

DERECHO A LA VIDA EN LA JURISPRUDENCIA DEL TRIBUNAL EUROPEO Y SISTEMAS JURÍDICOS NACIONALES

RIGHT TO LIFE JURISPRUDENCE OF THE EUROPEAN COURT AND NATIONAL LEGAL SYSTEMS

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Resumen

Este artículo examina la interpretación jurídica de las dimensiones éticas y culturales relacionadas con la definición del inicio del derecho a la vida en el derecho internacional y regional de los derechos humanos. Específicamente, el Tribunal Europeo de Derechos Humanos (TEDH) busca analizar cómo este concepto es interpretado y aplicado por los sistemas jurídicos nacionales y los organismos supranacionales dentro de los marcos socioculturales. El estudio revisa cualitativamente documentos legales clave, junto con la legislación nacional y la jurisprudencia del TEDH. Los hallazgos revelan que los instrumentos jurídicos internacionales, que incluyen el Convenio Europeo de Derechos Humanos, no establecen un estándar uniforme para el inicio de la vida, y los tribunales nacionales definen este umbral con discreción. La jurisprudencia confirma el margen de apreciación estatal, lo que confirma la reticencia del TEDH a imponer una regla generalizable. Los diferentes enfoques nacionales se configuran a través de tradiciones éticas y religiosas. Las tradiciones filosóficas también contribuyen a esta configuración. Podemos concluir que, de hecho, no prevalece una definición universal en este caso. El reconocimiento legal del nacimiento presenta una estructura que constantemente sopesa las preocupaciones estatales frente a los derechos reproductivos individuales bajo el derecho de los derechos humanos.

Palabras clave: Derechos humanos, salud reproductiva, derecho internacional, decisiones judiciales, derechos de las mujeres, factores culturales.

Abstract

This article examines the legal interpretation of ethical and cultural dimensions related to the definition of the beginning of the right to life in international and regional human rights law. Specifically, the European Court of Human Rights (ECHR) seeks to analyze how this concept is interpreted and applied by national legal systems and supranational bodies within sociocultural frameworks. The study qualitatively reviews key legal documents together with domestic legislation plus jurisprudence from the ECHR. The findings do reveal that the international legal instruments, which do include the European Convention on Human Rights, don't establish a uniform standard for the beginning of life, and the national courts define this threshold with discretion. Jurisprudence upholds the state margin of appreciation confirming ECHR's reluctance about imposing a generalizable rule. Different national approaches are shaped through ethical and through religious traditions. Philosophical traditions do also contribute to this shaping. It is concluded that in fact no universal definition prevails here. Legal birth recognition presents a structure that constantly weighs state concerns against individual reproductive rights under human rights law.

Keywords: Human rights, reproductive health, international law; judicial decisions, women's rights, cultural factors



INTRODUCTION

The question of when the right to life begins intersects within legal, ethical, also cultural discourses then remains one of the most complex and contested issues in contemporary human rights law. Legislative frameworks along with judicial interpretations are affected in a large way by this debate. Basic liberties likewise encounter effects about safeguarding them ([Nechukhaeva, 2021](#); [Al Azzam et al., 2022](#); [Kaganovska et al., 2023](#)). From an ethical standpoint, it is intrinsically tied to notions of human dignity, moral responsibility, and societal definitions of personhood ([Rastoropov et al., 2024](#)). The legal and moral boundaries surrounding the onset of life directly shape the ethical standards that govern reproductive rights, public health policy, and biolegal regulation ([Pérez-Curiel et al., 2023](#)).

Second, regarding legislative decree, diverse nations uniquely delineate the instant that the entitlement to existence commences. Legal frameworks govern abortion as well as associated medical procedures, plus these approaches do reflect this ([Ganiat and Rusniah, 2014](#); [Kovalev, 2022](#); [Pérez-Curiel et al., 2023](#)). The right to existence's origination points needs to be ascertained. Explicit legal parameters about these concerns can be formed consequently ([Correa Fernández and Luna Salas, 2022](#)).

Third, the genesis of the right to life is a subject of deliberation among states internationally. This is notably factual from the standpoint of global collaboration and female rights safeguard, specifically within worldwide human rights safeguard mechanisms ([Baimagambetova and Maulen, 2018](#); [Slanov, 2023](#)). Standardized strategies regarding this matter may ease global collaboration with information dissemination within the area of human rights safeguarding ([Akimzhanov et al., 2016](#); [Erdman and Cook, 2020](#); [Podolskiy, 2023](#)). As individuals ascertain the commencement of the right to life, that immediately influences women's rights regarding reproductive services ([Raharni et al., 2025](#)), access to secure abortion, and information on sexual and reproductive health ([Kjelsvik et al., 2018](#); [Delva Benavides and Gonzalez Lopez, 2022](#); [Falletti, 2023](#); [Leo and Bunga, 2025](#)).

In order to frame this analysis, a complete review of archive documents gets used throughout this research. These include scientific articles in addition to conference theses that tackle the theoretical and also legal aspects regarding the right to life within international law, along with national and international legislation.

The Declaration of the Rights of the Child ([United Nations General Assembly, 1959](#)), the Convention on the Rights of the Child ([United Nations General Assembly, 1989](#)), and the European Convention on Human Rights ([Council of Europe, 2013](#)) are vital international mechanisms contemplated. Domestic statutory structures such as the United Kingdom's Abortion Act of 1967 ([Parliament of the United Kingdom, 1967](#)) are being scrutinized. Likewise, there exist matters like Poland's Act on Family Planning, Protection of the Human Embryo, as well as Conditions for Permissible Abortion from ([Government of Poland, 1993](#)). Judicial materials by the [European Court of Human Rights](#). (2003; 2004; 2010) also guide interpretation of applying Article 8 of the European

Convention plus they show courts navigating reproductive rights balanced with life protection.

DISCUSSION

Analysis of the emergence of the right to life in international law

The question of when the right to life begins is closely linked to the debate on the right to abortion. This issue is characterized by a diversity of moral, medical, religious, and legal perspectives, with each country adopting its own approach to defining the moment when life begins ([Getting, 2020](#); Marchenko and Kondratieva, 2023). International law does not provide a clear definition of when life begins but some legal documents and scholars try to establish general frameworks.

[Dwyer \(2009\)](#) argues that a human embryo possesses all the characteristics of a fully developed human being from the moment of conception.

According to bioethics research ([Panadès and Yuguero, 2025](#)), there are two main concepts regarding the beginning of human life: the natalist perspective, which asserts that life begins at birth, and the embryonic perspective, which holds that human life begins at conception.

The introduction of these concepts has influenced scientific understanding of when the right to life begins. [Warren \(2013\)](#) argues that an unborn being is not a person. “Simply being human — an organism with human DNA — is not sufficient for personhood. To be considered a full-fledged person, they must possess certain intrinsically valuable traits”. The scholar identifies five key characteristics of personhood: (1) consciousness and the ability to feel pain ([Abrosimov, 2022](#)); (2) reasoning; (3) self-motivated activity; (4) capacity for communication; and (5) individual self-awareness ([Kachay, 2023](#)). Any being lacking at least one of these traits is not a person. Since an embryo or fetus possesses none of these traits, it is not yet a person and “cannot be said to have full moral rights” ([Warren, 2013](#), p. 335; [Farizi, 2024](#)). [Klipstein and Daar \(2023\)](#) also emphasize that not all human beings are persons, for instance, embryos or individuals in a deep comatose state. These definitions are conceptual and philosophical viewpoints, but they have given rise to numerous disputes and debates on this issue.

Thus, an embryo refers to the product of human reproduction. The legal status of the embryo refers to the legal provisions related to the human embryo. However, there should be a set of agreed-upon norms derived from the definition of its nature, rather than just a few of the aforementioned scientific positions. Several scholars emphasize that an embryo cannot have legal status because its nature remains unknown ([Riofrío, 2022](#); [Kemper et al., 2023](#)). The very essence of the human embryo and the moment of its emergence as a person remain unknown.

Several countries (Italy, Poland) adhere to the embryonic concept, which defines the moment of the right to life as beginning at conception. [Lücke \(2012\)](#) argues that the intrauterine period of life is a necessary stage of human development and should be protected just as life after birth.

Scholars also hold differing opinions on when the right to life begins, due to varying moral and ethical perspectives shaped by religious norms, upbringing, and traditions ([Serebryakov et al., 2024](#); [Shoev and Abozaid, 2024](#)).

To understand the essence of the right to life, it is necessary to analyze its historical development. As early as the Laws of the Twelve Tables (451-450 BCE) which represent the first written source of Roman law, it was established that a child born after the death of their father (an heir) was considered a rightful successor and could be explicitly mentioned in a will ([Raz, 2010](#)). Later, this recognition of the unborn child as a full-fledged heir was affirmed in Gaius' Institutes, Justinian's Digest, and Cicero's speech *Causa Curiana* ([Raz, 2010](#)). In Roman law, human life was considered to begin at conception.

However, given modern realities, it is crucial to examine the emergence of the right to life in the context of contemporary legislation.

The primary legal document that member states of the Council of Europe are obliged to uphold is the European Convention on Human Rights and Fundamental Freedoms (hereafter referred to as the Convention) ([Council of Europe, 2013](#)) along with its Protocols. However, Article 2 of the Convention ("Right to Life") does not provide a clear definition of when this right begins, leading to conflicts among international legal documents.

The right to life is also enshrined in the vast majority of the constitutions of developed countries ([Polovchenko, 2022](#)). Legislators have explicitly stated that the right to life is a fundamental constitutional right that cannot be violated ([Polovchenko, 2023](#)). Nevertheless, a legal challenge remains within fundamental laws as they do not define the precise moment when human life begins. This omission creates a legal gap in determining the aforementioned aspects.

In general, it can be stated that in many countries (such as the United Kingdom, France, and Russia), the aspects of when the right to life begins are clearly defined as there are established time limits after which abortion is no longer permitted.

According to the Abortion Act of 1967 (the Parliament of the United Kingdom), abortions in the UK are allowed up to 23 weeks and 6 days of pregnancy. After the 24th week, abortions may only be performed under exceptional circumstances, such as when the woman's life is at risk or if the fetus has severe developmental abnormalities. Thus, the legislation provides for the possibility of abortion up to nearly the 24th week of pregnancy.

Under the World Health Organization (WHO) criteria for live birth and stillbirth, birth is officially recorded by medical authorities at the moment a viable infant is separated from the mother's body. Based on these facts, it can be concluded that human life is considered to begin at the moment of birth and the child's emergence into the world.

For the purposes of this study, it is necessary to examine the legislation of countries where a different understanding of the beginning of life is established, such as Poland. Following an extensive medical reform that began in 2015 and concluded in 2022, a ruling by the Polish Constitutional Tribunal came into force, imposing a total ban on abortion ([Government of Poland, 1993](#); [Polish Constitutional Tribunal, 2020](#)). This rule explicitly states that abortion at any stage of pregnancy is not permitted solely at the

woman's request. However, the ruling of the Polish Constitutional Tribunal sparked women's protests since many saw it as an infringement on their right to privacy, given that abortion was no longer an option in cases of unwanted or unplanned pregnancies.

The Polish Constitutional Tribunal clarified that abortion is only allowed in cases of rape or if the mother's life is at risk. Thus, Polish authorities uphold the position that human life begins at fertilization, with the formation of the embryo.

The right of a child to life is outlined in the Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation (*Donum Vitae*) issued on February 22, 1987, by the Congregation for the Doctrine of the Faith. This document addresses biomedical issues from the perspective of the Roman Catholic Church. According to this Instruction, the Catholic Church asserts: "A human being must be respected and treated as a person from the moment of conception; their rights as a person must be recognized, first and foremost the inalienable right of every innocent human being to life" ([Congregation for the Doctrine of the Faith, 1987](#); [Osadchuk, 2023](#)). Particular attention should be given to Article 4 of the Charter of the Rights of the Family formulated and issued by the Holy See on October 22, 1983.

This document defines a child's right to life both before and after birth, stating that abortion constitutes a direct violation of the fundamental human right to life ([Pontifical Council for the Family, 1983](#)). These doctrinal documents, since they happen to be rooted deeply in Catholic moral theology, influenced in a measurable way constitutional frameworks and legislative debates in Catholic jurisdictions ([Kulczycki, 2023](#); [Schulte, 2025](#)). For example, in Poland the Catholic Church has actively supported restrictive abortion laws and influenced party platforms and constitutional rhetoric, often framing legal reforms in terms of the sanctity of life rooted in Catholic teaching. They can inform the public discourse as well as mobilize political action also interpret the constitution with respect to the time when life begins and also whether abortion is permissible. However, the normative weight within such documents varies greatly among legal systems because the extent to which religious ethics are integrated into state law affects it. Catholic doctrine is something that has shaped certain national policies so that its direct legal authority is still limited to contexts in which confessional considerations do explicitly inform statutory interpretation or constitutional identity.

Similarly, the American Convention on Human Rights (1969), which applies to Latin American countries, also establishes in Article 4 that life begins at conception ([United Nations General Assembly, 1969](#)).

This concept is also typical of countries with the Muslim legal system, where abortion is considered a sin and an act of murder as it is believed that a child in the womb possesses full rights ([Lulu et al., 2024](#)). Under Islamic law, unborn children not only have the right to legal protection of their health and life but are also entitled to additional rights. To grant unborn children legal rights, Islamic law recognizes them under the status of *dhimma* ([Rohe, 2004](#)), i.e., a term traditionally referring to a special legal status granted to non-Muslim subjects.

Therefore, to protect the life and health of an unborn child, Islamic law provides specific rights according to Islamic criminal law and tort laws ([Shaukat et al., 2024](#)).

ECHR case law on the emergence of the right to life.

Given the varying interpretations of legal acts and differing perspectives on the emergence of the right to life, we believe it is necessary to refer to the jurisprudence of the ECHR as its rulings serve as an independent source of law. One of the first legal cases in this area was *Brüggemann and Scheuten v. FRG* ([European Commission of Human Rights, 1977](#)), which was reviewed by the European Commission of Human Rights. The case concerned Germany's abortion laws at that time which allowed abortion only in cases where pregnancy posed a serious threat to the woman's physical or mental health.

The complaint was filed through a group of persons employed at a family planning center who asserted that German legislation contravened their rights per Article 8 of the European Convention on Human Rights (the right to respect for private life). Within German law, an appropriate equilibrium existed between the interests of women as well as unborn children. Consequently, the Commission decreed that grievance was not a breach of Article 8. The Commission did recognize member nations possess large latitude to determine approaches to detailed, delicate subjects such as abortion. The complaint was rejected as "manifestly ill-founded" through the European Commission of Human Rights.

The case *Brüggemann and Scheuten v. FRG* was one of the earliest cases that addressed abortion in the area of European human rights law for it underscored the complexity along with sensitivity of such issues across different member states.

The European Commission of Human Rights scrutinized another pivotal instance, *Paton v. United Kingdom* ([European Commission of Human Rights, 1980](#)). This instance pertains to abortion statutes especially with respect to the Abortion Act 1967. The statute was present throughout the United Kingdom, notably England plus Wales.

The main complaint asserted an infringement upon Mrs. Paton's rights under Article 12 of the ECHR and of the unborn child's right to life under Article 2 of the Convention. The European Commission of Human Rights rejected the grievance. It asserted that Article 2 of the Convention does not immediately pertain to unborn children. Additionally, the Commission ascertained that Article 12 was not contravened since it ensures the entitlement to wed and safeguard households yet does not directly allude to the entitlement to bear children in matrimony. To reaffirm member states' discretion, this decree stressed abortion-related issues' complexity along with sensitivity during their addressing.

An altercation involving a man and a woman regarding their unborn child surfaced in the ECHR case "*Y v. Norway*" (2003) ([European Court of Human Rights, 2003](#)). The case pertained to their discord. The man contended that Norwegian statutes failed to safeguard the fetus, asserted a breach of Convention Article 2, because his partner underwent an abortion at 10 weeks gestation absent his authorization. Thereupon, the European Commission stated that each country construes the right to life autonomously, which endows them latitude to institute their specific legal timelines for ending pregnancies. Under Norwegian law, abortions are permitted at the woman's discretion up to the 12th week of pregnancy. Consequently, the ECHR did not find a violation of the right to life in this case.

Particular attention should be paid to the "*Vo v. France*" case (2004) ([European Court of Human Rights, 2004](#)) which remains highly controversial. The plaintiff was a

woman who lost her child in the sixth month of pregnancy due to a medical error. While hospitalized, the French citizen was mistakenly identified as another patient who had been scheduled for surgery based on medical indications. As a result of the procedures carried out by the doctors, the pregnancy was terminated, and the fetus did not survive. The French court dismissed the criminal charges against the doctor as national law did not recognize the embryo as having the status of a person. Consequently, Ms. Vo brought her case before the ECHR.

The ECHR noted that French legislation lacks a clear legal definition of an unborn child and that there is no European consensus regarding the legal status of an embryo. The Court explicitly avoided whether an unborn child qualifies as a person under Article 2 of the Convention. In this case, the Court emphasized that the dispute concerned the fatal injury of an unborn child against the mother's will, causing her significant suffering. Therefore, the Court ruled that the interests of the fetus and its mother were intertwined. Accordingly, the Court examined the legal protections available to the applicant in terms of the adequacy of existing mechanisms for proving medical negligence in the loss of the unborn child and seeking compensation for the forced termination of pregnancy. Since the case involved a violation of the right to physical integrity, the positive procedural obligation arising from Article 2 of the Convention did not necessarily require a criminal remedy. The applicant had the option to file a claim for damages against the authorities based on the doctor's negligence.

The Court held that the legal status of the unborn remains unclear under Article 2, and it refrained from defining whether fetuses are protected by this provision. The ECHR emphasized that the termination of pregnancy is not considered a violation of the right to life. However, it may be recognized as such under specific circumstances if a causal link leading to the death of the fetus is established.

Special attention should be given to the "A, B and C v. Ireland" case (2010) ([European Court of Human Rights, 2010](#)), in which the ECHR evaluated Ireland's restrictive abortion framework in light of Article 8 of the Convention. However, the Court did not generally recognize the right to abortion in order to specifically limit gestation (such as 12 weeks) for member states. It backed the margin of appreciation principle instead. So, the case concerned three Irish women who became pregnant against their will. Their complaint was based on the fact that the right to life is interpreted as beginning at conception in Ireland, making abortion illegal. As a result, the applicants were forced to travel to the United Kingdom for termination procedures, which they argued was degrading to their dignity. However, Irish law permitted abortion in cases where the mother suffered from a severe illness. One of the women had previously battled cancer and had undergone high-dose radiation therapy, which posed serious risks to pregnant women as it could lead to genetic abnormalities in the child.

Thus, the ECHR determined that Ireland had failed to fulfill its constitutional obligation to implement the constitutional right to abortion on medical grounds. Consequently, a violation of Article 8 of the Convention was established. However, regarding the claims made by the other applicants, the ECHR found no violations, emphasizing that each European country has the authority to independently interpret the emergence of the right to life ([European Court of Human Rights, 2010](#)). Considering these rulings, it is

evident that the ECHR supported the understanding that the beginning of the right to life is determined according to the legislative norms of each state that is a member of the Council of Europe.

Overall, authors of the article agree with the ECHR's assertion that the uncertainty surrounding the emergence of the right to life should not infringe upon a woman's private life, including the right to make decisions about her own body (e.g., childbirth). Any interference with a woman's personal life that prevents her from terminating a pregnancy would constitute a violation of her right to privacy. Several member states allow abortion upon request during the first trimester, but the ECHR does not establish a general right to abortion at any specific gestational stage. It acknowledges the nation's judgment inside its scope for interpretation.

CONCLUSIONS

The instant when the entitlement to life commences might be resolved diversely across nations because they contemplate particular sociocultural, religious, moral, medical, alongside other aspects. Lawmakers should reconcile safeguarding the entitlement to existence with deference toward a woman's entitlement to discretion, her capacity for deciding judiciously concerning her well-being, and her procreative entitlements.

A homogenous outlook upon the beginning of the right to life in international law is absent, yet forging circumstances for dialogue among disparate stakeholders is necessary. This confirms equitable assessment toward interests and arguments. Fundamentally, a person must delineate when the entitlement to existence commences after they comprehensively scrutinize all aspects of this matter to sufficiently safeguard the entitlement to existence and honor individual rights and liberties.

In light of the analysis presented, it is suggested that the law most cohesively acknowledges the right to life at birth when the child turns physically independent from the mother as well as enters society as a separate legal subject. This tactic always implements basic entitlements. It sidesteps intrusions against longstanding reproductive autonomy safeguards as well. Conversely, construing the entitlement to life as commencing upon conception or during early gestation may generate constraints on access to legitimate abortion and potentially attenuate a woman's right to privacy and individual autonomy, particularly in the absence of a European consensus and within the scope of discretion afforded to member states under the European Convention on Human Rights.

Overall, this issue remains highly debated, illustrating the difficulty of reaching a consensus due to the psychological factors involved in understanding abortion. It is argued that legal norms should be developed and adapted to align with contemporary standards.

Since the ECHR serves as an authoritative legal instrument, its interpretations in specific cases contribute to the application of the right to life. Analyzing relevant cases suggests that the ECHR plays a key role in applying judicial practice to resolve contentious issues. In particular, the Court's rulings may be considered well-founded, as they uphold a woman's right to confidentiality, recognize the legitimacy of artificial

pregnancy termination, support the scientific consensus that human life begins at birth, and affirm a woman's right to abortion at her discretion up to twelve weeks of gestation.

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