

IV. C. 3. *Rights of Embryo and Foetus in Private Law*

GÁBOR JOBBÁGYI*

Rights of Embryo and Foetus in Private Law

Abstract. The paper gives an overview of the Hungarian legal regulation of the legal status of the foetus. In this respect, it reveals the historical roots of the legal protection of the foetus in Hungary. It analyses in details the theoretical standpoints of Hungarian authors of civil and criminal law. It describes the unconstitutional legal practice of the period of communist dictatorship (1950-1990) that lead to the unparalleled destruction of 4,5 million embryos. It analyses in details the unconstitutional practice. The analysis also includes the treatment of the prevailing “Embryonic Life Protection Act”. Finally, the essay determines, in accordance with Hungarian legal practice and jurisprudence, the legal status of the foetus and comes forward with proposals addressed to future legislation.

Keywords: legal status of the foetus, decisions of the constitutional Court, “Embryonic Life protection Act”

1. Foundations of the Legal History and in Law under Hungarian Law

As far back as the Middle Ages, the status of embryo and foetus had some roots deeply entrenched in Roman law, which had been received into Hungarian law.

In 1517 Werbőczy’s *Tripartitum*, practically having the force of law, spelled out what held sway for three centuries: “Here we must realize that some of the offspring are called ‘conceived’, others ‘born’, and yet others ‘posthumous’. Those conceived are ones who have been procreated in the mother’s uterus by the sexual union of husband and wife, but are unborn. Given their nature, they enjoy equal rights with the offspring born and living, from the date of conception as evidenced by delivery”.

Embryo and foetus exist and have rights under medieval Hungarian law. While the rights of foetus are primarily rights to succeed, foetus is *full-fledged* in this field, that is to say that foetus, if born alive, must be regarded as having been living at the time of accrual of the inheritance.

* Professor and Director of Institute, Pázmány Péter Catholic University, Budapest, H-1088 Budapest, Szentkirályi u. 28–30., Hungary.
E-mail: jobbagyigabor@yahoo.co.uk

In addition, Hungarian law had never made any reference to the possibility of legal abortion down to the 20th century. King Coloman I's penal code of the 11th century referred to "women destroying embryo or foetus", who were required to "expiate before their archdeacon". This led the Council of Buda, held in 1279, to rely on the threat of excommunication against women procuring abortion. Pursuant to municipal laws, the courts passed severe criminal sentences for procured abortion during the 16th and 17th centuries. Sentences were severe especially in cases where "the foetus already had soul", a fact which occurred on the 40th day following conception, because that date caused such women to be sentenced for "filicide". Data testifying to death sentences passed on women for aborticide are available from 1576, 1582, 1612 and 1655.

The first Penal Code of the Hungarian State (Act V of 1878) contained uniform strict regulations under the hallmark of disestablishment of the Church. Articles 285 and 286 prescribed separate penalties for women procuring abortion (imprisonment for a term of 2 to 3 years) and for illegal aborters (imprisonment for a term of 2 to 15 years).

During the 19th and 20th centuries, private-law practice, which was developing along the lines of customary law, granted foetus *conditional capacity to rights*, meaning that *legal capacity was subject to live-birth*. In other words, a foetus born alive was to be regarded as capable of rights from the date of conception. In one of its judgements delivered in 1892 the Supreme Court (*Curia*) held that "even foetus has rights, which, in case of birth, the court shall proceed *ex officio* to have preserved and enforced".

Up to the first part of the 20th century there was no legal practice to change the legally absolute protection of foetus and there was no jurist to support the legalization of abortion.

In 1933 a judgement of the *Curia* spelled out that abortion performed for the purpose of protecting a mother's life and health was not punishable. This, in the absence of legislative authorization, served to introduce medically indicated abortion into medical practice under circumstances that made it virtually impossible to know when such indication was justified. Given that in 1945 thousands of Hungarian women were raped by Soviet troops occupying the country, a decree of the Minister of Health cleared the way to abortion for a period of a few months.

In summing up developments during the period extending to 1950 it can be stated that the criminal legislation of Hungary accorded absolute protection to foetus, while Hungarian private law recognized conditional capacity to rights.

The period of 1950 to 1990 saw radical changes in "socialist" legislation concerning the status of foetus and the legalization of abortion.

The distinctive features of that era were the following:

— the status and the rights of foetus were not covered by a single provision of law or court decision, and the subject-matter was theoretically treated in brief by only a few writers;

— the Penal Code retained the ban on abortion, while government decrees and departmental orders devised a system for the authorization of abortion that was the world's most liberal as compared to contemporary legal practice;

— abortion as the only method of birth control was practised on a mass scale before the spread of contraception;

— there was no explanatory work and, in the absence of the right of association, there existed no "pro life" organizations, with no possibility for protest against the existing legal practice even within the frameworks of the churches.

All these features combined to result in the world's highest ratio of legal abortions in Hungary by comparison with the number of inhabitants (about 10 million) between 1956 and 1990, with a total of some 4,5 million legal abortions performed.

In more years than one, the number of abortions exceeded by far that of live-births (in 1969, for instance, there were 206,815 abortions against 154,319 live-births). This caused Hungary to become a country with the worst demographic pattern, the number of inhabitants decreasing by some 500,000 between 1981 and 2001.

The period 1950–1990 witnessed the following changes in the legal system:

— the years of 1953 to 1956 were a period of "abortionist terror", with legal abortion practically non-existent and with sentences of imprisonment for a term of 8 to 10 years often meted out for illegal abortions, while the social bases for the upbringing of children were lacking;

— the period 1956–1973 was that of the most liberal system for authorization of abortion in the contemporary world. If an expectant woman appeared before the "abortion committee" prior to the 12th week of pregnancy and said, without giving any cause or reason, that she wanted to receive abortive treatment, the permission had to be granted;

— during the period of 1973 to 1988 there was introduced a model of indications of a rather wide scale: in case of 6 indications the abortion committees had to grant, while in case of 4 indications it might grant, permission for abortive treatment. The annual number of abortions fell by 100,000 under the impact of that legislation;

— the scale of indications for abortion was further narrowed in 1988.

After the collapse of the communist party state (1989–1990) the Constitutional Court was established in Hungary, and there came into being organizations for the protection of life. The *Pacem in Utero* association immediately applied to the Constitutional Court to have the party-state rules on abortion declared unconstitutional.

In its Decision No. 64/1991. (XII. 17.) the Constitutional Court declared the whole body of relevant party-state legislative enactment's to be unconstitutional and annulled the subordinate provisions of law. It held that this domain was to be governed by legislative acts only, because it involved fundamental constitutional rights, such as the foetus's rights to life and legal capacity as well as the right of free disposal of one's own self.

Several of the Court's decisions contained findings of paramount importance:

— Foetus can be regarded as a *person* from the date of conception, subject, however, to an act of legislation. There is no bar to the law-maker recognizing “man as man from the date of conception”.

— Any authorization of abortion with no reason assigned is unconstitutional. The grounds for authorization are to be stated by law, it being understood that both complete ban and fully legalized abortion are contrary to the Constitution.

— The law-maker may provide that foetus is a human being, in which case nothing but indications of emergency are legal. Should the law-maker decide that foetus is not a human being, the State's constitutional responsibility for the protection of foetal life is nonetheless incurred. The Court held that “protection of foetal life is a state responsibility from the date of conception”.

Constitutional Judge Tamás Lábady, in his dissenting opinion appended to the decision, maintained that “foetus is a person, viz. a subject at law, and has, from the date of conception, a subjective right to be born”.

Act LXXIX of 1992 on the Protection of Foetal Life was adopted in the wake of the above-mentioned decisions of the Constitutional Court. It has failed to spell out that foetus is a “person” and to invest it with legal capacity and with rights. Although protecting foetus in principle, this Act can practically be considered to be an “act on abortion”. It presents some positive as well as negative features with regard to the protection of foetal life, namely

— it states that “foetal life beginning with conception shall enjoy respect and protection”; it introduces a “pregnancy allowance” due from three months of embryonic life; makes it a duty of the State to do explanatory work and to provide information prior to termination of pregnancy;

— it introduces a system of indications for abortion, including a broadly termed “crisis indication”, up to 12 weeks of pregnancy. Medical indications are likewise formulated in a rather wide sense. It is silent on the protection of embryo formed by way of artificial fertilization.

The status of embryo formed by way of artificial fertilization as well as the related procedures are regulated by Articles 165–187 of Act CLIV of 1997 on Public Health, which distinguishes *embryo* and *foetus*. Considered as embryo is a viable human embryo from the date of conception to 12 weeks of pregnancy, while defined as a human being is a foetus from 12 weeks of pregnancy. The Act affords little legal protection for embryo and deems artificial fertilization, embryo donation and research on embryo to be a basically medico-technical issue. While gratuitousness is held to be the general rule during the related procedures, the Act consistently uses property-law terms (embryo “donation”, “deposit” of embryo, “disposal” of embryo, etc.).

The aforesaid two enactment’s are silent about the starting date of human life. The date of conception is determined by Art. 9 of the Civil Code: “the three hundredth day preceding the date of birth shall be considered the day of conception, but it shall be open to proof that conception took place at an earlier or a later date”.

It is likewise provided by the Civil Code that a curator must be appointed before the birth of the child, if such appointment is necessary for safeguarding the interests of the child (Art. 10). It was pursuant to this Article that in the “Dávod Abortion Case”, which found an extremely great echo, the Town Court of Baja, by its Judgement No. 8.P. 20.367/1998/7, prohibited the performance of abortion on a girl mother aged 13. The Court based its judgement on the foetus’s constitutional right to life. This notwithstanding, the abortion was performed subsequently.

2. Foetus as a “Person” in Hungarian Law, and Rights of Embryo and Foetus

With regard to recognition of foetus as a “person” and to “rights of embryo and foetus”, distinction can be made in Hungarian law between *views of legal theory and civil law* and the *approach of positive law*.

2.1. Recognition of foetus as a “person” and of the related rights of embryo and foetus has always been a majority or dominant opinion in the history of the science of Hungarian private law.

István Werbőczy’s *Tripartitum* (1517), which was of decisive importance in Hungarian private law for three centuries, declared an embryo conceived

to have *equal rights* with a foetus born.¹ Based on it, Emericus Kelemen's first textbook of note on private law (1804) divides "persons" into three groups: persons conceived (*conceptas*), persons born (*natas*) and persons born after their fathers' death (*posthumas*). It states that "favourable opinion" regards them as being of full standing. Kelemen points that the expectant mother enjoys benefits in the interest of foetus ("*Quin favore foetus*").²

Hungarian legal folkways in this field are interesting. According to traditions, "abortion in a sin form the outset, but once the foetus has quickened it is a murder, because thenceforth the foetus has soul". Another tradition has it that "aborting women go to hell", "fall victim to the devil", and "have to eat the aborted foetus in the hereafter".³

Károly Szladits, a determinant figure of Hungarian jurisprudence in the 20th century, asserts that "in case of live-birth a foetus is similarly personable, its legal capacity is not limited to certain rights or modes of acquisition, but is *general yet conditional* for it (foetus) has to be born alive". He even names some rights pertaining to foetus, such as family rights, rights of inheritance, rights to damages, maintenance, gift, and mortgage registered in its favour, and the right to make certain contracts through its representative.⁴

Andor Sárffy, too, accepts the foetus's capacity to rights: "Once we accept the tenet that legal capacity is possible without disposing capacity, concerns are allayed that one who cannot exercise his rights cannot have legal capacity either".⁵ Bálint Kolosváry argues that the principle "*Nasciturus pro iam nato habetur, si de commodis eius agitur*" (One to be born is to be regarded as born if one's benefits are involved) certainly prevails in Hungarian law.⁶ According to criminal jurist Ferenc Finkey, the object

¹ Werbőcy István Hármaskönyve (István Werbőczy's *Tripartitum*), Révai 1897, Part II, Title 62, §§ 2–4.

² Kelemen, E.: *Institutiones Juris Privati Hungarici*, Pest, 1804, 178–180.

³ Tárkány-Szücs, E.: *Magyar jogi népszokások* (Hungarian Legal Folkways), Budapest, 1981, 113–125.

⁴ Szladits, K.: *A magyar magánjog vázлата* (An Outline of Hungarian Private Law), Budapest, 1937, 74.

⁵ Sárffy, A.: *A jövőbeli ember jogképessége* (Legal Capacity of Man Yet Unborn), in: *Szladits Károly emlékkönyv* (Essays Presented to Károly Szladits), Budapest, 1938, 47–55.

⁶ Kolosváry, B.: *Magánjog* (Private Law), 1930, 78.

in law of the crime of procured abortion is constituted by “the right of foetus to life”.⁷

The most definite stance in 1946 was represented by István Szászy, a jurist of European fame, claiming that “even a foetus and even a human yet to be conceived are persons and consequently have legal capacity, because in our law both are vested with rights, and with rights not only prospective but also present, while legal obligations devolve on them, and, to be sure, one either entitled or legally bound can only be a legally capable person”.⁸

After 1945 the communist system of law unconstitutionally introduced an extremely liberal machinery for the authorization of abortion, which it was impossible to protest against openly. Still, the traditional views appeared in the pertinent literature and none of the jurists supported the abortion policy of the party state, which allowed 4,5 million abortions. In 1965 Károly Törő posited that “legal capacity pertains to man, not from birth and not from the development of human consciousness, but from the date of conception... Man is endowed with personal rights in certain respects from the time legal capacity is acquired. Most important of such rights is the right to life, the *sine qua non* for the acquisition and exercise of any other right”.⁹ In 1986 he added that “even before birth, from the date of conception, our legal system ensures the protection of interests of the child to be born. Although the foetus is not yet a person, it carries the real possibility of a legally capable person being born”.¹⁰ Also, in the debate of 1990 over the rules on abortion, he said “this regulation is unsatisfactory... It should be recognized that foetus is a human being capable of independent legal protection”. Barna Lenkovics contended that it was untenable that protected animals were afforded a greater protection of the law than “foetal man” was, even though his right to life emanated from several rules of the Civil Code.¹¹

This opinion is shared by Gábor Jobbágyi, the present writer, whose views, set forth in several professional articles and two books, can be summed up as follows: foetus exists in law, as it flows from many articles of the Civil Code and the Penal Code; “foetal man” is a human being from

⁷ Finkey, F.: *A magyar büntetőjog tankönyve* (Textbook of Hungarian Criminal Law), Budapest, 1914, 594.

⁸ Szászy, I.: *Magyar Magánjog, Általános Rész* (Hungarian Private Law, General Part), Budapest, 1948, 5–8.

⁹ Törő, K.: *Az orvosi polgári viszony* (The Medico-Civil Relationship), Budapest, 1965, 153–157.

¹⁰ Törő K.: *Orvosi jogviszony* (Medico-Legal Relations), Budapest, 1986, 269–274.

¹¹ Törő K.: A meg nem született magzat jogi védelme (Legal Protection of Unborn Foetus), *Magyar Tudomány*, 1990/7, 845–848.

a medico-moral point of view and is entitled to medico-moral protection; legally, foetus is *a human person in a proces of formation*, and its condition as a subject at law is already independent of that of its mother and father from the date of conception, a reason why foetus cannot be “disposed of”; the legal capacity of foetus is general, equal and temporary; foetus is vested with personal and property rights; its *personal rights* include the right to life (subject to restrictions in very exceptional cases only), the right to dignity and the right to health; its property rights include capacity to inheritance, “capacity to claims” (e.g. claim for damages), and capacity to be a beneficiary (e.g. sale, donation, insurance); in legal relations, foetus is represented by its legal representative (parent, curator).¹²

Three renowned jurists acting as constitutional judges appended dissenting opinions to Decision No. 64/1991. (XII. 17.) AB.h. of the Constitutional Court.

— Tamás Lábady argues that “foetus is biologically a human, not a thing, not an object, but a genetically completed person, an individual, and individual human life is a unique process from conception to biological death. Foetus is therefore a person, or a subject at law, who has a right to be born from the moment of conception”.

— János Zlinszky contests the possibility of foetus’s full legal capacity, but he claims that foetal life as a *value* is to be protected by all means. “Foetal life is human life to be protected by law”, with “disposal” of it as a subjective right pertaining neither to the mother nor to the father.

It is important to stress that the above-mentioned Decision of the Constitutional Court contains a crucial finding, the Court holding that foetus’s full legal personality, or its condition as a person is in conformity with the Constitution, but it cannot be established except by the law-maker. That Act LXXIX of 1992 did not grant foetus the status of “person” is a different matter.

At the same time, Hungarian law contains provisions vesting embryo and foetus with rights:

— the Civil Code recognizes the capacity to inheritance for an embryo conceived (Art. 646);

— where it is necessary for safeguarding the rights of foetus, particularly if there is a conflict of interests between the child and its legal representative, a curator shall be appointed for foetus (Art. 10 of the Civil Code);

— foetus may be a beneficiary under a contract of life insurance (Art. 560 of the Civil Code);

¹² Jobbágyi, G.: *A méhmagzat életjoga* (The Right of Embryo and Foetus to Life), Budapest, 1997, 207–214.

— the prohibition of “abortion” in criminal law is placed by the Penal Code among “offences against life, bodily integrity and health”, “foetal life” being one of the values to be protected (Art. 169);

— the Preamble to Act LXXIX of 1992 on the Protection of Foetal Life provides that “beginning with conception, embryonic and foetal life deserves respect and protection”;

— pursuant to Art. 20 (4) of Act CLIV of 1997 on Public Health, a patient may not refuse life-sustaining or life-saving intervention if she is expectant and is likely to have a normal pregnancy;

— Art. 9 of Act LXXIX of 1992 contains a provision expressly aimed at protection of embryo and foetus, ordaining that a staff member of the Family Welfare Service must inform a mother asking for abortion in a crisis situation “in the interest of keeping the embryo or foetus”, in particular about

— state and other support, material and in kind, available in case of accepting the child;

— conception, development of embryo and foetus, hazards of abortion and its effect on eventual later pregnancy;

— the possibilities of and conditions for adoption.

3. Foetus and Mother: Rights in Conflict

The Hungarian rules for authorization of abortion (Act LXXIX of 1992 on the Protection of Foetal Life) are silent on the “rights of embryo and foetus”, but refer to the mother’s “right of free disposal of one’s own self” in regulating authorization of abortion. Pregnancy may only be terminated in case of “risk” and under the conditions determined by the Act (Art. 5). At the same time, in determining the causes of indication (Art. 6), the Act permits abortive treatment in view of the pregnant woman’s situation. The indications for abortive treatment in Hungarian law are:

— causes gravely endangering the health of a pregnant woman;

— pregnancy resulting from a criminal offence;

— grave genetic impairment to foetus;

— crisis situation of a pregnant woman.

Termination of pregnancy is subject to a written request of a pregnant woman (Art. 7).

An expectant woman requesting abortive treatment is required to participate twice in antenatal counselling by the Family Welfare Service.

Counselling must not be neutral, but must serve the protection of unborn life, respecting pregnant women’s emotions and human dignity (Art. 9).

4. Date of Conception and Protection of Embryo and Foetus

The date of conception is determined in Hungarian law by Art. 9 of the Civil Code: “The 300th day preceding birth shall be considered to be the date of conception, but it shall be open to proof that conception took place at an earlier or a later date. The day of birth shall be included in this period”. Accordingly, the date of conception in Hungarian law is a *presumptive* one, which is subject to proof by medical experts to the effect that conception took place at either an earlier or a later date. “A live-born child shall have legal capacity from the date of conception” (Art. 9 of the Civil Code). Thus, under Hungarian law, conception creates a “conditional legal position”, which becomes final upon the child’s birth or the failure of delivery. On this ground, Hungarian law endows foetus with conditional legal capacity.

The details concerning the possibilities for the protection of embryo and foetus in legal theory and legislative enactment’s have been set out in the preceding two paragraphs.

5. Legal Position of Father toward Embryo and Foetus

In actual fact, Hungarian law confers no right on the father with regard to the birth of foetus. The Act on the “Protection of Foetal Life” is confined to stating that crisis counselling must, so far as possible, be provided *in presence of the foetus’s father* (para. 1 of Art. 9), but the father is not entitled to make declarations at law.

6. Protection of Embryo in Case of Artificial Fertilization (IVF Procedures)

“Special procedures for human reproduction and research on embryo and gametes” are covered by Hungarian law in Chapter IX of Act CLIV of 1997 on Public Health (Articles 165–186).

The preambular provisions of the related part of the Act distinguish “embryo” and “foetus” in the following terms: “Deemed to be an embryo is every viable human embryo from the completion of fertilization to 12 weeks of pregnancy” (Art. 165).

The Act itself regulates in detail the general conditions for reproductive procedures, gamete donation, embryo donation, and research on embryo.

This part of the Act can be said to lego-technically regulate *in vitro* fertilization without vesting embryo with any rights. The Act creates rights and obligations for the participants in procedures (physician, spouses and life-companions). For that matter, it is characteristic of the Act to use *property-law terms* in connection with embryo (“deposit” of embryo, “possession” of embryo, “disposal” of embryo).

Such approach can be construed to mean that the embryo becomes a “thing” during IVF procedures.

Resolution 1100/1989 of the Council of Europe is known in the pertinent literature, but it has no influence to bear on the legislative text.

The main provisions of the said legislation are these:

— a reproductive procedure may be executed at the request of spouses or heterosexual life-companions in case of infertility;

— applicants must be advised in detail, orally or in writing, of the reproductive procedure;

— the “right to dispose of an embryo” formed outside the body and not implanted must be exercised in common by the spouses (life-companions). “Disposal” can be threefold:

- a) “deposit of embryo” for purposes of later use;
- b) donation to other persons;
- c) offer for medical research;

— an embryo deposited or donated may be stored for a period not exceeding ten years and, after the lapse of that period, must be destroyed without separate procedure or may be used for medical research;

— an embryo may not be formed for research on embryo and may not be used for such research except with the approval of persons entitled thereto; to that end, there must be formulated a plan and purpose of research to be approved by the Human Reproduction Committee;

— currently no proxy pregnancy (surrogate motherhood) is admissible (although the original wording of the Act allowed such pregnancy, but it was repealed later).

7. Protection of Embryo and Foetus in Vivo

Hungarian law does not regulate the methods of and conditions for conducting diagnostic procedures in the uterus.

Act LXXIX of 1992 on the protection of Foetal Life enumerates the conditions for termination of pregnancy on grounds of genetic impairment among the causes for abortive treatment:

- a) pregnancy may be terminated for genetic reasons up to the 12th week if the embryo “seems likely” to be gravely handicapped or otherwise impaired;
- b) pregnancy may be terminated up to the 20th week if the probability of the foetus’s genetic or teratological impairment reaches 50%;
- c) pregnancy may be terminated up to delivery if the foetus shows a disorder incompatible with postnatal life.

Any reason of health concerning embryo and foetus is to be unanimously established by an obstetrical-gynaecological specialist of the genetic counselling service, the centre for prenatal diagnosis or the designated hospital each. The Act does not specify the causes or diseases that may justify termination of pregnancy on genetic grounds.

8. Foetus as an “Organ Donor” in Hungarian Law

The Hungarian legislation in force neither permits nor prohibits the use of viable foetus as an organ donor. In the case of living foetuses this possibility is probably ruled out in practice. Dead (aborted) foetuses may happen in practice to be used as organ donors.

9. Representation of the Interests of Embryo and Foetus in Hungarian Law

Act LXXIX of 1992 on the Protection of Foetal Life and the Chapter on Human Reproduction of Act CLIV of 1997 on Public Health (Articles 165–186) are *silent on representation* of the interests of embryo and foetus.

Art. 10 of the Civil Code allows appointment of a curator for an unborn child if there is a conflict of interests between such child and its legal representative. This means in practice a conflict of interests in matters of *property law* (e.g. both mother and foetus are heirs to assets of an estate). The curator is appointed by the guardianship authority.

It was in a single case, which received great publicity, namely in the “Dávod Abortion Case” (Decision No. 8.P. 20.367/1998 of the Town Court of Baja), that the guardianship authority appointed a curator for the foetus of a 13-year-old girl, who became pregnant through depravation. Since the termination of pregnancy was requested by the girl’s legal representative (mother), the curator of the foetus instituted proceedings in the letter’s interest. The court of first instance allowed the action by relying on the foetus’s right to life and also recognized the curator’s right to act in the case. The County Court (judgement No. 1 Pf. 20.532/1998) subsequently

overruled the Decision, holding that the foetus had no capacity to rights. The abortion was performed.

10. Summary and Conclusions

The position of embryo and foetus is *contradictory* in Hungarian law *de lege lata*. The contradiction results from the fact that the current regulations recognize and value the existence of embryo and foetus from the date of conception, affording protection for them, but are essentially silent about their status, legal capacity, rights and representation, particularly as regards the most important issues (abortion, IVF). This contradiction gave rise to serious debates over the past decades, with even the Legislature addressing the matter on three occasions in pursuance of two decisions handed down by the Constitutional Court.

The contradiction and the issue itself, however, have remained unresolved in legislation.

In my opinion, it is the foremost duty of the world's legislators and jurists to settle *de lege ferenda* the status and protection of embryo and foetus. The statement may be ventured that solution of this issue, or its present lack of solution has a decisive influence to bear on the existence of human civilization, since it has profound implications for the fundamental rules on procreation, family life, sexual life, and the medical profession and thereby for the existence or non-existence of individual human communities, for fundamental human rights.

Embryo or foetus is a human person of full value, medically as well as morally, from the date of conception.

It is inevitable for the legislative fora, both international and national, to resolve the questions affecting the status and the rights of embryo and foetus as well as the protection of their rights in such a way that the law will consider embryo and foetus as *human persons in a process of formation*. Such arrangement will result in solutions for a limited capacity to *rights* from the date of conception, for *recognition of specific subjective rights* for embryo and foetus, and for the *protection of their interests and rights through representation*.