

Abortion: In the Context of the Legislation of Foreign Countries and the Republic of Azerbaijan

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Abstract

The article is dedicated to the legal analysis of abortion in the context of the legislation of foreign countries and the Republic of Azerbaijan. The article explains the meaning of the term "abortion," provides a brief overview of the history of abortion, and examines whether abortion is permitted in the legislation of various foreign countries. The article references the decisions of the European Court of Human Rights concerning abortion and analyzes how this issue is regulated in the legislation of the Republic of Azerbaijan.

Introduction

Abortion, derived from the Latin term *abortus*, signifies the termination of a pregnancy through the removal of an embryo or fetus. This medical, social, and ethical phenomenon has been practiced throughout human history, evolving in its perception and regulation across diverse cultural and legal contexts. Annually, an estimated 73 million abortions are performed worldwide, representing approximately 29% of all pregnancies. While the majority of abortions in developed countries occur under safe conditions, access and safety remain significant challenges in developing regions, where only 55% are conducted safely.

The reasons for abortion are multifaceted, ranging from life-threatening health risks to the mother, fetal abnormalities, and pregnancies resulting from sexual violence, to broader socio-economic hardships or personal choice. This complexity fuels ongoing global debates surrounding the morality and legality of abortion, shaped by cultural, religious, and ethical frameworks that vary from one society to another.

Historically, abortion practices can be traced back to ancient civilizations such as Egypt, Greece, and Rome, where societal needs often dictated their acceptance. Philosophers like Aristotle supported abortion in specific circumstances, emphasizing societal welfare and maternal health. However, with the advent of the Middle Ages, religious doctrines, particularly from the Catholic Church, imposed strict prohibitions on abortion. In modern times, the discourse has shifted toward recognizing abortion as a matter of individual rights, particularly in the context of women's autonomy and health.

The ethical debate surrounding abortion is polarized between two primary perspectives: "pro-choice" advocates, who emphasize a woman's right to bodily autonomy, and "pro-life" proponents, who assert that life begins at conception and view abortion as morally indefensible. These opposing views have



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led to diverse legal approaches globally, ranging from outright prohibition to liberal frameworks that prioritize individual choice.

This article aims to provide a comparative legal analysis of abortion, examining its regulation in various foreign jurisdictions and the Republic of Azerbaijan. By exploring historical developments, ethical debates, and landmark decisions from bodies like the European Court of Human Rights, this study seeks to illuminate the complexities surrounding abortion legislation and its implications for human rights and societal values.

Literature Review

Abortion has been extensively studied in the context of legal, ethical, and cultural frameworks by various scholars worldwide. Notable recent works include those by Kamenski (2023), Iryna Dzyhomon (2024), Ilse Kemker (2024), Yunhan Jiao (2024), Lora Adair (2024), Nicole Lozano (2024), and Nelli Ferenczi (2024), whose research explores abortion legislation and its implications across different societies.

The ethical dimensions of abortion were first systematically analyzed by Judith Jarvis Thomson in her seminal 1971 essay *A Defense of Abortion*, published in *Philosophy & Public Affairs*. Thomson's arguments continue to influence contemporary discourse, particularly her renowned "Violinist Analogy." This analogy challenges readers to consider a scenario where they are involuntarily connected to a famous unconscious violinist, whose survival depends on their circulatory system for nine months. Thomson juxtaposes this hypothetical with pregnancy, inviting reflection on whether one is morally obligated to maintain the connection, even if doing so conflicts with personal autonomy.

While Thomson acknowledges the fetus's right to life, she argues that this right does not inherently supersede a woman's autonomy over her own body. Her essay ignited significant debate and continues to serve as a foundational text in ethical discussions about abortion.

Globally, legal perspectives on abortion range widely. Countries like the Dominican Republic (since 1884) and Honduras (since 1982) enforce total bans, reflecting stringent moral and religious views. Malta's outright prohibition, even in cases of medical necessity, represents one of the strictest approaches. Conversely, other nations adopt more nuanced stances. For example, Poland has imposed significant restrictions, prompting mass protests against its abortion policies, as seen in 2020.

In the United States, abortion law has undergone substantial shifts. The landmark *Roe v. Wade* decision (1973) established a constitutional right to abortion during the first six months of pregnancy. However, the 2022 *Dobbs v. Jackson Women's Health Organization* ruling overturned this precedent, granting individual states the authority to legislate abortion independently. Consequently, the legal status of abortion in the U.S. varies widely, with some states maintaining liberal policies, others enforcing stringent restrictions, and several enacting complete bans.

The diversity of abortion laws globally underscores the interplay of cultural, religious, and political factors in shaping legal frameworks. By examining these variations, this article seeks to provide a comprehensive understanding of the multifaceted legal and ethical considerations surrounding abortion.

Methodology and Data Analysis

Abortion laws and practices reveal significant regional disparities, often reflecting the socio-political and cultural landscapes of respective nations. For example, China's one-child policy, implemented from 1979



to 2015, was closely tied to state-enforced population control measures. This policy led to widespread reports of forced abortions and sterilizations, sparking domestic and international protests. Additionally, the selective abortion of female fetuses during this period disrupted the natural sex ratio of China's population, highlighting the unintended consequences of restrictive reproductive policies (Adair, Lozano, & Ferenczi, 2024).

Globally, most countries allow abortion under specific conditions. Historically, the Soviet Union became the first state to legalize abortion without restrictions in 1920, marking a significant milestone in reproductive rights. However, by 1936, concerned about rising abortion rates, the Soviet government reintroduced bans on non-medical abortions, which remained in effect until 1955. This illustrates the fluctuating legal stance on abortion within the same jurisdiction based on social and political considerations.

In contrast, Canada provides one of the most liberal approaches, where abortion is fully legal and over 100,000 procedures are performed annually. Similarly, Sweden permits abortion up to the 18th week of pregnancy, with provisions for later-term abortions in cases of medical necessity. In the United Kingdom, the Abortion Act of 1967 legalized the procedure under specific conditions, allowing termination up to the 24th week with approval from medical professionals. Meanwhile, Northern Ireland only recently lifted its abortion ban in 2019, forcing women to travel to England for the procedure prior to the change (Jiao, 2024).

Abortion laws can also act as a catalyst for public dissent. In Poland, restrictive abortion regulations prompted large-scale protests in 2020, reflecting the profound social impact of such policies. Similarly, legal decisions in countries like El Salvador, Honduras, and Malta continue to shape international discourse on reproductive rights.

This section highlights the diverse methodologies employed by governments worldwide to regulate abortion, ranging from outright prohibition to permissive frameworks. Such diversity underscores the complexity of balancing public health, individual rights, and societal values in shaping abortion policy.

Results and Discussion

The legal position of the European Court of Human Rights (ECHR) on abortion provides valuable insights into the interplay between individual rights and state sovereignty. While the ECHR has not explicitly recognized a "right to abortion," it evaluates abortion-related cases within the frameworks of the right to private life (Article 8), the right to life (Article 2), and freedom of conscience (Article 9) of the European Convention on Human Rights. The Court employs the principle of the "margin of appreciation," allowing states a degree of discretion in regulating abortion based on cultural, religious, and societal contexts.

One landmark case, *Tysic v. Poland* (2007), illustrates the Court's approach to balancing these rights. In this case, the refusal of Polish authorities to permit a medically necessary abortion was deemed a violation of the woman's right to private life under Article 8. The Court emphasized that restrictions on abortion should not infringe upon a woman's fundamental rights. Similarly, in *R.R. v. Poland* (2011), the Court ruled that failing to assist a woman seeking a medical abortion created a conflict between freedom of conscience and personal rights, resulting in a violation of her rights.

The balance between the fetus's right to life and a woman's rights is central to the ECHR's judgments. In *Vo v. France* (2004), the Court refrained from defining the fetus's status under Article 2, highlighting the absence of a consensus among member states. Instead, it allowed states to decide the extent of fetal protection within their legal frameworks. In another significant case, *A, B, and C v. Ireland* (2010),



the Court upheld Ireland's restrictive abortion laws while stressing that women's health and rights must remain a consideration in national regulations.

In the context of Azerbaijan, abortion is regulated under Article 30 of the Law on the Protection of Public Health. The law refers to abortion as the "artificial termination of pregnancy," granting women the right to decide independently on matters related to motherhood. Azerbaijani law permits abortion in three scenarios:

1. **At the Woman's Request:** Allowed within the first 12 weeks of pregnancy.
2. **Based on Social Indications:** Permissible up to 22 weeks under specific circumstances, such as the death of the husband, disability of the husband, imprisonment of the woman or her spouse, or pregnancy resulting from rape.
3. **Based on Medical Indications:** Allowed regardless of gestational age, provided the woman consents. Conditions include severe mental illness, drug addiction, or life-threatening diseases such as AIDS or tuberculosis.

Violations of abortion regulations in Azerbaijan are addressed under Articles 141.1 and 141.2 of the Criminal Code, imposing penalties ranging from fines to imprisonment for unauthorized or negligent procedures. These legal provisions underscore the emphasis on ensuring abortion is performed safely and in accordance with medical standards.

This analysis demonstrates the nuanced legal and ethical landscape surrounding abortion in both international and Azerbaijani contexts. While global frameworks like those of the ECHR strive to balance individual rights and collective values, Azerbaijani legislation reflects a similar commitment to safeguarding maternal autonomy and public health within a defined legal structure.

Conclusion

The legal and ethical discourse surrounding abortion remains one of the most complex and contentious issues globally. This article explored how abortion is regulated under various legal frameworks, focusing on both international contexts and the specific case of Azerbaijan. The European Court of Human Rights (ECHR) plays a critical role in shaping abortion-related jurisprudence, balancing the rights of women with the interests of member states. Key decisions, such as *Tysic v. Poland*, *R.R. v. Poland*, and *Vo v. France*, illustrate the Court's commitment to protecting individual rights while respecting national sovereignty.

In Azerbaijan, abortion laws reflect a blend of public health considerations, individual autonomy, and societal values. The legal framework, detailed in the Law on the Protection of Public Health, establishes clear guidelines for the permissible termination of pregnancies. It emphasizes the importance of safeguarding women's rights, allowing them to make independent decisions while ensuring procedures are conducted safely by qualified professionals. Punitive measures under the Criminal Code reinforce the state's commitment to preventing unsafe or unauthorized abortions.

Despite these regulations, the ethical debate between "pro-choice" and "pro-life" perspectives continues to influence global and national policies. Pro-choice advocates argue for women's bodily autonomy, emphasizing the importance of reproductive rights, while pro-life supporters focus on the moral imperative to protect fetal life. The diverse legal approaches to abortion, ranging from outright bans to liberal policies, reflect the profound influence of cultural, religious, and political factors.



This study highlights the need for ongoing dialogue and reform to balance individual rights, ethical considerations, and societal needs. In Azerbaijan and beyond, future efforts should focus on ensuring access to safe medical care, protecting women's autonomy, and fostering a deeper understanding of the social and ethical dimensions of abortion. By examining both domestic and international legal contexts, this article provides a foundation for further research and policy development in this critical area.

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