect unborn life, while at the same time recognizing that this protection cannot be conceived as absolute and must be translated into concrete legal norms that also take into account the rights and dignity of the pregnant woman. This has resulted in a highly institutionalized system comprising criminal provisions, counseling and time-limit regulations, as well as supplementary provisions of the so-called Pregnancy Conflict Act (*SchKG*), which governs numerous organizational and procedural aspects.

In contrast, the Hungarian legal system follows a different approach in its normative design. In Hungary, too, there is a statutory time limit for abortion up to the twelfth week of pregnancy, as well as a counseling requirement intended to provide pregnant women with information about pregnancy and abortion options. In its external structure, this basic framework resembles the German model. Crucially, however, the Hungarian Constitutional Court has deliberately refrained from prescribing a substantive constitutional resolution to the conflict of fundamental rights, thereby leaving the legislature with a broad margin of discretion. This discretion has been used in recent years to place greater emphasis on the protection of unborn life in specific regulations. One expression of this development is the regulation enacted in 2022, which requires that pregnant women be informed of the presence of fetal cardiac activity prior to a planned abortion and provide written confirmation thereof before the procedure is permitted. The obligation to acknowledge embryonic signs of life aims to influence the pregnant woman and exert additional psychological pressure, even though it does not formally produce an independent prohibitive legal effect: access to abortion remains available within the statutory time limit, but the regulation operates as an additional procedural requirement that has been criticized by women's rights organizations and commentators as a substantial psychological burden and a potentially deterrent obstacle.<sup>55</sup>

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<sup>53</sup> WELTE, Germany's Abortion Regulation: A Relic of the Past?, *Völkerrechtsblog* (Online) <https://voelkerrechtsblog.org/germanys-abortion-regulation-a-relic-of-the-past>

<sup>54</sup> Hasselbach, C., German Commission Recommends Legalizing Abortion Before 12 Weeks, *Deutsche Welle* (DW), available at: <https://www.dw.com/en/german-commission-recommends-legalizing-abortion-before-12-weeks/a-68822032>

<sup>55</sup> MTI – Hungary Today, Hungarian NGOs Support Newly Introduced Heartbeat Regulation Regarding

The creation and enforcement of this heart-sound regulation are strongly influenced by political considerations: it was published in the Official Gazette at short notice without extensive public or parliamentary debate and thus appears as an instrument of state policy that shifts the normative orientation of abortion law. In Hungary, this approach is embedded in a broader conservative discourse on family and the protection of life, which articulates societal value judgments extending beyond the legal order itself. This stands in contrast to Germany, where the legal structure has largely emerged within a legislative and deliberative framework, the normative density and complexity of which—particularly through the *SchKG* and numerous supplementary provisions—have distributed the conflict between the protection of life and self-determination across multiple areas of law and regulated it institutionally.

Both models demonstrate that no legal framework can definitively resolve the conflict between fundamental rights. Legal frameworks function as expressions of the social, cultural, and political priorities prevailing within the respective national contexts. It becomes clear that neither an absolute prioritization of the protection of life nor unrestricted freedom of choice alone can adequately reflect the complex realities of pregnancy and motherhood. Modern legal systems therefore face the continuing task of developing and adapting legal frameworks that, on the one hand, take the protection of unborn life seriously and, on the other hand, respect the dignity, freedom, and self-determination of the woman concerned—a balance that is ultimately shaped by each state’s legal culture, constitutional tradition, and political development.

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