

Views on Abortion and Case Law on International and European Levels: Past and Present Jurisprudence

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Abstract : In this presentation, an overview is given of the freedom of states to legislate concerning abortion. Today, access to safe and legal abortion is still a hot topic in many countries in the world. Abortion policies try to strike a balance between women's rights to self-determination and private life on the one hand, and the protection of the life of unborn children on the other. Each country has different religious, cultural and political views on abortion, and therefore specific legislations. However, citizens may submit a complaint at international courts when they find their national legislation too restrictive. The study is discussed of the development of the ECtHR, UNCHR, and IACHR case law, regarding the question of the 'right to abort' and indirectly of the protection of the unborn children. Each relevant case is analyzed to answer the following questions: Is the unborn child protected, and if so, how? Why does the woman want to abort and how is her interest or right protected? How is a fair balance reached between the different interests? Is the state completely free to write policies that restrict abortion? What are the factors to determine the margin of appreciation of the state? In conclusion, does this specific court recognize a right to abort, and if so, under which conditions? To conclude, this presentation shows that each court has its own perspective on and perception of abortion, and its own criteria to determine whether the state is complying with international norms regarding individual liberty and protection of the children.

Keywords : abortion, international courts, unborn children, women rights

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