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INDIVIDUAL FREEDOM IN CIVIL LAW REGARDING INFORMED CONSENT IN THE CONTEXT OF ABORTION AND EUTHANASIA

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Summary of the PhD thesis

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CONTENTS

CONCEPTUAL LANDMARKS OF RESEARCH

The topicality and importance of the topic. Individual liberty is one of the fundamental pillars of civil law, essential for the protection and respect of human rights. In this context, informed consent and the protection of individual rights in situations such as abortion and euthanasia are highly topical and relevant issues. The analysis of national and international rules on these issues highlights the diversity of approaches and the cultural, religious and legal influences that shape them.

This study focuses on a comparative examination of the legal framework in Romania and other jurisdictions, with the aim to identify good practices and legislative gaps, as well as to propose improvements for the effective protection of individual rights[1].

A sense of freedom and justice was born and grew up. For man, freedom, as it has been conceived, is and always will be natural and legal. The concept of freedom has philosophical content as well as a legal dimension. The fundamental right to liberty is the highest value of society, i.e. the ability of an individual to think and act in accordance with his ideas and ideals, which is necessary and desirable in order to achieve the aims pursued and thus to realize himself in the objective world.

In its original sense, freedom implies the capacity to accompany all social manifestations, with the idea of the inviolability of a human being. Secondly, it appears as a set of rights guaranteed and secured by the Constitution. Personal liberty is a fundamental human right. They are formal and inalienable rights to the free development of human personality, guaranteed and enforced by norms such as laws, constitutions or other fundamental laws[2]. Personal freedom, as a fundamental human right, is a necessary condition for the development of modern society. A person lives in a society, is a member of a society, and therefore the degree of rights and freedoms recognized for him or her, as well as the rate of their actual migration, depend on the economic, social and political circumstances inherent to each individual person, depending on his or her situation.

According to some authors, the denial or limitation of personal autonomy, of fundamental rights, amounts to an oppression of the individual and, therefore, an unlimited expression of individual freedoms, and is tantamount to a denial of growth and social progress. It leads to the threat of anarchy and the disintegration of the organic unity

[1] Larenaudie judgment of 6 December 2007, judgment (1st Ch. Civ. appeal no. 061930. Bull civ. I, No. 380; D.2008, pag. 192, note P Sargos; RTDciv, 2008, pag. 303.

[2] Cernica, Viorel, *The Phenomenon and Nothingness I – The Phenomenological Project – Concept and Applications*, Paideia Publishing House, Bucharest, 2005, pp. 138-139, 154.

represented by the life of society. From the desire to avoid extraordinary circumstances, the level of human freedom is subordinated to the level of legal norms, determines the content and environment, which determines the "status libertatis" of the individual. Article 25 of the Constitution of the Republic of Moldova stipulates that "personal liberty and personal security are indispensable". For the first time in continental Europe, the Magna Carta Libertatum of 1215, the first constitutional law of Great Britain, stated that "no freeman shall be arrested, imprisoned or deprived of his property" without lawful authority or in other words prosecuted, unless we are entitled to be tried in our judgment, in a fair trial, by the same people and according to the laws of the land[3].

Aim of the paper and research objectives. The main purpose of this thesis is to comparatively analyze the rules on informed consent and the protection of individual rights in the context of abortion and euthanasia. The basic hypothesis is that harmonization of national legislation with international standards and clarification of the rules on informed consent will contribute to more effective protection of individual rights.

Informed consent has emerged as a central ethical standard in fundamental medical codes such as the Hippocratic Oath, the Geneva Declaration of 1948 or the International Code of Medical Ethics of 1949. The Minnesota Supreme Court's justice in Mohr v. Mohr emphasized that the patient must know that the physician will act only in his or her best interests, in accordance with the Geneva Declaration, respecting his or her right to self-determination in what he or she requests. According to the Human Rights Charter, "every adult with a mental disorder has the right to self-determination"[4].

Every patient has the legal right to choose which medical procedures can be applied to his or her body. In French and Canadian doctrine, this right is called autonomy. The patient must be informed in good faith. According to Art. 6 of Law No. 46/2003, "a patient has the right to be informed about his or her state of health, the proposed medical procedures, the risks that may arise in each regimen, whether there are currently alternatives to the recommended regimens, including non-treatment and non-adherence to medical suggestions, and information in preparation for diagnosis and prognosis".[5]

[3] The Constitution of the Republic of Moldova adopted on 29.07.1994 // Official Gazette of the Republic of Moldova, 1994, no. 1.

[4] Case of Klass and Others v. Germany (Application no. 5029/71), Judgment Strasbourg, 6 September 1978. Disponibil: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57510%22]}, accesat 02.01.2024, accesat în data de 30.11.2024

[5] LAW no.46 of 21 January 2003 on patients' rights, published in the Official Gazette no. 51/29 January 2003, Art 26

The scientific value of the results obtained during this research is found in the fact that the PhD thesis is, practically, a first attempt to review multiple problems and theoretical-practical aspects of the right to freedom of the human being with strict application to the termination of pregnancy and euthanasia as topical issues, being exposed the need for revisions and corrections in the legislation on abortion and euthanasia.

The thesis is also distinguished by the presentation of interdisciplinary implications in the field of individual liberty, by the comparative analysis of the way of protecting individual rights, all in the light of the two main objectives: the acceptance of the right of a woman to dispose of her own body, but also the possibility of admitting euthanasia as a way of expressing individual liberty, the right to human dignity.

The scientific problem solved refers to the research of national and international regulations, aiming to clarify some ambiguities in the national legislation on abortion and euthanasia and to fill, as much as possible, a legislative vacuum in this field, but also the issue of compliance with GDPR in the context of informed consent.

The theoretical importance is due to the fact that the totality of the formulated conclusions can serve as a scientific basis for the development and study of the complex of problems arising in the area of human rights to life and liberty, the legislative approach to the solution of these issues related to life and death, in the context of compliance with international provisions, the appreciation of different points of view in the legislation of nations, but not least from the European approach to them.

Summary of the research methodology and justification of the research methods chosen. The methodology used includes doctrinal, comparative and empirical research. Comparative research examines regulations in Moldova, Romania and other European countries to identify best practices. Empirical research involves interviews with specialists to understand the practical application of these contracts.

The research methodology is based on a comparative analysis of national and international rules, examining relevant case law and case studies to highlight good practices and challenges encountered in the application of legal rules. The interdisciplinary perspective, including elements from criminal law, theology and philosophy, will provide a holistic understanding of individual liberty.

The research methodology chosen is a survey of the normative works currently used to better inform individuals and clinicians about informed consent, its nature and content,

the specifics of obtaining informed consent, the legal implications and issues arising in clinical medical practice[6].

The approval of the research results took place at the University of European Studies of Moldova, where the doctoral thesis was evaluated within the Doctoral School of Legal Sciences and International Relations, specialization 553.01.

The scientific results were used in the educational process of the Faculty of Law of the University of European Studies of Moldova and the Faculty of Law of the "Danubius" University of Galati, Romania.

During the research, the preliminary ideas, conclusions and resulting recommendations were presented and validated at national and international scientific conferences and published in specialized journals, thus strengthening the relevance and scientific value of the work.

[6] LAW no.46 of 21 January 2003 on patients' rights, published in the Official Gazette no. 51/29 January 2003, Art 26

THESIS CONTENT

The dissertation is systematically structured in several sections, each having an essential role in deepening the topic "Individual liberty in civil law on informed consent in the context of abortion and euthanasia". This organization includes: annotations in three languages, list of abbreviations, introduction, four chapters, general conclusions and recommendations, bibliography, appendices and CV of the author. The entire work has been prepared according to the academic requirements applicable to this type of research.

In the **Introduction**, the current importance of the investigated topic is highlighted, emphasizing the gaps identified in the literature. The topic of individual freedom in civil law regarding informed consent in the context of abortion and euthanasia is an issue of major interest in the legislation of the Republic of Moldova and Romania, being closely related to the needs of vulnerable groups, such as women and elderly people, in the context of contemporary economic and social challenges[7]. This context responds to a growing demand for knowledge of individual liberty, which is one of the fundamental pillars of civil law and essential for the protection and respect of human rights. In this context, informed consent and the protection of individual rights in situations such as abortion and euthanasia are highly topical and relevant issues. The analysis of national and international rules on these issues highlights the diversity of approaches and the cultural, religious and legal influences that shape them.

This study focuses on a comparative examination of the legal framework in Romania and other jurisdictions, with the aim to identify good practices and legislative gaps, as well as to propose improvements for the effective protection of individual rights.

The scope of the study includes a number of specific objectives: the main objective of this thesis is to comparatively analyze the rules on informed consent and the protection of individual rights in the context of abortion and euthanasia. The underlying hypothesis is that harmonization of national legislation with international standards and clarification of the rules on informed consent will contribute to a more effective protection of individual rights.

Informed consent has emerged as a central ethical standard in fundamental medical codes such as the Hippocratic Oath, the Geneva Declaration of 1948 or the International Code of Medical Ethics of 1949. The Minnesota Supreme Court's justice in Mohr v. Mohr

[7] Avornic Gh. Treatise on the General Theory of State and Law. Chisinau: Central Printing House, 2010, ISBN 9975703704, 9789975703703, page 12

emphasized that the patient must know that the physician will act only in his or her best interests, in accordance with the Geneva Declaration, respecting his or her right to self-determination in what he or she requests. According to the Human Rights Charter, "every adult with a mental disorder has the right to self-determination"[8].

The Declaration on the Promotion of Patients' Rights in Europe was made public at the World Health Organization's European Dialogue, which took place in Amsterdam on 28-30 March 1994. This Declaration includes a set of principles[9] for the promotion and implementation of patients' rights in the European member states of the World Health Organization and was subsequently reintroduced by the laws of the respective European countries. The expression of this statement has been realized in Romania in the Patients' Rights Law no. 46/2003[10]. Law No 46/2003 was adopted by Decree No 386/2004 of the Minister of Health[11]. Informed consent is also regulated by other legislation, namely:

- Title XVI "Civil liability of doctors and providers of medical, sanitary and pharmaceutical products and services" of the Law no. 95/2006 on health sector reform.
- Rule no. 482/2007 for the approval of the Rules of Procedure for the application of Title XVI "Civil liability of medical personnel and the provider and medical, sanitary and pharmaceutical services"[12] of Law no. 95/2006 on health sector reform.
- Opinion SOC/221 of 26 September 2007 of the European Economic and Social Committee on Patients' Rights - was based on a civil society initiative 'European Charter of Patients' Rights', developed by the Active Citizenship Network (a European network of organizations) in 2002.

[8] Case of Klass and Others v. Germany (Application no. 5029/71), Judgment Strasbourg, 6 September 1978. Disponibil: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57510%22]}, accesat 02.01.2024, accesat în data de 30.11.2024

[9] Barnes, J. Brendel, M. Gao, V.R. Suraj Rajendran, Junbum Kim, Qianzi Li, Jonas E Malmsten , Jose T Sierra , Pantelis Zisimopoulos , Alexandros Sigaras , Pegah Khosravi , Marcos Meseguer , Qiansheng Zhan , Zev Rosenwaks , Olivier Elemento , Nikica Zaninovic , Iman Hajirasouliha ...*A non-invasive artificial intelligence approach for the prediction of human blastocyst ploidy: a retrospective model development and validation study*, Lancet Digit Health. 2023; 5: e28-e40, doi: 10.1016/S2589-7500(22)00213-8.

[10] LAW no.46 of 21 January 2003 on patients' rights, published in the Official Gazette no. 51/29 January 2003, Art 26

[11] URL: https://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=39946 accessed on 30.11.2024.

[12] URL: https://legislatie.just.ro/Public/DetaliiDocumentAfis/177 accessed on 29 December 2023, accessed on 28.11.2024

- - Recommendation No. R (97) 5 adopted by the Committee of Ministers of the member states of the Council of Europe on February 13, 1997, on the protection of medical information[131415].

In 1847, the American Medical Association wrote the Code of Medical Ethics of the American Medical Association, which Worthington Hooker expanded in 1849[1617].

In 1947, after the Nazi war crimes trials in Nuremberg, the paper known as the Nuremberg Code was created, containing 10 conditions that doctors must observe during clinical trials involving humans. Subsequently, the emergence of new drug molecules and advances in technology necessitated the convening of the World Medical Association in 1964 in Helsinki to discuss ethical standards for medical research on human subjects.

Informed consent in clinical research is currently governed by the ICH-GCP guidelines promulgated in Brussels in April 1990, revised in 2002. These 16 guidelines include a set of common national/regional strategies applicable in the EU, Japan and the United States. The ICH-GCP guidelines provide a good general standard for the design, conduct, registration and reporting of clinical studies (trials) involving human participants. Joseph J. Finney and Pablo Rodriguez studied informed consent at the cultural level and how it affects the presentation of information at this stage. The literature has also analyzed the introduction of electronic informed consent, which would have benefits in terms of patient accessibility and better data integration. A recent study shows that social networks such as Facebook and Tik Tok can emotionally manipulate people; the authors identified many controversies in informed consent that need to be analyzed from all perspectives[18].

Every patient has the legal right to choose which medical procedures can be applied to his or her body. In French and Canadian doctrine, this right is called autonomy. The

[13] Order no. 386/2004 of the Minister of Health was published in the Official Gazette, Part I no. 356 of 22.04.2004

[14] International Covenant on Civil and Political Rights, New York, December 16, 1966, ratified by the Republic of Moldova by Parliament Decision no. 217-XII of 28.07.1990 // International Treaties. Vol. I, 1998, p. 33, or the original on the official UN portal - http://www.un.org/russian/documen/convents/politpact.pdf, accessed on 29.11.2024

[15] URL: https://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=39946 accessed on 30.11.2024

[16] Meisel, A., Kuczewski, M. *Legal and ethical myths about informed consent*". In: Arch. Intern. Med. 1996, no. 22, vol. 156, pp. 2521–2526. ISSN 1538- 3679

[17] Popa Vasile, Popeti Comeliu, Adamescu Ion. *Human rights (concept, legislation, state practice).* Romanian University Press Publishing House, Timișoara, 1994, p. 34

[18] Jean–René Binet, *Droit medical*, Montchrestien, Paris, 2010, pag. 131 ; Jean–René Binet, *Droit de la Bioethique*, 2023, LGDJ Manuels, 2-ieme edition, p. 129-131.
Joseph J. Fins și Pablo Rodriguez, *Too Much Information: Informed Consent in Cultural Context*, Acad. Med. 2011; 86:321-325; Mallardi, V. *The origin of informed consent.* In: Acta Otorhinolaryngol. Ital. 2005, no. 5, vol. 25, pp. 312-327. ISSN 0392100X.

patient must be informed in good faith. According to Art. 6 of Law No. 46/2003, "a patient has the right to be informed about his or her state of health, the proposed medical procedures, the risks that may arise in each regimen, whether there are currently alternatives to the recommended regimens, including non-treatment and non-adherence to medical suggestions, and information in preparation for diagnosis and prognosis".[19]

The research methodology utilizes a multidisciplinary approach and integrates doctrinal, comparative methods. The research methodology is based on a comparative analysis of national and international rules, examining relevant case law and case studies to highlight good practices and challenges encountered in the application of legal rules. The interdisciplinary perspective, including elements from criminal law, theology and philosophy, will provide a holistic understanding of individual liberty.

The research methodology chosen is a survey of the normative works currently used to better inform individuals and clinicians about informed consent, its nature and content, the specifics of obtaining informed consent, the legal implications and issues arising in clinical medical practice.

The Declaration on the Promotion of Patients' Rights in Europe was made public at the World Health Organization's European Dialogue, held March 28-30, 1994 in Amsterdam. This declaration includes a set of principles for the promotion and implementation of patients' rights in the European Member States of the World Health Organization and was subsequently adopted by the legislation of each European country. The wording of this statement was spelled out in Romania in the Patients' Rights Law number 46/2003. Law 46/2003 was implemented by Order 386/2004 of the Minister of Health.

Informed consent is also regulated by other normative laws, namely:

- Title XVI "Civil liability of doctors and providers of medical, sanitary and pharmaceutical products and services" of Law No 95/2006 on health sector reform.
- Rule No. 482/2007 for the approval of the Rules of Procedure for the application of Title XVI "Civil liability of medical personnel and medical, sanitary and treatment providers and services" of Law No. 95/2006 on health sector reform.
- Opinion No. 221 of 26 September 2007 of the European Economic and Social Committee on Patients' Rights - which was based on a civil society initiative

[19] LAW no.46 of 21 January 2003 on patients' rights, published in the Official Gazette no. 51/29 January 2003, Art 26

"European Charter of Patients' Rights", developed by the Active Citizenship Network (a European network of organizations) in 2002.

- Recommendation No. R (97) 5 adopted by the Committee of Ministers of the member states of the Council of Europe on February 13, 1997, on the protection of health information.

Since 50 BC. Ch., the father of medicine Hippocrates, left the first written rules of medical law in which the physician is advised to provide information to the patient before performing the medical procedure. These grants were later taken up by Henry de Montville, Benjamin Rush and Thomas Percival. The latter wrote the first modern code of medical ethics in 1803, entitled Medical Ethics - Code of Institutions and Teaching, adapted to the European Union of Surgeons.

Subsequently, the emergence of new drug designs and advances in technology necessitated the convening of the World Medical Association in 1964 in Helsinki to discuss ethical standards for medical research on human subjects. Informed consent in clinical research is currently governed by the ICH-GCP guidelines promulgated in Brussels in April 1990, revised in 2002. These guidelines include a set of common national/regional practices adopted in the EU, Japan and the USA. The ICH-GCP guidelines provide a good general standard for the design, conduct, registration and reporting of clinical studies (trials) involving human participants[20].

Joseph J. Finn and Pablo Rodriguez studied informed consent at the cultural level and how this context affects information processing. Special literature has also analyzed the introduction of electronic informed consent, which would have benefits both in terms of "patient addressability" and better integration of information.

The extraordinary advances in medical technology, the high cost of health care, the increasing demands and expectations of the population and changing values require that some of the old moral principles need to be revised or re-applied.

Both the doctor and the patient need to understand the principles behind medical decisions, which determine how those decisions are made today.

A person's fundamental rights derive from the recognition of his or her status as a human being, his or her life and freedom are invincible, especially when he or she is vulnerable.

[20] Pădure, A. Ethical and legal aspects of informed consent of the patient. In: Public Health, Economics and Management in Medicine. Chisinau, 2011, no.1(36), p.57-61. ISSN 2587-3873

The central principle is the concept of self-determination, which assumes that each individual is responsible for his or her own actions and body. It is very important to emphasize that every decision is the patient's own, with the doctor as an advisor. As the autonomy and responsibility of each individual, including those in need of medical care, are accepted as important values, their engagement or involvement in making decisions about their body or health should be recognized as a universal right.

Informed consent is consent communicated to the patient for a medical action.

According to Article 4(11) of the GDPR: "the data subject's consent means a freely given, specific, informed and unambiguous indication of the data subject's wishes, which, by a statement or explicit act, signifies his or her agreement to the processing of personal data about him or her or how it will be used", according to his or her own ideas.

This definition is broader than the definition in Directive 95/46/EC, currently in force, according to which "consent is an independent, specific and informed indication of the data subject's wishes indicating his or her agreement to personal data being 'processed' or used[21].

Behind this broader formal definition, the GDPR includes elsewhere a number of elements that outline the conditions that must be met by consent in order to be considered valid. These elements will be briefly outlined below.

Informed consent includes three parts to be valid:

a) Information consists of the provision of relevant medical information and information by the physician about diagnostic and treatment options as well as their consequences, danger and understanding of the disease.

b) Decision-making capacity, referring to the patient's ability to understand, choose or refuse an intervention, to exercise consent and to evaluate the consequences of the decision[22].

c) Autonomous decision-making refers to the patient's right to make an independent decision without coercion or stimulation.

Consent can be given in two ways:

- through transparency (oral, written or video recordings, and witnesses outside the medical facility);

[21] Tzanou, M., *Health Data privacy under the GDPR*, Routledge Publisher, 2020, p. 45-47

[22] Oudeyer, P-Y. (2010). „*On the impact of robotics in behavioral and cognitive sciences: from insect navigation to human cognitive development"* (PDF). IEEE Transactions on Autonomous Mental Development.: 2–16. doi:10.1109/tamd.2009.2039057. Arhivat din original (PDF) la 3 octombrie 2018. Accesat în 18 martie 2019, accesat în datat de 20.11.2024

- implied (when the patient expresses consent to a medical treatment or procedure through his/her behavior).

To be lawful, consent must be informed, i.e. the patient must know and understand the information communicated to him or her.

Consent must be free, specific, informed and unequivocal. This criterion is mentioned in the definition of type-approval in Directive 95/46/EC, which, but does not include other relevant details and the meaning of this concept. However, this position was developed on the basis of one of the Working Party's assumptions in Article 29 - informal activities[23].

The legal breach is now covered by the GDPR, which provides further details on this situation. Thus, under GDPR, consent will not be freely given if:

- The person in question does not actually have the freedom of choice, nor is he or she in a position to refuse or withdraw consent lest it be destroyed;
- There is a clear imbalance between the informant and the auditor, especially if the auditor is a habit of the manager. For example, this requirement would call into question the validity of the employee's consent for data processing by employers. In Romania, employers generally process data on the basis of consent. Therefore, it should be considered whether, after May 25, 2018, they can still rely on employee consent as a basis for the use of the information;
- The way in which consent is given does not allow consent to be given for different data processing activities, although this is specifically sufficient in the case in question (called granular consent). As a result, controllers will no longer be able to use 'catch all' consent statements;
- The performance of a contract or the provision of a service is subject to consent, although consent is not required for the performance of the contract. This approach is often encountered in practice. The GDPR therefore warns that operators may not 'force' consent, justifying that refusal would result in a potential benefit from the services provided under a contract with the operator, if the processing is not necessary for the provision of the relevant services[24].

[23] Pădure, A. Ethical and legal aspects of informed consent of the patient. In: Public Health, Economics and Management in Medicine. Chisinau, 2011, no.1(36), p.57-61. ISSN 2587-3873

[24] https://www.coe.int/t/dghl/standardsetting/dataprotection/EM/EM_R(97)5_EN.pdf accessed on 28.11.2024

Very broad consent given for general, unspecified purposes is invalid. To be considered valid, management must clearly identify the purposes of the processing, and the consent must include all work activities carried out for the same purpose. In addition, if data are processed for more than one purpose, consent must be given for all purposes of processing.

Where data processing is carried out for scientific research purposes, there is no obligation to fully identify the purpose of the processing, which, as the subject of scientific research, is sufficient for data subjects to be able to consent to certain aspects of the research identified by the user. However, the requirement of 'granularity' of consent, i.e. providing the possibility for data subjects to consent only to certain aspects of the research or parts of the research projects (to the extent permitted by the intended purpose), must be respected.

Both the current regulations and the GDPR provide that personal data must be processed in a transparent manner, by informing commenters of posts about the existence of data processing and the contexts in which it is processed. Compared to the current provisions, Articles 13 and 14 of the GDPR provide new information that the organization must provide (e.g., the legal basis for the processing; the expected duration of the information processing or the criteria for determining the interval or whether there is automated decision making)

In addition to the current rules, the GDPR also provides some clarifications on the process of processing this data, with a direct impact on effective consent.

Information and communication about the use of the data should therefore be easily accessible and understandable, using simple and clear language. In other words, operators will need to review the content of the explanatory notes and ensure that the simplicity and clarity of the message are respected. Explanatory notes that contain highly technical terms, containing language that is difficult for a lay consumer to understand, are unlikely to meet this requirement and may call into question the validity of consent.

The need for clear and plain language can also cause problems for employees working online, such as writing a comment in a foreign language - which commenters may not recognize. Thus, when creating descriptive statements or policies for information displayed on websites/online platforms, operators are likely to use the language of each jurisdiction in which the article is subject, of course to avoid potential consent discussions.

Unambiguity is not a new requirement in privacy law. Art. 5(1) of Law 677/2001 provides in principle that personal data can only be processed if the natural person has given his or her unambiguous consent to it. Neither Directive 95/46/EC nor Regulation No 677/2001 define the meaning of this term.

GDPR provides some clarification on what unambiguous consent means. Therefore, in order to be considered unambiguous, it must be in the form of a statement or action that clearly indicates the intention of the person to whom the information is provided to give consent.

When it comes to informed consent in the form of data, things are clear - this includes written and signed statements, as well as verbal comments from recipients about their acceptance of the information processing.

What actions clearly indicate a person's intention to consent? Here are some examples of GDPR:

a) checking a box when visiting a Web page.

b) choosing criteria for information society services.

(c) any other statement or action that clearly indicates the recipient's acceptance of the proposed action in a particular context.

The following examples can be included in the overview described below c):

- provision of your e-mail address when creating an account on an online platform in a box next to it you select the policy, and below the box there is a short message like "your e-mail address is used to send you commercial communications about our products and/or services.
- the processing of body measurements information by a tailor when the customer asks for the information to make some clothes and gives us the body measurements; this can be considered unless the informant has permission and if he allows the tailor to take the body measurements necessary to make the clothes.

Importantly, the GDPR clearly states that failure to respond or process cannot be considered valid consent. Nor can pre-ticked boxes on web pages or software applications be called viable methods of expressing consent.

Finally, the GDPR provides that where the data subject has more than one connection with the third party, the request for consent must be presented in a way that is clearly distinguishable from other matters (e.g. it would not meet the requirement of

unambiguous consent or information that includes the conclusion of an agreement and an agreement to share information).

Directive 95/46/EC requires explicit or implicit consent only in the case of data of a characteristic nature (e.g. racial or ethnic origin, political or religious beliefs, health or sexual health information).

According to Law No 677/2001 consent to data processing must be express and unequivocal, without discrimination as to the type of data processing, i.e. normal or special data. This legal irrelevance to European law has, in practice, raised questions as to where the rule of Art. 5 para. (1) of Law 677/2001, i.e. whether express (explicit) consent was required in all circumstances, or only in the case of exceptional data, as explained by Directive 95/46/EC (the general action provided for by Law 677/2001)[25].

The GDPR preserves the distinction established in Directive 95/46/EC between unambiguous consent for routine personal data and implied and implicit (expressed) consent for special information, thus eliminating the difficulties that arose under Law 677/2001 regarding the nature of consent in the case of routine statements.

However, it should be noted that, in addition to special data processing, the GDPR also specifies other cases where unequivocal and express (explicit) consent is required, namely: processing of data when it is subject to a restricted subject (Art. 18 and Art. 2 GDPR); acceptance of orders based on automated processing, including profiling operations (Art. 22 (1) GDPR); transfer of personal data to countries not recognized as having an adequate level of protection (Art. 49 (1) a) GDPR).

The GDPR explicitly addresses the issue of consent of minors, starting from the premise that "minors need some protection of their personal data because they may be less aware of risks, side effects, questionable safeguards and, in relation to their rights, the use of their personal information. The GDPR recalls that this protection is necessary in particular in the case of marketing to children, the creation of identity or user data, the collection of personal information about children when using services provided directly to children and in general at the level of services offered by information associations.

The GDPR therefore states that the processing of data of minors on the basis of consent will only be lawful if the child was at least 16 years of age when he or she gave consent. In the case of children under 16, parental/guardian consent or permission is required. It is important to note that controllers must make reasonable efforts (based on

[25] URL: https://lege5.ro/Gratuit/gy3dsnry/decretul-lege-nr-1-1989-privind-abrogarea-unor-legi-decrete-si-alte-acte-normative , accessed on 30.11.2024

available technology) to verify that the parent/guardian has given consent or has authorized the minor's consent.

Finally, the status of 'informed consent' must be determined in the case of minors, with explanatory data underlying the consent in simple and clear language so that minors are easy to understand. Operators should therefore bear in mind that in this case, the requirements of convenience and accessibility are even stricter than the word.

Article 660 para. (2) and (3) of the Law no. 95/2006 regulates the process of transfer of medical information: 'after receiving the written consent of the patient, the doctor, dentist, nurse are obliged to present the information to the patient in a scientific context appropriate for the patient's understanding[26].

The text of the agreement will be read aloud to the illiterate or blind patient; the patient is asked if this represents his or her wishes, and the doctor will write down what is said.

The information will be presented in a way that enhances understanding, in a respectful and clear manner.

The information will be presented in a neutral manner that does not influence the subject, considering the patient's cultural context and social background.

The content of the consent will specifically indicate the proposed treatment (such as cholecystectomy).

It is better to convey useful information in order to make a fully informed decision. The patient can ask questions that the doctor must answer in a way that the patient understands. In the case of foreign nationals, they have the right to access information in an internationally spoken language, such as English, or through a translator if they do not know such a language.

The patient can indicate whether he/she wishes someone else to access the information on his/her behalf. According to Art. 8 of the Rules of Procedure for the application of Title XVI of Law 95/2006, the patient's written consent must contain the following elements: the patient's name, surname and place of residence or, where appropriate, place of domicile, profession plus other data required by the doctor, and at the same time a summary of the information provided by the doctor, dentist,

[26] Regulation for carrying out the voluntary interruption of the course of pregnancy, Order of the Ministry of Health of the Republic of Moldova No. 647 of September 21, 2010

nurse/midwife, together with the unconditional permission to practice medicine, name and date of approval, must be submitted[27].

The physician's attitudes toward consent and his or her conduct may fall into the anti-patient category if:

- speed of action in an emergency - no hazard warning needed.

- practical activities - it is necessary to warn of many hazards.

- cosmetic intervention - it is necessary to warn of all hazards.

Informed consent is required when the patient is undergoing a potentially invasive medical intervention, such as analgesics, surgery, acute interventions, but also in the case of aggressive or new medical treatments (vaccines).

Concerning the list of medical services where mandatory informed consent is required, we would like to emphasize that this is not legally regulated in Romania. For this reason, we turned to the Moldovan 'model';[28] Therefore, according to the Decree No 303/2010 of the Ministry of Health of the Republic of Moldova we distinguish:

I. Surgical interventions, including minor surgical interventions.

II. Parenteral interventions, including vaccines.

III. Certain medical services.

VI. Medications with certain side effects or high risk.

In certain cases, patient consent is not required. In the following, we discuss exceptions to the informed consent rule, namely:

a) emergencies requiring interventions for unconscious patients. In such cases, immediate intervention is necessary to save the patient's life or to maintain stable health. Any reasonable person would agree to follow the recommended treatment in such circumstances, especially since any delay would have fatal or particularly serious consequences.

Exceptions to the requirement to obtain permission in emergency situations are also limited in certain circumstances. Doctors must not use unapproved emergency medicines if there is an indication that the patient will refuse treatment (for example, members of Jehovah's Witness religious sects refusing blood transfusions).

b) Severe psychiatric conditions requiring involuntary hospitalization of mental patients.

c) Treatment of irresponsible patients with infectious diseases.

[27] National Strategy for Reproductive Health in the Republic of Moldova for 2005-2015
[28] *idem*

d) Medical rights.

It is sometimes necessary to withhold traumatic information from the patient in the process of obtaining consent for treatment, such as when, for example, the patient suffers from an incurable disease. The patient's right to know or to be informed about the seriousness of their illness must be balanced against the right not to know, if informed, it can cause a painful state of helplessness and mental collapse, as it requires intensive lifelong physical exercise aimed at problem-solving.

The right not to know is very important in providing information about physical condition or early detection of hidden diseases where they manifest themselves many years later (such as Huntington's disease). On the other hand, this right not to know does not apply if a person needs to receive information that would allow them to protect others by modifying their behavior. For example, a positive test result for a sexually transmitted disease should not be withheld by the patient.

e) waiver by the patient of the right to be fully informed about his or her illness.

f) the need to postpone surgery while the patient is still under anesthesia.

The **Introduction** introduces the objective on which the whole work is centered: individual liberty, which is one of the fundamental pillars of civil law, being essential for the protection and respect of human rights. In this context, informed consent and the protection of individual rights in situations such as abortion and euthanasia are highly topical and relevant issues. The analysis of national and international rules on these issues highlights the diversity of approaches and the cultural, religious and legal influences that shape them.

This study focuses on a comparative examination of the legal framework in Romania and other jurisdictions in order to identify good practices and legislative gaps, as well as to propose improvements for the effective protection of individual rights. According to some authors, the denial or limitation of personal autonomy, of fundamental rights, amounts to an oppression of the individual and, therefore, an unlimited expression of individual freedoms, and is tantamount to a denial of growth and social progress. It leads to the threat of anarchy and the disintegration of the organic unity represented by the life of society. Out of a desire to avoid extraordinary circumstances, the level of human liberty is subordinated to the level of legal norms, determines the content and the environment, which determines the "status libertatis" of the individual. Under these circumstances, freedom is a social value determined by the stage of development of society and is often the right to evaluate all legitimate characteristics, attitudes, interests

and desires of the person. Article 25 of the Constitution of the Republic of Moldova states that "personal liberty and personal security are indispensable".

The following general provisions should be added to the guidelines of the European Convention: the constitutional provisions, namely: 'without infringing personal liberty and security of person', deoareece individual liberty, like all human freedoms, is not, cannot and must not be[29] absolutely restricted "for the purpose of realizing a substantial value only by law"; The Constitution of the Republic of Moldova stipulates in Article 54(2) that "The exercise of rights and freedoms may not be subject to restrictions other than those prescribed by law, in accordance with the conditions unanimously recognized by international law and is necessary "in the interests of national security, territorial integrity, sound economic security of the country, public order, protection of the rights, freedom and dignity of others, to prevent the disclosure of confidential information or to ensure the authority and to exclude the impartiality of justice", a measure that interferes with the guarantee and cannot affect the existence of the right or freedom (Art. 54, para. 4 of the Constitution of the Republic of Moldova). Based on the nature of 'individual liberty', restrictions are deliberately imposed on this right by the rule of law in general, and to protect the rule of law in particular, in the conduct of criminal investigations In particular documents, reference is made to 'the activities of participants in public power, to restore the rule of law, and violence (if any) is and should be limited and clearly defined so as to respect the personal liberty that should thus exist. There are also innocent people who may become victims of abusive acts, which may be politically motivated.

In **Chapter I** entitled "Analysis of the situation in the field of the protection of individual liberty" the right to life is analyzed in detail as the most natural human right. It was established early in the legal system, being enshrined in the earliest declarations of rights and, of course, in the Constitution. It is a citizen's right with which the inventory of human rights begins in the most important international human rights instruments. Most of these acts were adopted after the Second World War under the aegis of the United Nations. They underpin the whole international construction of human rights. They influence national human rights laws, and their provisions constitute international human rights standards.

The protection of life and defense of the person is one of the main objectives of all legal systems. This is not only defining not only for the biological and physical existence

[29] http://www.eesc.europa.eu/?i=portal.en.soc-opinions.14224, accessed on 29.11.2024

of the human entity, but also for the existence and social evolution of humanity. The law protects not only the interest of each individual to live, to preserve and prolong his or her life, but above all, the interest of society that the life of each individual is preserved and respected by others, the preservation of the life of individuals being decisive for the existence of society, which can only be conceived as made up of living individuals.

In principle, the right to life creates a negative obligation on the State not to do anything that would arbitrarily take a person's life. However, in the light of ECHR case law, States' obligations can also be positive obligations when they have an obligation to ensure the protection of the person, particularly those who are in distress or in vulnerable situations.

Chapter II considers all these situations in relation to the national legislations of Romania and the Republic of Moldova, with a view to further addressing two delicate and much discussed in legal doctrine and case law, in relation to the principle of protection of life and defense of the person.

This chapter covers "The legal framework of informed consent and contemporary challenges: Legislative developments and comparisons between different legal systems", because obtaining consent has ethical, legal and, not least, aspects that are "useful that both clinicians and patients should be aware of for their good practice".

According to art. 6 of Law no. 46/2003, the patient has the right to be informed about his or her state of health, the proposed medical procedures, the conclusions, the potential risks associated with each method, the existing alternatives to the proposed methods, including over-the-counter and without treatment and to undergo recommended therapy and treatments and regimens, the lack of adherence to medical recommendations, as regards diagnostic and predictive data.

Furthermore, the Oviedo Convention, which is a binding transnational legal instrument in the field of medical human rights, provides in Article 5 that a health intervention may only be carried out after the person concerned has given free and informed consent. In this context, the patient must receive adequate prior information on the purpose and nature of the intervention, as well as on the consequences and risks.

In its turn, the European Charter of Patients' Rights of the European Union, in art. 3. and 4 stipulates the right to information and informed consent of patients[30].

[30] Charter of Fundamental Rights of the European Union (2010/C 83/02), Official Journal of the European Union C 83/389 of 30.03.2010.

We can regard the informed consent of the patient as an intrinsic component of the medical act that cannot be dissociated from it. It can therefore be said that the medical act involves at least two essential components: an ethical component (which includes informing the patient and obtaining his or her consent) and a scientific component (which includes the actual prevention, diagnosis and treatment procedures).

Every patient has the legal right to decide which medical procedures may be applied to his or her body, and informed consent is imperative for any medical intervention. In order to make an informed decision, however, the patient must be fully informed about his or her state of health, the proposed medical procedures, the potential risks and benefits of each procedure, alternatives to the proposed procedures, diagnosis, prognosis and treatment progress.

Obtaining informed consent has ethical, legal and, last but not least, practical implications and consequences that should be known by both physicians and patients for their proper application.

According to the legal provisions in Romania, the patient has the right to be informed about his/her state of health, the proposed medical interventions, the potential risks of each procedure, the existing alternatives to the proposed procedures, including the non-treatment and non-compliance with medical recommendations, as well as about the diagnosis and prognosis.

It is necessary to understand the data for clinical decision-making by clinicians and patients, and the elements that shape how decisions are made today. Fundamental human rights derive from the recognition of the human condition, the inalienability of life and liberty, especially for young people in distress. The central principle is the concept of self-determination, which implies that everyone is responsible for his or her own actions and body. It is important to emphasize that every decision rests with the patient, with the physician as his or her advisor. Since the autonomy and responsibility of individuals, including those in need of medical care, are considered important values, participation or non-participation in decisions concerning one's body or health should be recognized as universal rights.

Chapter III, entitled "Interdisciplinary implications of individual liberty: Elements of criminal law, theology and philosophy", presents personal liberty, as a fundamental human right, as inextricably linked to criminal law. It is therefore necessary to carry out an analysis that limits possible interferences between personal liberty and other fundamental rights and freedoms when applying the legal limits of personal liberty. There

are no absolute rights, but other fundamental freedoms or rights are also affected by the internal exercise of the right, the inviolability of correspondence and the privacy of family and private life. These will therefore be considered together.

Violations of human rights also lead to consequences of violations of human freedoms. The limit is very strict, as it is constitutionally laid down in Article 53. Of course, it is of a general nature and cannot cover all the specific situations that may arise in social reality. The main thing is to respect the limits thus established in relation to the beneficiaries of the restriction, the competence and foreseeability of the restriction, the possible grounds, the need in a democratic society for proportionality of the situation that determines it by non-discriminatory application and, in particular, the need for immateriality of the existence of the right or freedom. Only by respecting these conditions can the individual be free, even in a democracy, because liberal democracy is based on liberty and equality, with liberty and equality as the means to the ends of society. It is not true that the abuse of human rights always leads in the end to immorality and corruption, that is to say, to a form of immorality which requires the adoption of urgent procedures to eradicate this form of corruption as a way which can lead to the destruction, the degradation of society.

According to Art. 28 of the Constitution of Romania and Art. 30 of the Constitution of the Republic of Moldova, "The confidentiality of letters, telegrams, other postal messages, telephone calls and other lawful means of communication is inviolable" and according to Art. (1) and, consequently, art. 28 "Public authorities shall respect and protect private, family and private life".

Regulations aimed at protecting the same rights are also to be found in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights.

As it can be seen, these two rights, although expressly provided for in the Romanian Constitution, are mainly related to intimate family and private life, which is in line with the provisions contained in all constitutions of democratic states. This right implies that every person should enjoy the privacy of his or her private life, that his or her right to his or her image should be respected, that his or her personal data should not be made public without his or her express consent, requirements which are increasingly difficult to meet in today's world due to the unprecedented development of the mass media. The constitutional regulation of secrecy of correspondence is therefore, in our opinion, a kind

of tribute to the intimate family and private life, which in turn is subordinate to the large family in relation to fundamental rights and freedoms.

The constitutional institution of the secrecy of correspondence is also reflected in the issue of substantive law by criminalizing the offense of violation of the secrecy of correspondence, provided for and punishable by Article 227 of the Criminal Code and, as an additional guarantee, the offense of revealing a professional secret, provided for and punishable by Article 302 of the Criminal Code.

Analyzing the aforementioned conventional, constitutional and legal provisions, it emerges that the right to secrecy of correspondence is not absolute and may be limited for reasons imposed in a democratic society by the need to protect national security, conduct criminal investigations, prevent criminal investigations and other such public imperatives. According to Article 1, para. 1 of Part 3 of the Constitution: 'Romania is a democratic and social state based on the rule of law, in which human dignity, citizens' rights and freedoms, the free development of the human personality, justice and political pluralism are the highest values. and are guaranteed". In order to effectively protect all these values, in some cases and under strictly regulated conditions, it is necessary to restrict the exercise of even some fundamental rights and freedoms.

If criminal law follows European and international norms on personal autonomy, the theory begins in the creation of man on earth, saying that "Life and death are before man and it will be given to them as they will". (Exodus 9:17) The responsibility rests entirely with man, for God has given him the knowledge of good and evil and free will. Providence is God's greatest and most sacred gift to man. Without freedom man would not be man. The freedom that has been granted to him - free will - gives man the right to consider himself master. Manage yourself and all that God has given you and you become the field for the development of imagination, creativity and all values. This great gift, freedom, gives man the right to use his life, his happiness or his misery. Man has received from God the right, but also the power, to choose happiness or misery, life or death. "I have set before you life and death, good and evil" (Deuteronomy XXX, 15). When we speak of freedom, we mean not only physical freedom, but also spiritual freedom, which is much more important than external freedom. Inner freedom - spiritual and moral - is the source, the foundation, the reward of outer, material and social freedom.

God gave man at creation, spiritual freedom, which is based on moral freedom, and which means to redeem man to free him from sin and transgression, which means to fight against the sins that bring him into bondage and bring all the problems in personal and

social life. We can speak of a free person when he has the power to act, when he is beyond the limits of sin, choosing, seeking to do God's will, because, yes, it is in the mind of God. "If you continue in My word, you are My disciples; indeed, and you shall know the truth, and the truth shall make you free." (John 8:31-32) God created man conscious and free, pursuing the good and doing the good, in constant fellowship with his Creator of freedom, as St. Basil the Great says: "Virtue is found by free choice, not by compulsion. Free will also depends on us. And what hangs over us is freedom". Commenting on these observations, Father Professor Dumitru Stăniloae states that "at the basis of every greatness of the divine image of man is his freedom. By sinning, man has renounced freedom, but by this refusal he has lost the chance to return".

The premise of the interdisciplinary approach to content is to ensure the unity of knowledge and to go beyond the boundaries of the disciplines known to a person. It is universally accepted that in everyday life we do not use disparate knowledge accumulated in certain disciplines and do not capitalize on subject-specific skills. The integrated approach to knowledge is nothing new, with the ancient Greeks emphasizing the importance of imparting knowledge as a whole. Our life is a complex, unitary life, therefore we should study phenomena from the perspective of different disciplines, interrelated and, moreover, from the perspective of valuing non-formal and informal learning in a formal context.

The interdisciplinary perspective facilitates the formation of a unified view of reality and the development of integrative thinking. Interdisciplinary correlations are logical links between disciplines, in the sense that the explanation of a phenomenon requires information and methods studied in different subjects. They may be spontaneous or planned and may be related to the definition of concepts or notions, the use of methods or tools in new contexts, the transfer of values and the formation of attitudes across disciplines.

On the other hand, the most logical and profitable way to solve this problem of freedom is to approach it in the social context of human beings' daily life, that of personal and group relations. I should point out, however, that the pragmatic theories that have developed around the concept of freedom did not begin to develop coherently and systematically until the beginning of the modern era, starting primarily in British society in the 17th century.

The first author to make a pragmatic analysis, with great lucidity and coherence, was Thomas Hobbes in Leviathan, published in 1651. Here he demonstrates in a logical

exposition the need for people to live in peace, to organize themselves into societies (states) and to come to accept politics by creating the state as a form of representation of the interests of the multitude. It starts from the premise that man has a natural right to possess, and then, by deduction, goes on to formulate the other theories, each in turn being a premise for the next.

Freedom concerns more the individual himself who has the natural right to use his own capacities in order to ensure his own survival and to obtain his own advantages, but in this paradigm of freedom, society, otherness, the other intervenes, the other who, through his own freedom, restricts the freedom of the subject in question. From this derives another principle, another perspective on freedom, determined by the need for peace: "From this fundamental natural law by which man is commanded to pursue peace derives a second law: that a man is willing, when others are also, and as long as he deems it necessary for peace and for his own defense, to deprive himself of this right over all things and to be content with as much freedom from other men as he himself would allow other men from himself. Basically, the idea is formulated that man needs a framework conducive to his development, a framework which will help him to walk a positive path, which will give him the moral support as a point of reference, that structure which will guide him in thought and action. There is also a need for a body to enforce and crack down on dissenters and those who refuse to play by the rules. Basically, the individual has to accept a certain form of freedom, I would say similar to today's democracy, but it is obvious that this very form proves that man cannot have full freedom, and that this remains a concept circumscribed by models and ideologies.

There can be no freedom without knowledge and the latter can only be achieved through an interdisciplinary approach.

Chapter IV, entitled "Comparative analysis of the protection of individual rights", deals with the system of protection of fundamental rights and freedoms introduced by the European Convention on Human Rights ("the Convention"), which is based on the principle of subsidiarity. It is primarily for the States Parties to the Convention to ensure its application, and the European Court of Human Rights ("the Court") should only intervene when States have failed to comply with their obligations. The control exercised in Strasbourg is exercised mainly by means of individual applications, which may be brought before the Court by any natural or legal person within the jurisdiction of the States Parties to the Convention. Consequently, the category of potential claimants is huge: in addition to the eight hundred million inhabitants of the enlarged Europe and citizens of

third countries residing in or transiting through its territory, there are millions of associations, foundations, political parties, businesses, etc. We must not forget the persons who, as a result of extraterritorial acts of the States parties to the Convention committed outside their respective territories, come within their jurisdiction.

Starting from the premise that it is the responsibility of the parents to ensure that the appropriate conditions for the healthy development of the embryo are in place and that the protection of the embryo's life depends on the pregnant mother, and appealing to the constitutional right to information, it is necessary to set up counseling centers for women with unwanted pregnancies, as well as to establish a period of reflection so that the pregnant woman can make a fully informed decision without pressure or haste.

It is of paramount importance for the physical and mental health of nations to inform abortion-seeking patients about the existence of alternatives, the risks and the effects of intervention. Abortion-seeking patients have the right to accurate and complete information on both the abortion procedure and the medical, physical, psychological, emotional and social consequences of abortion on demand, information which they are currently not receiving.

Before resorting to abortion, women need to be aware of the complications and short- and long-term consequences of this intervention. The experience of counselling centres for women with unwanted pregnancies, centres run by non-governmental organizations and cults shows that when a woman wants to terminate a pregnancy that has occurred at a difficult time in her life, she needs emotional, medical, psychological and material support to get through the critical moment.

Consequently, it must be legally possible for every pregnant woman to be informed in the period before the abortion and to have the necessary time to assimilate the information received and thus make a fully informed decision.

Furthermore, the chapter presents data and graphs to support this, including extensive comparative law material that supports the general idea, reflected in the chapter title, that respect for individual rights can and must be related to the concrete situation arising from women's right to informed respect for their freedom to decide.

The second part of the same chapter deals with informed freedom in the context of a person's decision to decide on euthanasia. Informed consent has a crucial role to play in this context, as it can only be valid in the context of full and informed freedom.

Also, in the context of the presentation of enlightening examples from comparative civil law and the idea of the freedom of persons to choose a dignified death, a broad

analysis has been made, including ethical, religious, moral and, of course, legal elements and their arguments.

The conclusions include both conclusions and proposals on abortion and conclusions and proposals on euthanasia.

Regarding abortion, it is considered to be a controversial, complex and sensitive subject, which can be viewed from both a pro-abortion and an anti-abortion perspective.

Abortion is a legal procedure, a right that a woman can have and therefore we cannot stop it. Every woman has the right to privacy and the decision to have an abortion is hers, and the gynecologist will help her with "the necessary information and instructions".

From a social point of view, a single woman should not have to deal with the shame of pregnancy or the pain of giving her child up for adoption. Teenage girls who become mothers can no longer continue their education, struggle and often rely on welfare to raise their child, which is inappropriate.

Abortion should be considered a right when the life of the mother is in danger during pregnancy, childbirth or when a woman becomes pregnant as a result of rape or incest. At the same time, abortion is a safe medical procedure, given advances in medicine and technology. The patient's health is not affected and the risk of complications is very low after the procedure.

From a religious point of view, abortion is considered a crime because the child has life from the moment of conception, even if it is not yet fully mature. A new person is a gift from God and its life depends on the choice the woman makes.

Abortion causes trauma, both psychological and physical. Abortion can cause physical trauma because it carries many risks, which can lead to infertility or even death, as well as the risk of infection or complications (such as cancer or ectopic pregnancy). In this case, information about the process can be useful to reverse and restore the situation.

Abortion should not be used to prevent pregnancy. Contraception is the process by which pregnancy is prevented. There are contraceptive methods, such as: female and male sterilization (tubal ligation in women, vasectomy in men); long-acting reversible contraceptives (intrauterine devices, hormonal implants); short-acting hormonal methods (the pill, mini-pill, patch, injections, vaginal ring); barrier methods (condoms, diaphragm, vaginal cap, sponge) and natural methods (abstaining from sex on fertile days of the menstrual cycle).

Restrictions on abortion affect poor women because they cannot undergo the procedure in a specialized clinic due to financial constraints. For this reason, or to avoid abortion, women resort to unsafe methods that endanger their lives or, on the contrary, carry the pregnancy against their will, in violation of their human rights. Sometimes, women cannot have abortions because some doctors call it a "conscience clause", which does not affect the patient's right to access medical care and services.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

In conclusion, we can say with great conviction that termination of pregnancy in any case is not a solution for the pregnant woman because it causes her, as we have noted, many physical and especially mental injuries. However, there must be a legal basis for safe abortion, as this is the foundation of safe motherhood, an integral part of the call for good reproduction.

In both Romania and the Republic of Moldova, we have liberal laws on termination of pregnancy, of course limited by fetal age (on request up to 12 weeks of pregnancy in the Republic of Moldova and up to 14 weeks pregnant in 2010 in Romania). However, the placement of these restrictions on women's reproductive rights in relation to termination of pregnancy, in relation to gestational age and the system of medical indications, is based on the idea of protecting the life or health of the pregnant woman rather than on the demographic importance of the state, which is forced to see a sharp decline in population. This problem of the declining population creates serious problems for the government because the future workforce will decline and will not be able to provide social security in the future.

In the European context, the ambiguous status of intellectual property and, implicitly, the lack of respect for the right of recall is also due to the fact that Article 2 of the European Convention on Human Rights does not define legal notions of 'human' and 'life'. Furthermore, the rights claimed for the outcome of pregnancy and the pregnant woman are intertwined, or in other words, life is closely linked to the fetus and the life of the woman who has it, it cannot be analyzed by taking it out of context and it follows that the outcome of pregnancy, gestation and the fetus up to a certain age does not guarantee an absolute right to life.

From a legal point of view, it is clearly impossible to accept the simultaneous existence of two opposing rights which are mutually exclusive, the right to life of the unborn child and the right to privacy of the pregnant woman. Although states have some discretion, national laws are nevertheless dependent on the privacy of women, as they have the status of "persons" under the Convention Art. 2 would apply to the outcome of pregnancy, the absence of an express limitation would lead to the presumption that termination of pregnancy is prohibited even if it would be "dangerous", if the pregnancy endangers the woman's life, then abortion becomes incompatible with Art. 2 of the Convention.

According to the case law of the ECHR, as we have seen above, the Convention does not regulate the right of a pregnant woman to have an abortion, but the right to be able to terminate the pregnancy herself. A woman's decision not to terminate her pregnancy falls within the realm of personal health, i.e. free will, which is specified in Article 8 of the European Convention.

Therefore, in order to reduce the number of abortions, several recommendations should be considered, such as:

Romanian and Moldovan states should provide support services to people considering abortion, including (but not limited to):

1. provide accurate and complete information about their condition from medical professionals who do not try to persuade them to give up their choices, but who clearly explain the risks they face.
2. refer to a physician who performs abortions, and if they refuse on religious or moral grounds, on the other hand, fulfill their legal obligation to refer the patient to a physician who provides such services, pursuant to Art. 34 of the Code of Ethics.
3. mandatory psychological counseling for persons seeking an abortion, prior to the completion of the abortion, to be supplemented by a period of reflection for the pregnant woman.
4. provision of psychological counseling services to people who have had an abortion.

I believe that an abortion protocol should be established at national level, specifying the circumstances in which doctors can refuse 'abortion on demand', the patient's rights and responsibilities. If a pregnancy is the result of rape or incest, the rape victim should have access to the procedure free of charge or should be offered an abortion at a reduced cost.

With regard to euthanasia, it is imperative to provide the necessary and accurate information in health facilities to prevent misinformation and discouragement. At the same time, a website should be set up where anyone can obtain accurate information about the treatment regime, advice from doctors and the steps to follow.

Proponents of human euthanasia present several arguments in favor of legalizing or authorizing euthanasia in certain circumstances, such as respect for autonomy in which proponents argue that individuals should have the right to make decisions about their own lives, including the right to end their suffering through euthanasia.

They believe that respect for a person's autonomy and self-determination is essential, particularly in matters of life and death, namely for: Relieving suffering as in their view euthanasia offers a means of alleviating the extreme physical and psychological suffering experienced by terminally ill patients; pro-euthanasia advocates argue that euthanasia allows people to die with dignity, without prolonged pain, discomfort and loss of quality of life; Compassionate end-of-life care where supporters say euthanasia can be a compassionate option for patients who are facing a terminal illness and have no hope of recovery; they believe that providing a peaceful and painless death can be a compassionate form of end-of-life care; autonomy and patient empowerment as pro-euthanasia advocates argue that legalizing euthanasia would allow patients to have control over their end-of-life decisions and allow them to die on their own terms; and they argue that individuals should have the right to choose when and how to die, especially when faced with prolonged suffering and irreversible conditions; reducing medical costs and resources because some advocates argue that legalizing euthanasia could help reduce the financial burden on health systems by avoiding prolonged and costly end-of-life care for terminally ill patients; they argue that the resources saved could be redirected to other areas of health care, which would benefit more patients; preventing inhumane deaths, which can be considered as torture, when patients suffer greatly and have no chance of recovery, euthanasia can prevent them from suffering inhumane deaths such as prolonged suffering, loss of dignity and unconsciousness; pro-euthanasia advocates argue that euthanasia ensures a peaceful and humane end to life.

In general, euthanasia advocates argue that legalizing euthanasia, subject to strict regulations and safeguards, can support individual autonomy, ease suffering and provide compassionate end-of-life care for those facing terminal illness or unbearable pain.

Opponents of euthanasia present several arguments against its legalization or practice under any circumstances, such as: Sanctity of life in which most opponents argue that life is valuable and that intentionally ending it, even in cases of extreme suffering, is morally wrong; they believe that life must be preserved and protected at all costs, regardless of the circumstances; the slippery slope, as an effect in which those who are against euthanasia often express concern about the potential for abuse and the effect of the "slippery slope"; they argue that legalizing euthanasia could lead to the erosion of safeguards and the possible acceptance of involuntary euthanasia or euthanasia for non-terminal conditions; they are concerned that vulnerable people could be coerced or pressured into choosing euthanasia, especially the elderly, disabled or financially

disadvantaged; the impact on the doctor-patient relationship, so opponents argue that legalizing euthanasia could undermine the trust and integrity of the doctor-patient relationship; they believe that physicians, whose primary duty is to heal and alleviate suffering, should not be involved in intentionally ending a patient's life; legalizing euthanasia could fundamentally change the nature of medical practice and compromise the ethical principles of medicine; the potential for error and misdiagnosis, which stems from critics who express concern about the potential for error in diagnosing terminal illnesses or accurately predicting life expectancy; they argue that misdiagnosis or misprediction could lead to premature death for patients who would have had longer to live or unnecessary loss of life for those whose conditions can be treated or managed; alternative palliative care options.

In general, opponents of euthanasia argue that legalizing euthanasia poses significant ethical, moral, legal and social risks and that alternative approaches to end-of-life care should be given absolute priority in order to uphold the sanctity and dignity of human life.

In addition to the arguments for and against euthanasia, here are some additional points and considerations that may be helpful in deciding what is best for the human being: the legal status of euthanasia, as it varies widely around the world; some countries, such as the Netherlands, Belgium, Luxembourg, Canada and several states in the United States, have legalized euthanasia or assisted suicide in certain circumstances, with strict regulations and safeguards in place.

In contrast, many other countries ban euthanasia outright or allow only limited forms of end-of-life decision-making, such as advance directives or withdrawal of life-sustaining treatment.

Advance directives and decision-making at the end of life, which are nothing more than advance directives, living wills and health care proxies, allow people to specify in advance their preferences for medical treatment and care at the end of life, including decisions about euthanasia or assisted suicide; these legal documents allow people to express their wishes regarding the use or refusal of life-sustaining treatments in the event of incapacity or terminal illness.

They also provide palliative care and hospice services that lead to a dignified end through palliative care that focuses on relieving pain and improving the quality of life of patients with serious illnesses, including those nearing the end of life; hospice care provides comprehensive support and care for terminally ill patients and their families.

Both palliative care and hospice services aim to address physical, emotional, spiritual and psychosocial needs, offering alternatives to euthanasia by providing compassionate end-of-life care.

Religious perspectives, which play a decisive role for most people towards the end of their lives through religious beliefs and teachings, have a significant role in shaping attitudes towards euthanasia; while some religious traditions may support euthanasia in certain circumstances, others oppose it on the basis of religious principles that uphold the sanctity of life and emphasize the importance of natural death; understanding the various religious perspectives can provide insight into the ethical and moral dimensions of euthanasia debates.

Euthanasia laws and regulations vary widely between countries around the world. Romania and the Republic of Moldova have not legalized euthanasia or assisted suicide, and there are no specific laws or regulations allowing these procedures in all situations. However, there have been discussions about euthanasia and end-of-life care, reflecting wider debates about healthcare ethics and patients' rights. Individuals and advocacy groups have called for the legalization of euthanasia or the implementation of policies to improve end-of-life care, including access to palliative care services.

The legal framework in Romania and the Republic of Moldova focuses primarily on the provision of palliative care to patients with chronic diseases, with the aim of reducing suffering and improving the quality of life of people approaching the end of life. Palliative care focuses on holistic support, pain management and meeting the physical, emotional and spiritual needs of patients and their families.

With regard to the proposals for improvement, while there are legal provisions on abortion which accept that women should be able to decide on this issue, within the limits laid down by law, which are similar to those existing at European level, as regards euthanasia, neither in the Republic of Moldova nor in Romania have any legislative steps been taken, and there is only formal opposition to the idea of causing death under certain limited conditions.

Things are no better at European level either, as we have pointed out. However, one by one, the EU Member States are coming round to accepting the idea, as we are seeing in the Netherlands, Belgium, Germany and Spain. To act inhumanly purely out of convictions is not characteristic of the Romanian or Moldovan people. The existence of solutions practiced since 2005, for example, in Belgium shows once again that legislation is perfectible, and we could take advantage of the statistics of countries which have

adopted such legislation to create a legislative framework based on their research and, of course, on our needs. There is suffering in the terminal stages of some diseases that equals and surpasses the most exquisite tortures. We must believe in dignity, faith and love of our neighbor in terrible suffering.

We can use the experience of other countries that have created real statistical databases, including the legislative typology they have used, to create a similar situation in our countries, in spirit and at the suggestion of the European Union.

Informed consent has emerged as a fundamental ethical standard in major medical codes such as the Hippocratic Oath, the 1948 Geneva Declaration or the International Code of Medical Ethics. The patient needs to know that the doctor will act only in his or her best interests, in accordance with the Geneva Declaration, and will respect the patient's right to decide what he or she wants to do. Under the Human Rights Act, "every adult with a mental illness has the right to self-determination".

The Declaration on the Promotion of Patients' Rights in Europe was made public at the World Health Organization's European Forum, held March 28-30, 1994 in Amsterdam. This declaration includes a set of principles for the promotion and implementation of patients' rights in the European member states of the World Health Organization and was subsequently incorporated into the legislation of each European country. The expression of this article is made in Romania in the Law on Patients' Rights no. 46/2003. Law no. 46/2003 has been implemented by Decree no. 386/2004.

There appears to be room for improvement in this form, particularly for questions relating to the reasonableness of alternatives and independence of consultation. For treatment alternatives, for example, the question should be worded more clearly in order to be able to assess whether these alternatives have been considered 'reasonable' by the doctor himself. Subsequently, i.e. in June 2009, a new reporting form became available; the impact of these changes (which are partly in line with the recommendations made by the expert committees) needs to be awaited and studied.

For the review committees, the standard form that is completed by the reporting physician generally provides sufficient information to form their reasoning; the review committees requested additional information in only 6% of all reported cases.

We have found elsewhere that these review committees have confidence in the reporting physicians, which may indicate that those 6% involve cases with clear inconsistencies or missing information. Possibly, the committees assume that the reporting of a case already reflects the physicians' intent to act within legal criteria. A

certain level of trust between the review committees and the reporting physicians is a prerequisite for a proper reporting procedure, as this would incentivize physicians to report their acts. Review committees seem to mainly check whether the physician has acted with due care, rather than trying to falsify this by looking for inconsistent information. They focus their additional questions on two specific criteria: one subjective (the patient's distress) and one procedural (the consultation) but hardly ask questions about the patient's physical condition and the presence of possible alternatives. Possibly, their basic attitude of trust in the reporting physician is primarily related to the criteria that physicians can evaluate within their own medical field. Unbearable suffering is the most debated requirement, subjectively and openly framed. Evaluation committees probably see their role as more relevant to this specific criterion than to criteria that mainly require in-depth medical knowledge.

Our results show that the Dutch review procedure seems to focus on the criterion of (unbearable) suffering and procedural aspects. The US legislation does not contain criteria on the degree of the patient's suffering; the patient's medical situation is addressed in the criterion on the patient's life expectancy which should be six months or less.

These findings are based on the application in 2005 of the euthanasia law passed in 2002 in Belgium, which has undergone numerous amendments until 2024, thanks to the reports of the doctors appointed for this purpose and not least the Federal Control and Evaluation Commission, which closely supervises the way in which the legal provisions based on constitutional provisions are applied.

Such a proposal will be on the doorstep of the new parliaments of the two sister countries: the Republic of Moldova and Romania.

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ADNOTARE

GHEORGHIȚĂ Nelu „Libertatea individuală în dreptul civil cu privire la consimțământul informat în contextul avortului și eutanasiei”, teză de doctorat în drept, Chișinău, 2025

Structura tezei: introducere, capitole (patru), concluzii generale, bibliografie din 211 de titluri, anexe, 153 pagini text de bază.

Cuvinte cheie: avort, dreptul la viață, embrion, eutanasie, făt, întreruperea ilegală a sarcinii, libertate, liber-arbitru, produs de concepție, sinucidere asistată medical, uciderea la cererea victimei.

Domeniul de studiu: specialitatea 553.01 – Drept civil.

Scopul și obiectivele cercetării: Scopul cercetării constă în justificarea teoretico-practică a importanței și necesității aplicării normelor juridice, psihologice și etico-religioase atunci când vorbim despre libertatea umană și dreptul la viață, finalizată cu un anumit concept care să asigure o corelație echitabilă între protecția dreptului la viață al embrionului și fătului și protecția libertății și a vieții private ale femeii însărcinate; sau între dreptul la viață al omului și libertatea acestuia în a alege când și cum dorește să moară. Acest scop a determinat încercarea de a soluționa următoarele obiective: a stabili noțiunea și esența libertății raportat la avort și la eutanasie; a analiza libertatea în strânsă legătură cu avortul și eutanasia din punct de vedere juridic, istoric, filosofic și religios; a identifica sistemul și conținutul cerințelor juridice și etico-religioase atunci a stabili și analiza esența consimțământului informat din perspectiva dreptului la libertate al ființei umane, al accesului liber la avort precum și la eutanasie; a determina importanța dreptului la libertate al ființei umane, precum și dreptul la viață privată în raport cu dreptul la viață al acesteia; a analiza regimul juridic și legislativ național și internațional în privința întreruperilor de sarcină și a eutanasiei; a formula concluzii și recomandări în materia revizuirii legislației în lumina legislației europene și internaționale precum și a practicii organelor de drept în materia avortului și eutanasiei.

Noutatea și originalitatea științifică a rezultatelor cercetării se regăsește în faptul că teza de doctor reprezintă, practic, o primă încercare de a trece în revistă multiple probleme și aspecte teoretico-practice ale dreptului la libertate al ființei umane cu aplicație strictă la întreruperea sarcinii și la eutanasie ca și subiecte de actualitate, fiind expusă și necesitatea operării unor revizuiri și corectări în legislația privitoare la avort și eutanasie.

Problema științifică importantă soluționată prin cercetarea desfășurată se referă la cercetarea reglementărilor naționale și internaționale, urmărindu-se clarificarea unor ambiguități în legislația națională privind avortul și eutanasia și umplerea, pe cât posibil, a unui vid legislativ în acest domeniu.

Semnificația teoretică a lucrării se datorează faptului că totalitatea concluziilor formulate poate servi ca bază științifică a dezvoltării și studierii complexului de probleme apărute pe segmentul drepturilor la viață și la libertate ale omului.

Valoarea aplicativă a lucrării constă în faptul că rezultatele cercetării pot fi folosite pentru dezvoltarea sau chiar pentru redactarea unor norme juridice referitoare la avort și eutanasie.

Implementarea rezultatelor științifice. Rezultatele științifice au fost utilizate în procesul educațional al Facultății de Drept din cadrul Universității de Studii Europene din Moldova și al Facultății de Drept din cadrul Universității „Danubius” din Galați, România

ANNOTATION

GHEORGHIȚĂ Nelu „*Individual freedom in civil law regarding informed consent in the context of abortion and euthanasia*”, PhD thesis in law, Chisinau, 2025

Structure of the thesis: introduction, chapters (four), general conclusions, bibliography of 211 titles, annexes, 153 pages of basic text.

Keywords: abortion, right to life, embryo, euthanasia, fetus, illegal termination of pregnancy, freedom, free will, product of conception, medically assisted suicide, killing at the request of the victim..

Field of study: specialty 553.01 - Civil Law.

The purpose and objectives of the research: The purpose of the research consists in the theoretical and practical justification of the importance and necessity of applying legal, psychological and ethical-religious norms when we talk about human freedom and the right to life, finalized with a certain concept that would ensure a fair correlation between the protection of the right to life of the embryo and fetus and the protection of the freedom and private life of the pregnant woman; or between the right to life of a person and his freedom to choose when and how he wants to die. This purpose determined the attempt to solve the following objectives: to establish the notion and essence of freedom in relation to abortion and euthanasia; to analyze freedom in close connection with abortion and euthanasia from a legal, historical, philosophical and religious point of view; to identify the system and content of legal and ethical-religious requirements then to establish and analyze the essence of informed consent from the perspective of the right to freedom of the human being, of free access to abortion as well as to euthanasia; to determine the importance of the right to freedom of the human being, as well as the right to private life in relation to the right to life thereof; to analyze the national and international legal and legislative regime regarding abortion and euthanasia; to formulate conclusions and recommendations regarding the revision of the legislation in light of European and international legislation as well as the practice of law enforcement bodies in the field of abortion and euthanasia.

The novelty and scientific originality of the research results is found in the fact that the doctoral thesis represents, practically, a first attempt to review multiple problems and theoretical-practical aspects of the right to freedom of the human being with strict application to abortion and euthanasia as topical subjects, the need for revisions and corrections in the legislation regarding abortion and euthanasia being also exposed.

The important scientific problem solved by the research carried out refers to the research of national and international regulations, aiming to clarify some ambiguities in the national legislation on abortion and euthanasia and to fill, as far as possible, a legislative vacuum in this field.

The theoretical significance of the work is due to the fact that all the conclusions formulated can serve as a scientific basis for the development and study of the complex of problems arising in the segment of human rights to life and freedom.

The applicative value of the work lies in the fact that the research results can be used for the development or even for the drafting of legal norms regarding abortion and euthanasia.

Implementation of scientific results. The scientific results were used in the educational process of the Faculty of Law of the University of European Studies of Moldova and the Faculty of Law of the "Danubius" University in Galați, Romania.

АННОТАЦИЯ

ГЕОРГИЦЭ Нелу «Свобода личности в гражданском праве в отношении информированного согласия в контексте абортов и эвтаназии»,, докторская диссертация по праву, Кишинев, 2025 г.

Структура диссертации: введение, главы (4), общие выводы, библиография из 211 наименований, приложения, 153 страницы основного текста.

Ключевые слова: аборт, право на жизнь, эмбрион, эвтаназия, плод, незаконное прерывание беременности, свобода, свободная воля, продукт зачатия, самоубийство с медицинской помощью, убийство по просьбе жертвы.

Область обучения: специальность 553.01 - Гражданское право.

Цель и задачи исследования: Цель исследования состоит в теоретическом и практическом обосновании важности и необходимости применения правовых, психологических и этико-религиозных норм при рассмотрении вопросов свободы человека и права на жизнь, оформленных в определенную концепцию, обеспечивающую справедливое соотношение между защитой права на жизнь эмбриона и плода и защитой свободы и частной жизни беременной женщины; или между правом человека на жизнь и его свободой выбирать, когда и как он хочет умереть. Данная цель обусловила попытку решения следующих задач: установление понятия и сущности свободы применительно к аборту и эвтаназии; проанализировать свободу в тесной связи с абортами и эвтаназией с юридической, исторической, философской и религиозной точек зрения; выявить систему и содержание правовых и этико-религиозных требований, затем установить и проанализировать сущность осознанного согласия с точки зрения права человека на свободу, свободного доступа к аборту, а также эвтаназии; определить важность права человека на свободу, а также права на неприкосновенность частной жизни по отношению к праву человека на жизнь; проанализировать национальный и международный правовой и законодательный режим в отношении абортов и эвтаназии; сформулировать выводы и рекомендации по пересмотру законодательства с учетом европейского и международного права, а также практики правоохранительных органов в вопросах абортов и эвтаназии.

Новизна и научная оригинальность результатов исследования заключается в том, что докторская диссертация представляет собой, по сути, первую попытку рассмотрения многочисленных теоретических и практических проблем и аспектов права человека на свободу применительно к таким актуальным темам, как прерывание беременности и эвтаназия, а также выявляет необходимость внесения изменений и дополнений в законодательство об абортах и эвтаназии.

Важная научная проблема, решенная в ходе проведенного исследования, касается изучения национальных и международных нормативных актов с целью прояснения некоторых неясностей в национальном законодательстве относительно абортов и эвтаназии и заполнения, по возможности, законодательного вакуума в этой области.

Теоретическая значимость работы обусловлена тем, что все сформулированные выводы могут служить научной основой для разработки и изучения комплекса проблем, возникающих в сегменте прав человека на жизнь и свободу.

Прикладная ценность работы заключается в том, что результаты исследования могут быть использованы при разработке или даже составлении правовых норм, касающихся абортов и эвтаназии.

Внедрение научных результатов. Научные результаты были использованы в учебном процессе юридического факультета Университета европейских исследований Молдовы и юридического факультета Университета «Данубиус» в Галаце, Румыния.

GHEORGHIȚĂ, NELU

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