
**SCHOOL OF GLOBAL STUDIES**

# "Am I not a woman even when I am pregnant?"

*An analysis of the development of fetal rights in policy documents in Europe and how pregnant women are fetal containers and second-class citizens*

Dissertation in Human Rights, 30 higher education credits
Spring Semester *2021*
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## Abstract

This thesis focuses on the development of fetal rights in policy documents in Europe and how fetal rights and the protection of fetal life can be a part of the discussion of how pregnant women are associated with being "fetal containers" and(/or) "second-class citizens". The study aims to identify different articles and paragraphs in policy documents that can identify the connection between fetal rights and pregnancy rights and how pregnant women are "fetal containers" and(/or) "second-class citizens". The thesis will also answer how both biopower and biopolitics exist in the EU-member countries (Ireland, Hungary, Slovakia, and Poland) regulations about fetal rights and women's obligation in society to reproduce humankind. The empirical findings are based on different policy documents related to fetal rights, pregnancy rights and the termination of pregnancy, in either their constitution or in other policy documents or both. The qualitative research has been conducted through Critical Discourse Analysis (CDA). It uses the concepts of biopower and biopolitics as theoretical frameworks and the central concepts of "fetal containers" and "second-class citizens". Through the empirical findings and the analysis of the policy documents, the study identified how pregnant women are associated with being both "fetal containers" and "second-class citizens" in the analysed countries. Since the regulations of fetal rights in the different policy documents indicate that the states have biological control over human life, especially concerning women and pregnant women in relation to the propagation and the protection of fetal life. Although, how much regulatory control and how the state controls depend on the state's development of fetal rights in the respective countries legal system.



**Key words:**

Pregnant women | Fetal containers | Second-class citizens | Fetal rights | Women's rights | Policing | Human rights | Biopower | Biopolitics


**Word count:** 19 482[1] (26 617)

[1] Excluding: cover page, table of contents, references, footnotes, bibliography, and appendices.

## Acknowledgements

First of all, I would like to thank my supervisor, Maria Clara Medina, for always believing in me and inspiring me during this thesis's conduct, especially during the difficult times with the Covid-19 pandemic. I cannot be more grateful, and without her knowledge and inspiration, the thesis would not have been possible to do in time or been the same as it is today.

Secondly, I would like to give a special thank you to the Gothenburg University Research Program on Pregnancy and Politics (PregDem), where I did my internship within my master programme during the autumn semester of 2020. This research program inspired me to the subject of this master thesis and gave me great opportunities and knowledge within this particular area.

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# Abbreviations

BDPFA = Beijing Declaration and Platform for Action

CAT = Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CDA = Critical Discourse Analysis

CEDAW = Convention on the Elimination of All Forms of Discrimination against Women

CPED = International Convention for the Protection of all Persons from Enforces Disappearance

CRC = Convention on the Rights of the Child

CRPD = Convention on the Rights of Person Disabilities

ECHR = European Convention of Human rights

ICCL = The Irish Council for Civil Liberties

ICCPR = International Covenant on Civil and Political Rights

ICCPR-OP = Optional Protocol to the International Covenant on Civil and Political Rights

ICERD = International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR = International Covenant on Economic, Social and Cultural Rights

ICESCR-OP = Optional Protocol to the Covenant on Economic, Social and Cultural Rights

ICMW = International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families

OP-CEDAW = Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

SDGs = Sustainable Development Goals

UDHR = Universal Declaration of Human Rights

# 1. Introduction to the research problem

The Universal Declaration of Human Rights (UDHR) (1948) and the European Convention on Human Rights (ECHR) (1950) recognise "right to life" as a human right that shall include everyone's life and that every human life shall be equally protected under the law. Women shall thereby be equally treated with men, since everyone shall be treated without distinction of, for example, sex (Art 2., UDHR, 1948). In recognition of "right to life", the right to both "[...] liberty and the security of person" (Art 3., UDHR, 1948) are included and shall provide with your free right to your body. To be safe and have secure ownership of your body and both your sexual and reproductive health. However, the question is, if this perspective of these rights is recognised within the rights of: "Everyone has the right to life, liberty and the security of person" (Art. 3., UDHR, 1948) since the perspective is about bodily integrity and reproductive rights, which are not a part of these rights. However, according to the Beijing Declaration and Platform for Action (BDPFA) (1995), reproductive rights are embraced in human rights and the international human rights laws, likewise in other international and national laws. Although, in the BDPFA (1995), reproductive rights are associated with family planning and not in perspective to have your reproductive health, which means that a pregnant woman can, for example, have an abortion. Consequently, this can produce gender inequality since women have a form of bodily service to society in the context to reproduce humankind (Cook & Dickens, 2003). Likewise, how women uphold their bodies during pregnancy to reproduce new citizens in society, which leaves the pregnant woman in vulnerability due to the health risks with pregnancy and unsafe abortion. This contributes to how pregnant women do not have the freedom to choose according to their desire and how it discriminates against the individual rights of the pregnant woman, which violates both ICCPR (1966) and ICESCR (1966) article 1.1.: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". Nevertheless, it provides inequality during pregnancy since pregnant women are not equally treated during pregnancy due to the development of fetal rights in society (Annas, 1986; Cosgrove & Vaswani, 2020; Roth, 2000).

Furthermore, this leads to the debate regarding abortion and how fetal rights have developed in our society for almost 50 years (Cook & Dickens, 2003) and exist today in different policy documents, as well as in countries constitutions worldwide. Thereby, the question remains if the recognition of "right to life" (Art. 3, UDHR, 1948; Art. 3, ECHR, 1950) as a human being

includes or shall include the protection of the fetal life. Although, to this point, fetal rights are not included in any of the articles related to "right to life" or any other articles in the UDHR (1948), ECHR (1950) or the core international human rights instruments[2] (OHCHR, 2021b). Regardless of this, countries on a global and a European basis have chosen to recognise fetal rights in the country's respective policy documents and(/or) constitution[3]. By that, previous research (Grossman, 2010; Johnsen, 1986; Purdy, 1990) indicate that pregnant women are associated with being "fetal containers" and(/or) "second-class citizens" (Cook & Dickens, 2003; Grossman, 2010; Purdy, 1990), due to women's obligation in society to reproduce humankind.

The development of fetal rights in society is somewhat problematic in pregnant women's rights and how women cannot decide over their bodies. Due to how states have chosen to protect fetal life, and the foetus can, by that, have rights over the pregnant woman (Cosgrove & Vaswani, 2020). Even though, from a global human rights perspective, pregnant women and mothers shall have extended rights during pregnancy and motherhood, primarily through the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979). Yet, with fetal rights, previous research (Cosgrove & Vaswani, 2020; Grossman, 2010; Purdy, 1990) indicates that pregnant women can have fewer rights, and can it thereby be possible that fetal rights have potentially negative effects on women's rights and even be a threat?

[2] International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1965), International Covenant on Civil and Political Rights (ICCPR, 1966), International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984), Convention on the Rights of the Child (CRC, 1989), International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (ICMW, 1990), International Convention for the Protection of all Persons from Enforces Disappearance (CPED, 2006), Convention on the Rights of Person Disabilities (CRPD, 2006). This with the additional protocol/s to the ICCPR (1966); CEDAW (1999); CAT (2002); CRPD (2006); ICESCR (2008).

[3] Ireland: *"Eighth Amendment of the Constitution Act (1983)"; "Protection of Life During Pregnancy Act 2013"; "Health (Regulation of Termination of Pregnancy) Act 2018"*. Hungary: *"The Fundamental Law of Hungary, 2011"; "Act LXXIX of 1992 on the protection of fetal life".* Slovakia: *"Constitution of the Slovak Republic (1992)"; "Act no. 73/1986 Coll. as amended by Act No. 419/1991 Coll. of 23 October 1986 on Artificial Interruption of Pregnancy"; "Act No. 345/2009 Coll. of Laws Amending Act No. 576/2004 Coll. on Healthcare, Healthcare-related Services and Amending and Supplementing Certain Acts".* Poland: *"The Family Planning, Protection of Human Embryo and Conditions of Termination of Pregnancy Act of 7 January 1993".*

Through the regulations of fetal rights, pregnancy rights seem to be forgotten in the context of the pregnant woman and her rights to her body (Cosgrove & Vaswani, 2010; Roth, 2000). Therefore, is the research problem for this study related to the discussion about how pregnant women are "fetal containers" and(/or) "second-class citizens". Likewise, how the development of fetal rights is a part of this discussion, primarily through the regulation of fetal protection laws and how the concepts of biopolitics and biopower are seen through the state's regulations. However, previous research (Grossman, 2010; Purdy, 1990) about the concepts of "fetal containers" and "second-class citizens" mainly focuses on the United States (U.S.) and Canada, due to how the first court cases concerning the right of the foetus occurred in these two countries. Instead, these two concepts are discussed from a European perspective to clarify if pregnant women in Europe are also associated with these concepts.

Thereby, to clarify if these concepts are a part of Europe, this study will examine fetal rights policy documents in four EU-member countries. This to identify how states in the European Union (EU), especially those with fetal rights in their respective constitutions, control pregnant women through the additional regulations to protect fetal life, which also indicate of biopolitical ruling and biopower. The study will identify different articles/paragraphs in relevant policy documents to clarify how pregnant women in Europe are potentially associated with being "fetal containers" and(/or) "second-class citizens". This by analysing the connection between fetal rights, pregnancy rights and women's obligation to reproduce humankind in these policy documents and analyse how the concepts of biopower and biopolitics can be seen in the state's regulations. The EU-member countries examined in this study are as follows: Ireland, Hungary, Slovakia, and Poland.

## 1.1. Research aim/objectives and Research questions

This master thesis aims to identify the connection between fetal rights and pregnant women and their rights. Likewise, how biopower and biopolitics can be a part of fetal rights regulations and the discussion of pregnant women being fetal containers and(/or) second-class citizens.

The master thesis aims to answer the following research questions:

1. What kind of articles/paragraphs in policy documents related to fetal rights in the EU can be identified in the association of how pregnant women are fetal containers and(/or) second-class citizens?

2. How can biopower and biopolitics be seen in the state's regulation of fetal rights and women's obligation in society to reproduce humankind?

## 1.2. Relevance to human rights

In relevance to human rights, the thesis has a connection to the development problems in the Sustainable Development Goals (SDGs) in Agenda 2030. Especially SDG 5: which shall "Achieve gender equality and empower all women and girls", includes targets such as 5.1.: "End all forms of discrimination against all women and girls everywhere". As well as target 5.6.: "Ensure universal access to sexual and reproductive health and reproductive rights as agreed following the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences". The SDG 5 and its targets in Agenda 2030 is a part of a global partnership and is essential for human rights to promote and provide better equality in society (United Nations, n.d.).

## 1.3. Delimitations

The study is limited to analysing only EU-member countries that have either recognised fetal rights in their constitution and(/or) other policy documents or has an active constitutional debate regarding fetal rights and abortion. A limitation I, as an author, choose because of how previous research concerning the subject of this thesis discusses cases within the U.S. or Canada. However, as mentioned, European countries are a part of prior research, although not specifically in the same context and will be further discussed in this thesis. This study will focus on the following countries: Ireland, Hungary, and Slovakia. All three countries have adopted articles in their constitution related to fetal rights and other policy documents that recognise the protection of fetal life. However, as explained, Poland is also analysed due to the ongoing legal discussion in the country's Constitutional Tribunal about abortion and fetal rights.

Another limitation in this thesis is language, since the official language/s in the countries is not English, except for Ireland who has both Irish and English as official languages. Thereby, to analyse the other countries laws, unofficial translations of the different policy documents (not the articles in the constitutions) have been used in the empirical findings. However, I have also used other sources to prove that the translations of the documents are correct and reliable.

Nevertheless, I have also translated the official policy documents myself by using Google Translate to see if the translations are the same or similar, which have been the case and can be read about in the chapter related to the critical discussion of the used sources.

### 1.4. Disposition

This thesis is divided into nine chapters, with additional sub-chapters and appendices. The first chapter introduces the subject in the thesis and the research problem, likewise the research questions, the aim of this study and delimitations in the thesis. The second chapter contributes with background information to the reader to identify different rights in the discussion of the central concepts. The third chapter presents the methodological framework in this study and is followed by the fourth chapter, which identifies previous research studies related to the subject. The fifth chapter introduces the theoretical framework and the central concepts in the study. Thereafter, is the empirical findings examined in chapter six and then analysed in chapter seven, which also summarises the study. The eighth chapter provides conclusions and future research and is followed by the last chapter, which is the bibliography. After that, in the final pages of the thesis, the reader can find the two additional appendices.

## 2. Background

Since the thesis shall identify articles and paragraphs related to how fetal rights can potentially affect pregnant women's rights, different human rights related to the subject will be clarified in this chapter. This to identify easier how these rights are connected within the discussion regarding how women can be associated to be fetal containers and second-class citizens. Likewise, to clarify how these rights are a part of different policy documents and how they can affect pregnant women.

### 2.1. Women's rights

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted and recognised by the United Nations Assembly. Today, the CEDAW (1979) has been ratified by 189 States Parties, and two countries[4] have signed the convention,

[4] According to the latest data from the UN Treaties Collection (2021) the countries which have signed the CEDAW (1979) but not ratified it yet are the United States and Palau. The United States signed it in 1980 and Palau signed it in 2011.

and six countries[5] have not taken any action at all (OHCHR, 2021a). In recognition of the CEDAW (1979), women shall not be in any form discriminated due to the basis of sex and shall "[...] on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." (Art. 1, CEDAW, 1979). Women and men shall thereby be equally treated, likewise as both of them shall share responsibilities, for example: "the upbringing of children requires a sharing of responsibility between men and women and society as a whole, [...]" (CEDAW, 1979). In the adoption of the CEDAW (1979), the chosen countries: Ireland, Hungary, Slovakia and Poland, have all ratified the convention[6] and works towards promoting women's rights in the form of eliminating any discrimination.

Beyond the CEDAW (1979), women's rights are recognised in other conventions and declarations in the UN's core international human rights instruments[2]. The ICESCR (1966) identifies in article 3; "The States to the present Covenant undertake to ensure the equal right of men and women the enjoyment of all economic, social and cultural rights set forth in the present Covenant", which shall ensure every person, no matter women or men, their right to all forms of cultural, economic and social rights in society mentioned in the Covenant (ICESCR, 1966). Nevertheless, for example, "the right of everyone to social security, including social insurance" (Art. 9, ICESCR, 1966), a right which shall, for example, contribute with assistance in maternity and different stages of life itself. The Covenant also recognises that "Special protection should be accorded to mothers during a reasonable period before and after childbirth [...]" (Art. 10.2., ICESCR, 1966), an essential section in pregnancy rights and the development of fetal rights. Since the bearing woman, the mother to the child shall be protected by the Covenant even before childbirth. The ICESCR (1966) is also ratified by each country[7] analysed in this thesis.

Beyond these rights in the core international human rights instruments[2], other rights are a part of the international human rights laws which recognise women's rights. However, these rights are similar to the mentioned rights or not the right context for this thesis. Although, other documents such as the BDPFA (1995) recognises extended women's rights that are important

[5] The six countries who have not taken any action in relation to the CEDAW are the following countries: Islamic Republic of Iran, Niue, Somalia, Sudan, Tonga, as well as the Holy See ("The Vatican City") (OHCHR, 2021a).
[6] Ireland in 1985; Hungary in 1989; Slovakia in 1993; and Poland in 1980 (OHCHR, 2021a).
[7] Ireland in 1989; Hungary in 1974; Slovakia in 1993; and Poland in 1977 (OHCHR, 2021a).

in this thesis and the discussion of fetal rights and how women are fetal containers and(/or) second-class citizens. The BDPFA (1995) was adopted during the Fourth World Conference on Women between 4 to 15 September 1995 and was assembled to advance the goals and rights that promote equality and women's rights and will be further examined in the next chapter (2.2. Pregnancy rights) concerning pregnant women's rights.

The women's rights mentioned in this chapter are to understand how women's rights exist in the CEDAW (1979) and how other human rights documents promote women's rights and eliminate discrimination against women. Nevertheless, due to how women's rights are a central part of this thesis, it is necessary to clarify how fetal rights can cause discrimination or violation against pregnant women. Although, as mentioned, other women's rights are essential to eliminate the discrimination that women live through/experience. However, these rights are not a central part of this thesis and will not be examined.

## 2.2. Pregnancy rights

Regarding pregnant women, pregnancy rights are associated with labour laws related to pregnant workers and the extended rights at the workplace during pregnancy or motherhood (Grossman, 2010). This can be seen in the core international human rights instruments[2], as the CEDAW (1979) recognises in article 11.2. that States Parties shall ensure effectiveness concerning the discrimination against women that are either pregnant or mothers, etc. and how they shall provide measurements in women's rights to work. This shall, for example, be as follows:

"(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; [...]
(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them. [...]"
(Art. 11.2, para. (a), (b) and (d), CEDAW, 1979).

This article provides extended rights during pregnancy and motherhood to protect and support pregnant women and mothers in society. Beyond this, there are additional pregnancy rights in

the UN's core international human rights instruments[2], which is further examined in the empirical findings, specifically chapter "6.1.1. Pregnancy rights". However, pregnancy rights exist in different forms. They are extended in various amounts of rights depending on the state's development within the rights work and the UN's core international human rights instruments[2]. There are also other instruments/documents about women's rights that provide extended pregnancy rights, for example, the BDPFA (1995). Although these rights are primarily concerning pregnancy at an early age and in developing countries, but also introduce human rights about maternal and obstetric care. The BDPFA (1995) also provides extended pregnancy and maternal rights regarding women's workplace and employment discrimination.

The pregnancy rights introduced in this chapter is not particularly associated with the context of this thesis, although they are mentioned to demonstrate what pregnancy rights are primarily related to human rights. However, the extended version of pregnancy rights is a part of the different legal systems worldwide. Therefore, the empirical findings in this thesis will examine these rights within the respective chosen country's chapters and clarify how pregnancy rights exist in different policy documents and how it relates to fetal rights.

## 2.3. Fetal rights

From a historical perspective, foetuses have in a legal consent been kept separately from the pregnant woman as foetuses have not been granted any rights except from the rights of the bearing woman (Johnsen, 1986). This can be seen in the core international human rights instruments[2] since foetuses are not mentioned in any convention or declaration articles. Yet, with time, countries have recognised fetal life to be protected under the law, though as explained by Roth (2000), fetal rights are commonly associated with diverse legal terms regarding the legalisation of abortion. However, the term fetal rights were introduced during the U.S. Supreme Court case by Roe v. Wade (410 U.S. 113) in 1973 and even though this case introduced how a woman shall have the right to an abortion on her terms. The case started a discussion in the legal community about fetal rights and the protection of fetal life. Particularly in the U.S., since it opened up the possibility to prosecute pregnant women if they did not live by the beneficial effects of the foetus (Cosgrove & Vaswani, 2020). The regulations of fetal rights allowed the state to have control over the individual identities by making the foetus an individual fetal identity that can have its regulations and be a part of the court and other institutions too, for example, prosecute the pregnant woman. Therefore, by making the fetal

life an individual life, the foetus is separated from the pregnant woman. They are two individual identities, with their rights, making fetal rights and women's rights separate (Roth, 2000).

In the regulation of fetal rights to protect fetal life, European countries have recognised the importance of fetal rights (de Londras, 2015) after the Roe v. Wade (410 U.S. 113) court case introduced fetal rights in the U.S. (Roth, 2000). In the EU, Ireland was the first country to recognise foetus's rights in their constitution in 1983 (de Londras, 2015). Although other member countries in the EU, like Hungary and Slovakia, recognised fetal rights later on within their respective constitutions (Constitution of the Slovak Republic, 1992; Fundamental Law of Hungary, Article II, 2011). However, other countries within Europe have recognised fetal rights, such as Norway, which protects the foetus or unborn child within the royal family, its right to succession (Constitution of the Kingdom of Norway as amended in 2018, 1814). Apart from this, Poland's lawmakers have during the year 2020 discussed the dimension of how the Constitutional Tribunal believes it is not constitutionally right to access abortion since it is a "severe and irreversible fetal defect or incurable illness that threatens the fetus' life" (Amnesty International, 2020). The case of Poland is thereby used in the thesis to understand how the discussion of fetal rights both interacts and affects women's rights in relation to pregnancy.

Overall, fetal rights are implemented in different amounts in the legal system in the respective countries. How much fetal rights are implemented, and in which contexts are further examined in the empirical findings. However, fetal rights are a part of previous research studies and will be introduced in chapter "4.1. Fetal rights" to clarify how fetal rights are analysed in the different research studies.

# 3. Methodological framework

This chapter presents the empirical material and discusses the conduct of the study with criticism of the sources, likewise, the ethical considerations in this study. The chapter also introduce the method, CDA, and how the material has been examined and analysed through CDA combined with the concepts of biopower and biopolitics.

## 3.1. Empirical material

The gathered material to the empirical findings consists of different laws, international human rights instruments, peer-reviewed articles, books, book chapters and reports. The primary material to analyse the chosen countries is provided through the countries' constitutions and(/or) policy documents. These documents have been collected from the country's official legal documents or through other reliable sources that have provided an unofficial translation of these documents since Hungary, Slovakia, and Poland do not have English as an official language. Thereby, have the study been conducted through these unofficial translations of the policy documents (not the constitutions), except Ireland's policy documents, which are translated officially in both Irish and English, as mentioned in chapter "1.4. Delimitations". These policy documents have been selected by their content of fetal rights, particularly concerning abortion or the more used term "termination of pregnancy". They are the primary documents in this research, and the policy documents and constitutions can be seen in Table 1 below.

Table 1: The constitutions and policy documents in the selected countries

| | Constitution | Policy document | Policy document |
|---|---|---|---|
| Ireland | *Eighth Amendment of the Constitution Act (1983)* | *Protection of Life During Pregnancy Act 2013* | *Health (Regulation of Termination of Pregnancy) Act 2018* |
| Hungary | *The Fundamental Law of Hungary, 2011* | *Act LXXIX of 1992 on the protection of fetal life* | - |
| Slovakia | *Constitution of the Slovak Republic (1992)* | *Act no. 73/1986 Coll. as amended by Act No. 419/1991 Coll. of 23 October 1986 on Artificial Interruption of Pregnancy* | *Act No. 345/2009 Coll. of Laws Amending Act No. 576/2004 Coll. on Healthcare, Healthcare-related Services and Amending and Supplementing Certain Acts* |
| Poland | - | *The Family Planning, Protection of Human Embryo and Conditions of Termination of Pregnancy Act of 7 January 1993* | - |

Beyond these constitutions and policy documents that are mentioned in Table 1, the material is based on previous research articles that relate to "fetal rights", "pregnancy rights", "women's rights", "fetal-containers", and "second-class citizens". These articles have been selected

through the database International Bibliography of the Social Sciences (IBSS) and through the Gothenburg University Library's search function called "Supersök". The function of Google Scholar and Google Books have also been used to gather other relevant materials for the study.

## 3.2. Critical discourse analysis

To answer the aim of this thesis and identify different articles and paragraphs in policy documents related to fetal rights, the chosen method to analyse the policy documents is Critical Discourse Analysis (CDA) (Boréus & Bergström, 2018, p. 8). This to analyse how the states have potential legal control over pregnant women and their population and to further examine the power relationship between the policy documents and how pregnant women experience the development of fetal rights in these policy documents (Esaiasson et al., 2010, pp. 238-39). The CDA is used to contribute to the discourse of different social elements, for example, power or institutions, etc. This to be able to critically analyse the discourse (Fairclough, 2017, p. 13) of how, in this case, the states have legal power over pregnant women, or as well how the states have a biopower over pregnant women (Foucault, 1990) through the development of fetal rights in the policy documents. By using CDA, these policy documents can be critically analysed to criticize the reality of these policy documents in society and to have the objective to change and create awareness to be able to make the reality better by taking political action to change for something better (Fairclough, 2017, p. 13). Although, as explained by Fairclough (2017, p. 13), the method itself cannot change how it is in society and how, in this case, these policy documents with fetal rights are experienced for pregnant women. The CDA can critically analyse the policy documents and create better knowledge of the reality by explaining the discourse of the policy documents and how the articles and paragraphs are experienced.

Furthermore, according to Bryman (2012, p. 536), CDA "emphasizes the role of languages as a power resource" and mentions how CDA uses different approaches and theories by Foucault. Significantly, how power is constructed through disciplinary practices, which has the power over, for example, the individual body and can, through these practices, construct rules and other procedures. Fairclough (2013, p. 6) describes this through how the use of frameworks and theories in analysing power structures and how the research will concern the relation between power and, in this case, the discourse. However, it is a challenge with "connecting categories and relations such as 'discourse', 'genre', 'recontextualisation' and 'argumentation' (from discourse theory) with categories and relations such as 'power', 'hegemony', 'ideology'

and ‘legitimacy’ (political theory)” (Fairclough, 2013, p. 6). Therefore, it is essential to have an already existing power theory in the research (Fairclough, 2013, p. 6), such as biopower, but also have the discourse present. Since “discourse is internalised in power and power is internalised in discourse” (Fairclough, 2013, p. 6), meaning that both concepts are needed to analyse the meaning of the language. This to identify the discourses in the policy documents and compare them to each other, to analyse how different discourses can be dominated and how they interact with each other (Fairclough, 2013).

Additionally, since the research study is based on CDA, the study has been a part of showing the reality, or as mentioned by Fairclough (2017, p. 13), the “CDA combines a *critique* of discourse and *explanation* of how discourse figures in existing social reality as a basis for *action* to change reality”. An understanding of CDA used in the process of combining this thesis to identify the different articles and paragraphs in policy documents related to fetal rights to contribute to the discussion on how this causes pregnant women to be fetal containers and second-class citizens in society. In this process, Bryman (2012, pp. 536-37) mentions how Foucault’s approaches and theories can be emphasized in CDA since it discusses existing material, in this case, the policy documents and how it can constrain the reality for individual subjects, such as pregnant women. The CDA and the concepts of biopolitics and biopower are thereby influenced by each other in this study as the CDA shows the reality of these concepts, and, at the same time, these concepts are a part of CDA, which makes it possible to analyse the discourses in the policy documents.

## 3.3. Methodological discussion

This thesis has been carried out through qualitative research to analyse and understand policy documents concerning fetal rights and pregnancy rights in society (Creswell, 2009, p. 232). In collecting information for the study, information regarding the central concepts (fetal containers and second-class citizens) has been collected from various research studies, which have then been analysed and validated to have high reliability and deliver good quality in this thesis (Creswell, 2009, pp. 190-91). The study is based on multiple policy documents to identify fetal rights within these documents and explore how they affect pregnant women's rights and, above all, contribute to pregnant women being seen as fetal containers and(/or) second-class citizens. This is also analysed through how the states' regulations of these laws

can be seen from biopolitics and biopower from Foucault's perspective. The information about Foucault's view on these concepts has been collected through his books and other sources and is also based on others' works on Foucault's concepts. These sources have been compared with other sources to identify their authenticity (Esaiasson et al., 2010, pp. 317-18).

Concerning the gathering of the policy documents to the empirical findings, these documents have been in the original language, which has meant that other sources with an unofficial translation of these documents have been used to identify fetal rights. However, as mentioned earlier and mentioned below, these sources have been validated based on translating the official laws. In this context, Creswell (2009, p. 190) mentions the importance of validation to identify the authenticity of the sources. Following this, the respective policy documents have been analysed to determine the articles and paragraphs that best concern the study to include this in the results. Within the empirical findings, pregnancy rights and fetal rights have also been identified in a human rights global perspective to clarify how these rights are seen in the international human rights laws. Subsequently, the empirical findings have been analysed and processed through CDA and are based on biopolitics and biopower and the central concepts: fetal containers and second-class citizens. This is to develop and examine how the key concepts can be associated with fetal rights and how pregnant women are fetal containers and second-class citizens. Nevertheless, how biopolitics and biopower can be seen within state regulations and how it also contributes to the central concepts and affects the rights of the pregnant woman.

## 3.4. Critique of sources

To ensure good quality in the research study, four classical rules have been evaluated during the assessment of the thesis to have a better quality of the research, these rules are as follows: Reliability, Objectivity, Accuracy and Relevance (Esaiasson et al., 2010, p. 314). The concepts are essential to deliver reliable conclusions of the research study and evaluate the material's quality to this thesis (Esaiasson et al., 2010). The concept of reliability is a part of the study regarding if the material is reliable and accurate since the material has to be valid to be evaluated. Otherwise, will false information be a part of the research, and the conclusions cannot be reliable (Esaiasson et al., 2010). Regarding this concept, the empirical findings in

the study consist mainly of official documents since different policy documents[8] in the selected countries are examined. The policy documents from Ireland are used from the Irish government website. Meanwhile, the policy documents in Hungary, Slovakia and Poland are used from other websites than the governmental websites since these websites have provided an unofficial translation of the policy documents into English. However, to make sure the translation is corrected, I have translated the official documents into English through Google Translate and found other sources to prove its authenticity.

The other concepts are also considered in this thesis to provide arguments that are realistic in the study. Since the previous research about fetal containers and second-class citizens indicate how pregnant women are associated with these concepts. Although, as explained, these research studies mainly consist of arguments related to the U.S. and Canada, not Europe. Therefore, are these two concepts analysed through these arguments, but with the perspective of Europe and the examined policy documents. To clarify how the concepts are related to pregnant women in Europe and how these policy documents are experienced today in society.

## 3.5. Ethical discussion

In the ethical discussion related to the research of this study, there are, according to Vetenskapsrådet (2002), four research ethical principles to consider in social science research. These four principles are requirements that consist of "Information", "Consent", "Confidentiality", and "Usefulness"[9] and are essential to consider having a better quality in the research. The requirement of "information" is to give correct information regarding the study and the research aim. Nevertheless, information regarding me as an author of the thesis and my supervisor and which institution I as an author belongs to, therefore, is this information available on the first page of this thesis. The concept of "consent" concerns studies that include surveys, interviews, etc., including participants who have to give their consent to be a part of the study. These studies have to consider the concept of "confidentiality" since the participants' personal information must be confidential. Therefore, shall not other persons than the researcher be able to identify the information related to the participants. Lastly, the usefulness requirement is about how collected data to the research study concerning individuals can only

[8] See table 1 in sub-chapter "3.1. Material".
[9] In Swedish: Informationskravet, Samtyckeskravet, Konfidentialitetskravet, Nyttjandekravet (Vetenskapsrådet, 2002)

be used for the research. The information about the individual can, for example, not be used in the context of something other than within the research study (Vetenskapsrådet, 2002).

Concerning these four concepts of ethical principles, the study only includes the principle of "information" since the empirical findings are based on official documents and not through, for example, interviews of participants. Therefore, is the law of GDPR not applicable in this research study either. However, since the study touches both complex subjects that concern morale, the study can be sensitive, especially due to its relevance in gender politics, which is considered in the thesis.

# 4. Previous research

In previous research, pregnant women are somewhat described differently in the appearance of pregnancy, being a woman and women's obligation in society to reproduce humankind. Research studies indicate that women, or in this matter pregnant women are 'fetal containers' (Grossman, 2010; Johnsen, 1986; Purdy, 1990), or as well 'second-class citizens' (Cook & Dickens, 2003; Grossman, 2010; Purdy, 1990). Since women cannot enjoy fundamental rights, such as your right to decide over your own body, and by that, women cannot experience the full enjoyment of their citizenship and rights. Even though pregnancy shall provide women with further human rights (Cook & Dickens, 2003). This contradicts each other and as described within Cook and Dickens (2003) research study, pregnancy-related rights are likely to be interfered with concerning how the state controls the regulations of these rights. Thereby, even though pregnancy-related rights are seen in the international human rights laws. The so-called "positive rights", which are the additional rights during pregnancy, can somewhat, in some perceptions, become "negative rights" since states can neglect to deliver these rights, which will create further medical care and safety for pregnant women. Therefore, as can be seen in Grossman's (2010), Johnsen's (1986) and Purdy's (1990) respectively research studies, women are to some extent seen as 'fetal containers' concerning how the state could (/or) have control over the female body during pregnancy.

Overall, this indicates that women's rights can be interfered with to some extent during pregnancy since the state controls the female body. However, how, and why is not critically analysed in existing research from a human rights perspective in a European context. As

previously mentioned, research studies about fetal containers and second-class citizens are often referred to as either American or Canadian cases. However, European countries are mentioned, but not in the same kind of context and will, as mentioned above, be further examined in this thesis to clarify how these concepts are associated with the development of fetal rights in policy documents.

## 4.1. Fetal rights

The previous research about fetal rights discusses how abortion is an ethical dilemma for physicians, and the protection of foetuses is possible through fetal rights. These kinds of rights create the ability for states to protect the "fetal citizens" since the use of the term citizen establishes the potential identification of a foetus as a person. This creates the possibility to see a foetus as a "person with civil rights", and by that, foetuses shall have guaranteed rights as any other life (Holc, 2004). However, as Johnsen (1986) explained, fetal rights differ through a form of 'social determination' in our legal systems since everyone does not have the same opinion of the existence of fetal rights and the different fetal rights that can exist. The presence of fetal rights can also create concerns regarding women's health and the legal system. Nevertheless, it causes gender inequality because of how the foetus that grows inside the woman's womb has extended rights that the pregnant woman does not have (Cosgrove & Vaswani, 2020).

As described in previous research, fetal rights are a part of the maternal-fetal debate of how the policing of pregnancy neglects pregnancy control by favouring the foetus. This means that policing pregnancy, in the perspective of the protection of fetal life, the pregnant woman's life, and the motherhood life, is monitored in the best interest of the foetus. For example, in relation to prenatal care and how the pregnant woman's health and life reflect on the foetus. The pregnant woman can, in some contexts, be associated with being a "bad mother" since the woman can be judged for her actions during pregnancy, that does not favour the foetus, which means that the pregnant woman would become a bad mother after the childbirth too (Cosgrove & Vaswani, 2020). Roth (2000, p. 6) further describes this through how the "maternal-fetal conflict erases all other aspects of a pregnant woman's identity". A conflict that creates a description of pregnant women as mothers even before childbirth and makes it possible to judge the pregnant woman in the belief that she will become a bad mother. Due to possible events that could occur during pregnancy, which does not benefit the foetus. However, these potential

events do not mean that the pregnant woman will not become a wonderful mother. Although, with the protection of fetal life through the regulations of fetal rights, society and the state can judge the pregnant woman for being a bad mother before she even technically is a mother (Roth, 2000).

Through this, previous research indicates a discussion about fetal rights and pregnancy rights concerning pregnant women and how they are analysed in the best interest of the foetus. Nevertheless, contribute to the discussion of the pregnant woman as a mother and how her lifestyle reflects on the foetus and how state's control pregnant women through the regulation of protecting the foetus.

# 5. Theoretical framework and key concepts

To clarify how the regulations of fetal rights in the different countries are a part of how women are associated with being fetal containers and(/or) second-class citizens. The concepts of biopower and biopolitics through Michel Foucault's perspective will be analysed in the study to clarify the state's involvement in women's obligation in society to reproduce humankind and pregnant women's rights. Foucault's beliefs in these concepts are chosen since they can be most related to the subject of the study. The thesis is also grounded in women being fetal containers and(/or) second-class citizens, which are key concepts in the thesis. This chapter will further clarify these four concepts to evaluate how these concepts are important in discussing fetal rights and pregnancy rights.

## 5.1. Biopolitics/ Biopower

In the context of biopolitics or biopower, Michel Foucault (1990, p. 140) mentions the beginning of a new era in the realisation of techniques that made it possible to control the population or the subjection of bodies. Techniques he referred to as biopower (Foucault, 1990, pp. 140-41). A form of power that creates the availability for states to use the power of institutions to govern. However, biopower evolved from biopolitics, based on "anatomo-politics" regulated through the human body. This creates the mechanisms to control the biological process, from propagation to mortality and regulatory control of the population. Furthermore, this establishes an organisational power where the government controls the lives of human beings (Foucault, 1990, p. 139). For example, how state's regulations of fetal rights

can create limitations for pregnant women and how they shall live by the benefit of the foetus (Annas, 1986), which provides governmental control over pregnant women (Foucault, 1990, p. 139).

By that, biopower is a form of development of biopolitics and is categorised within biopolitics. Biopolitics can be identified as a form of modern interpretation of sovereign power by developing Foucault's aspect of biopower since it controls the population from the state of the fetal life to the end of your life (Marchesi, 2013). Foucault (1979a) argued for how biopower is about governing the entire population, with a form of "technology of power" (Foucault, 1990, p. 136), which means that the power or the government is *"*taking charge of life" (Foucault, 1990, p. 143). This is how a government is organising a population, or in another context: human subjects, with multiple techniques. Foucault (1990, p. 136) recognised these techniques as: "incite, reinforce, control, monitor, optimize and organize". Using these techniques, the government has control over the population and life itself (Foucault, 1990), which, together with the influence of sovereign power, makes it possible to use both law and regulations to regulate further and control the population (Dean, 1999; Foucault, 1978). This can be seen in, for example, the protection of fetal life through laws concerning abortion.

Biopower is "the endeavour, begun in the eighteenth century, to rationalize problems presented to governmental practice by the phenomena characteristic of a group of living human beings constituted as a population: health, sanitation, birth rate, longevity, race" (Foucault, 1997). The concept in a bio-historical perspective in the context of power is the way to have power and not in the form of death, but the ultimate way to control human beings, with different mechanisms. This, through the control of human beings in diverse levels in life, will create access to control of the human body and not only death (Foucault, 1990). Through this, one can "designate what brought life and its mechanisms into the realm of explicit calculations and made knowledge-power an agent of transformation of human life" (Foucault, 1990, p. 143). Biopower, therefore, represents how the government has control and power over the population and individuals (Foucault, 1990).

The concepts are also a dimension of liberal modernity since both "development" and "liberalism" are grounded in the concepts (Foucault, 1990) since the concepts are associated with developing life. This contributes to how liberalism can integrate further in society and, by that, taking control over states and societies on multiple levels (Mezzadra et al., 2013), by using

"a power that exerts a positive influence of life" (Foucault, 1990, p. 137). Nevertheless, which subjects both "precise controls and comprehensive regulations" (Foucault, 1990, p. 137), one can administer life itself and, in that way, have the "power to foster life or disallow it to the point of death" (Foucault, 1990, p. 138). Furthermore, with the association of liberalism in the context of a liberal state where individual rights are prioritised, biopolitics cannot simply be used since the engagement of these rights are not possible in population problems and ruling of the population (Stopler, 2017, pp. 171-72). Although Stopler (2017, p. 172) argues for how this perspective of biopolitics can be associated with individual rights concerning a male-centric understanding of liberalism in society. In the context of how liberal states control pregnant women and their uterus within fertility policies designed by male leaders. Nevertheless, due to how the sexuality of women in the use of biopolitics ignores women's bodies since it explores bodies as one and not how it differs between women's and men's bodies (Stopler, 2017, pp. 172-73).

## 5.2. Fetal containers

The concept of fetal containers has been used in research since the late 1980s and has been analysed through how pregnant women could be seen as fetal containers. In the discussion of the concept, Margaret Atwood's dystopian novel Handmaid's Tale[10] is a part of the subject of pregnant women being containers, since it emerged through one of the handmaid's descriptions of her role as a handmaid: "We are two-legged wombs, that's all; sacred vessels, ambulatory chalices" (Atwood, 1985, p. 146). Annas (1986) discusses Atwood's novel in relation to how this "unlikely future" (1986, p. 13) in the novel is a version of how pregnant women can be associated to be fetal containers since pregnant women are not treated equally towards their health and rights. Due to the medical treatments that can be decided by the physician on behalf of the foetus's survival and not the pregnant woman's will. Annas (1986) also discusses how there is something called "fetal neglect", which means that the attorney can build a case against the pregnant woman if she does not live a life that benefits the foetus. This means that the pregnant woman needs to uphold her body to live a healthy life that benefits the foetus. A life that can include, for example, her living situations since the pregnant woman can be forced to leave her child for adoption if her living situation is not ideal for the safety of the foetus and the child.

[10] The first edition was published in 1985.

This is also discussed in Atwood's (1985) novel since the handmaid's daily life is controlled multiple ways, everything from eating to exercise to their drug use. However, their sexual intercourse could also be managed somehow, as a family owns the handmaids to reproduce and deliver a child for them. Therefore, it is essential to control everything to provide a healthy child, which Annas (1986) mentions in relation to these criminal charges that can be made against pregnant women. Especially towards how the foetus is dependent on the pregnant woman and how the pregnant woman and the foetus are analysed as two individuals. Thereby, if something would happen, either the foetus or the pregnant woman will be devalued, and with the "fetal neglect", pregnant women are more likely to be devalued due to the protection of the foetus in the developed policies. Thereby can pregnant women be seen as these kinds of containers for the foetus's survival since humankind cannot reproduce without women's bodies. This creates the importance of the pregnant woman's health, living situation etc., to deliver new healthy children (Annas, 1986) or as well new healthy citizens.

Furthermore, in 1989, Maier (1989) published an article with the title: "Pregnant Women: Fetal containers or People with Rights?", which analyses how pregnant women can be seen as fetal containers in relation to how fetal rights and the protection of the unborn child have become a part of our society (Maier, 1989). Maier (1989) describes this through the "Baby R" case in Canada in 1987, where a pregnant woman had an unwanted medical treatment, and the case involved both ethical and legal issues, as well as medical issues. Since the pregnant woman still wanted a vaginal birth after the obstetrician at the Grace Hospital in Vancouver informed the pregnant woman that the foetus position was a foot lining breach and the best course of action would be to do a caesarean section. The discussion of this case related to how the pregnant woman cannot provide the best kind of care and safety for her unborn child and was not simply a case that involved women's rights, as the court mentioned.

Purdy (1990) further describes fetal containers as a concept referring to pregnant women and how they cannot enjoy their full rights as a woman. In Purdy's (1990) article, she starts the article by introducing right away with: "[...] yes, pregnant women are fetal containers." (Purdy, 1990, p. 273). This as pregnant women carry the foetus in their bodies, and the bearing woman contains the foetus during pregnancy. However, how fetal containers affect pregnant women depends on the different outcomes and how pregnant women can be treated differently. Since women, the same as men, want to control their own bodies and what is happening with their body and how they are treated. Therefore, it is important to respect our rights not to treat anyone

differently and that everyone has an equal right to control their bodies. The problem here is that pregnant women cannot control their bodies during pregnancy. Therefore, inequality is a part of pregnancy and how pregnant women are devalued due to the development of fetal rights in society. Due to the value of the foetus instead of the bearing woman (Purdy, 1990).

These research studies analyse the different cases that have mainly occurred in the U.S. or Canada. Yet countries in Europe seem to have similar cases, even if they may not be that extreme as the other cases, they still relate to the same issue. How pregnant women are devalued over foetuses. However, these cases and the European perspective are not equally discussed in research as the cases in the U.S. and Canada, which is why it will be further analysed in this thesis. This to identify fetal rights in policy documents in Europe and how it relates to how women are fetal containers.

## 5.3. Second-class citizens

The concept of second-class citizens exists in different ways and has various meanings depending on how the concept is used. Green (2016) argues that the phenomenon of the second-class is about the political insights and the so-called "shadow of unfairness" (2016, p. 29) in a liberal democracy. Due to how citizens cannot expect that all citizens are both free and equal in political life since politics is shaped in the form of "second-class civic structures" (Green, 2016, p. 29). Green (2016) analyses this through the structures: remove, manyness and plutocracy, and how the concept of second-class citizens is not only a class question but an ordinary example of how citizenship is experienced in a liberal democracy. The structure of "remove" is used as a concept concerning how citizens are removed from the system after a certain age since they do not have the same "power" in society as before. Manyness is grounded through how citizens desire to be a part of something more than what has been given them in a liberal democracy. This means that citizens want to be a part of, for example, a protest movement to have an actual potential impact on the country's politics. The last structure, plutocracy, shows that, despite the great efforts by states to have a neutralised socioeconomic status in society. There is still economic inequality, which, for example, causes differences in educational and political opportunities. Therefore, since these concepts are a part of liberal-democratic regimes, Green (2016) argues through these concepts how ordinary citizenship is already second-class citizenship due to the structures of an "ordinary civic life" that contributes to restrictions in society (Green, 2016, p. 30). However, as mentioned, the concept of second-

class citizens can be seen from different perspectives and even though Green (2016) notes important aspects of second-class citizenship in a liberal democracy.

Other elements can be argued for in discussing who are second-class citizens and why they are classified as second-class citizens since there are diverse systems in society, for example, family systems, which can be in a predominantly patriarchal society. Consequently, this causes women to be denied their social rights and that they can be associated to be second-class citizens, which Ahmed et al. (2015) argue is the case in Pakistan because of the family system and how women are below men in the households. Even the children in the families are treated differently since the sons have both better respect and rights than the daughters. This means that girls/women have, even from their day of birth, limited rights and are treated differently, which is gender discrimination against females. Likewise, women are also treated as second-class citizens, especially in a predominantly patriarchal sociocultural society, because of the limited social rights, which is more than just gender discrimination (Ahmed et al., 2015). Feinman (1997) also discusses how women in the U.S. have been treated as second-class citizens, both from a military point of view and in republican's ethics. Republicanism is developed through the ethics of how white males are treated as "first-class citizens" and white females as "second-class citizens" since the white males were more privileged in society than white females. Especially since only the white males could, for example, be a part of the military services, keep the child/children in the household if the married couple filed a divorce, vote, etc. This left the white females to be "citizens-mothers" (1997, p. 33) and how they should only take care of the family and not have any formal obligation in society, such as voting and conscript to military service. Significantly since one believed that women could not be that martial soldier and a fearless citizen, that was necessary for these circumstances. Instead, women had and still have the obligation in society to reproduce humankind and be a mother and a wife. With time, this has developed and changed in the American society, but this kind of perspective still lies in the ground structure of the society (Feinman, 1997).

In the end, the discussion of citizenship is a part of the concept of second-class citizens since a second-class citizen has been denied their fundamental rights to enjoy full citizenship. This means that this person is not recognised to her/his same form of membership within society as everyone else, even though they have the same citizenship and same status in society (Grossman, 2010). Yet, the under-discussed subject in the concept of second-class citizens is

pregnant women and how pregnant women are second-class citizens, which is further examined in this thesis.

# 6. Empirical findings

The following chapter will first present the relation between the pregnant woman and the foetus from a global human rights perspective and then identify pregnancy rights and fetal rights separately to further identify the context of these rights on a global basis. After that, each country's policy documents will be examined in separated sub-chapters to identify the different articles that recognise fetal rights, to analyse them in the analysis chapter below.

## 6.1. Human rights Global Framework in relation to pregnant women and the fetal life

In the previously mentioned chapters, pregnancy rights are not commonly associated with the core international human rights instruments[2]. The fetal life is not grounded in any of the articles in relation to "right to life" (UDHR, Art. 3; ECHR, Art. 2.) and is instead recognised by each country's regulations in relation to the protection of fetal life. Likewise, pregnant women's rights are mentioned in these regulations since the foetus develops and grows within a woman's womb. Although, as will be examined below, through the different laws in respective countries, pregnant women's rights are in this context more associated with the development and the health of the foetus, and not the pregnant woman herself.

Additionally, and as previously mentioned, pregnant women's rights are more associated with the BDPFA (1995) since this framework for change for women is still a powerful source today. Yet, this framework serves more of a guidance than an actual print of rights, even if the governments that participated in the Fourth World Conference on Women adopted this new framework that envisions gender equality and women's empowerment. The framework offers a forward-looking goal in society in terms of women and girls. Although, in this context, women's rights and especially pregnancy rights are mentioned several times using different concepts, but always in relation to the pregnancy and the pregnant woman. Particularly in the context of childbirth, health, and safety (BDPFA, 1995), which will be further examined in the next upcoming chapter. Lastly, fetal rights are not mentioned in the framework and will instead be further demonstrated through other relevant legal documents and sources (BDPFA, 1995).

The following two upcoming chapters will further introduce pregnancy rights and fetal rights related to the human rights documents that are most associated with these rights.

### 6.1.1. Pregnancy rights

What can be seen in the UN's core international human rights instruments[2], pregnancy rights are mentioned a few times, this in the use of the following concepts: "maternity", "pregnancy", and "pregnant". However, as shown in Table 2 below, these concepts are not particularly common or repeated in the relevant core international human rights instruments[2]. Other related concepts such as "fetal", "fetus/foetus", "unborn child" are not mentioned in any of the mentioned international human rights laws in table 2. Since fetal rights and the protection of the foetus are developed through national laws, for example, in state's constitutions or various policy documents.

Table 2: The use of the different concepts related to pregnancy rights

| Concepts: | "Maternity" | "Pregnancy" | "Pregnant" |
|---|---|---|---|
| ICCPR | 0 | 0 | 1 |
| ICESCR | 0 | 0 | 0 |
| CEDAW | 9 | 4 | 0 |
| CRC | 0 | 0 | 0 |
| | | | |
| Optional protocols | | | |
| ICESCR-OP | 0 | 0 | 0 |
| ICCPR-OP | 0 | 0 | 0 |
| OP-CEDAW | 0 | 0 | 0 |

* In the columns with a "0", the convention does not mention the concepts at all.

The concept/s mentioned above are used in an article/s in the respective convention, whereas "maternity" is commonly used in maternity leave. The concept "pregnancy" is mentioned in relation to how the state shall grant different services and protect women during pregnancy, for example, in different work situations and health aspects. "Pregnant", on the other hand, is only used within the ICCPR (1966) in the context of how pregnant women shall not be sentenced to

death (Art. 6.5, ICCPR). However, in the ECHR (1950) and the UDHR (1948), none of these concepts is used, likewise, as in the other core international human rights instruments[2], even if the concept of "family" is used several times. Yet, this does not cover the bearing woman or the foetus in some way since it is more of your right to family and private life. This causes pregnant women not to be protected as much as needed from a European and international perspective. Therefore, each country's development in this area is important to deliver better services and rights concerning pregnancy and women's rights.

Beyond the core international human rights instruments[2], the previously mentioned BDPFA (1995) includes different pregnant women's rights. For example, in comparison to the above Table (2) in relation to the BDPFA (1995), the concepts are more commonly used and are presented in Table 3 below.

Table 3: The use of the different concepts in the BDPFA

| Concepts: | "Maternity" / "Motherhood" | "Pregnancy" | "Pregnant" |
|---|---|---|---|
| The Beijing Declaration and Platform for Action | 7 (4 / 3) | 16 | 4 |

In the viewing of the numbers in Table 3, one can see that the concepts are more used in the BDPFA (1995) in relation to the different core international human rights instruments[2] in Table 2. However, the BDPFA (1995) is more extended and many different things regarding girls/women's rights that governments and other institutions must manage. The BDPFA (1995) also recognises comprehensive rights for pregnant women and shall ensure that women, even if they are: breastfeeding, maternity leave, are a mother or are pregnant, shall have equal rights. Women shall not be discriminated against in the labour market and as employers (Section 165. By Governments: para. (c)). However, since the framework does not include fetal rights, pregnancy rights in this document are represented in the context of the labour market or in relation to, for example, forced pregnancy or pregnancy at an early age. Thereby, even if it looks good on paper, the BDPFA (1995) features many different rights to accomplish gender equality in society with women empowerment. The framework does not serve in the right context of pregnancy rights regarding this research. Yet, the framework is essential in discussing how "women's rights are human rights" (Art. 14, Annex I, Beijing Declaration, 1995) and shall be acknowledged further through this framework, as pregnancy rights are a

part of it. Thereby, in relation to pregnancy rights and the health of women, the state's that participated in the Fourth World Conference on Women recognise "the right for all women to control all aspects of their health, in particular their fertility, is basic empowerment" (Art. 17, Annex I, Beijing Declaration, 1995). By that, pregnancy rights are demonstrated and will be important in the ongoing discussion of pregnancy rights and fetal rights in this research and the chapters below. The BDPFA (1995) recognises critical perspectives in relation to women's rights and women being pregnant.

### 6.1.2. Fetal rights

In the discussion of fetal rights, Roth (2000) acknowledges the importance of how fetal rights are not easy, it is not free, and it causes inequality, which does not benefit women. Yet, fetal rights have developed throughout the years, and more countries recognise the importance of fetal rights in various policy documents. This protects the fetal life and health, likewise as it benefits the foetus in the reproduction of humankind in society. Roth (2000) also analyses how fetal rights always come with a cost since the pregnant woman is not prioritised in the context of the foetus's health and life. Significantly, even though the social arrangement (in this case in the U.S.) is that only women are responsible for reproduction and have an obligation to reproduce humankind. By that, fetal rights are unfavoured to women since the social institutions require women to uphold their bodies and live through the ethics that benefits the foetus during pregnancy and not the pregnant woman.

In recognition of fetal rights and the protection of fetal life, the foetus is not protected in the UDHR (1948) or the ECHR (1950) in relation to the "right to life" (UDHR, art. 3; ECHR, art. 2.1.). Fetal rights are, as mentioned above, not a part of the core international human rights instruments[2] or any human rights in that matter on a global basis. However, fetal rights and the protection of fetal life have emerged during the last decades in society, as states have recognised the importance of protecting the foetus and that fetal rights shall also be adopted through national laws. The variety of the impact and extension of fetal rights in society depends on the different stages the states have implemented laws favouring fetal rights in the country's legal system (Copelon et al., 2005). Thereby, in the upcoming chapters, the development of fetal rights in each selected country in the thesis will be further examined. This to demonstrate and analyse fetal rights in the respective legal systems to identify the progress of fetal rights and the protection of fetal rights on a national basis. Likewise, as discussed in Copelon et al.

(2005) research, how fetal rights interact with reproductive rights since reproductive rights are your right to your body and reproductive health. Thereby, the adoption of fetal rights will cause inequality, as women cannot decide over their reproductive health, especially since Roth (2000) mentions how the protection of fetal life does not benefit women, especially during pregnancy.

Reproductive rights are also a part of the BDPFA (1995) and how girls and women and pregnant women need to have better rights in relation to their reproductive health, which goes hand in hand with fetal rights. Even if fetal rights are not expressed or included in the BDPFA (1995), these rights are a part of each other and will be examined below in relation to your right to your own body.

## 6.2. Ireland, Hungary, Slovakia and Poland

In the development of fetal rights in Ireland, Hungary, and Slovakia, fetal life is protected in the respective constitutions with their right to life / or worthy of living. Even if Poland has not regulated a statement in the Polish Constitution, Poland has adopted laws that protect fetal life. By these countries, Ireland was the first country in the EU to cover fetal rights in their constitution. This occurred in 1983 when the voters in Ireland accepted the Eighth Amendment to be added in the Irish constitution, which related to fetal rights (de Londras, 2015) and will be examined in the upcoming chapter "6.2.1. Ireland". Likewise, the other countries in their respective forthcoming chapters.

### 6.2.1. Ireland

In recognising the protection of fetal life, Ireland's adoption of the Eighth Amendment to the Irish constitution started the discussion about how women's actions to do an abortion would be seen as criminal actions. This, since the Eighth Amendment of the Constitution Act (1983), states in part II article 3:

"The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right."

In this section, the so-called "unborn" is protected under the Irish constitution with her/his right to life and shall be protected equally with the bearing mother. Although, if something would

happen which violates this right, the foetus shall be defended even if it may violate the pregnant woman's rights (Eighth Amendment of the Constitution Act, 1983). Thereby, if pregnant women choose to decide over their own body, which is their right, they would be treated as criminals if they performed a termination to end their pregnancy. The adoption of the Eighth Amendment consequently banned abortion[11] (Carnegie & Roth, 2019) and The Irish Council for Civil Liberties (ICCL) (2021) state:

> "[...] for over 35 years, the State has guaranteed the right to life of the fetus OVER the rights to life, health, dignity and privacy of women and girls. The State has also subjected pregnant people to inhuman and degrading treatment and arbitrary deprivation of liberty, all as a result of the 8th Amendment."

The statement is a part of how the ICCL (2021) is a supporter of removing article 40.3.3. in the Eight Amendment of the Irish Constitution that includes the rights of the foetus due to how it treats pregnant women as criminals and violates the rights of the bearing woman. Nevertheless, it results in women being forced to travel to the United Kingdom to have an abortion. A right and a procedure that should be possible to have in your own country (Carnegie & Roth, 2019).

The adoption of the Eighth Amendment is further described by Cook and Dickens (2003) as a part of the Roman Catholic Tradition since the tradition believes human life starts from the moment of conception. This makes it equally important to protect the foetus, too, since your life has already begun according to religious beliefs. Thereby, with the historical perspectives of Ireland as a "Catholic-driven state ideology" (Carnegie & Roth, 2019, p. 111), the generations of women having the primary role as both mother and wife is still a part of the society. Thereby, even though Irish politics have changed over the years, many traditions remain the same, and the traditions influence the regulations. Particularly regarding the development of fetal rights and the different policy documents that have been adopted, especially concerning abortion. By that, two of these laws will be further examined in the chapters below.

[11] Abortion is legal in some circumstances and will be examined during in the next upcoming chapters.

#### 6.2.1.1. Protection of Life During Pregnancy Act 2013

Beyond the adoption of the Eighth Amendment in the Irish Constitution in 1983, other policy documents have been adopted in Ireland that recognise the right of the foetus. One of these acts is the "Protection of Life During Pregnancy Act 2013", an act that protects the foetus or the "human life during pregnancy" (2013, p. 5). The Protection of Life During Pregnancy Act 2013 also recognises the pregnant woman's right in specific/limited circumstances.

In the protection of the foetus, the unborn human life is protected explicitly in the articles 22.1.; 22.2.; and 22.3., since these articles include the "Destruction of unborn human life" (Protection of Life during Pregnancy Act 2013, p. 18). Article 22.1. states:

"It shall be an offence to intentionally destroy unborn human life"

This article means that anyone that intentionally harms the foetus which causes the death of the foetus shall be punished on a legal basis. This is further stated in article 22.2.:

"A person who is guilty of an offence under this section shall be liable on indictment to a fine or imprisonment for a term of exceeding 14 years, or both."

Thereby, suppose you potentially harm the foetus to the extent that it is lethal for the foetus. In that case, the person who harmed the unborn child will be prosecuted if the Director of Public Prosecutions consent that a prosecution is necessary for the context of the unborn child (Art. 22.3.)

Furthermore, the Protection of Life During Pregnancy Act 2013 refers to multiple articles in the protection of fetal life, recognising the pregnant woman's life. Part 2, chapter 1, "Risk of loss of life of pregnant women" (2013), examines the potential outcomes of physical illness and when termination can be possibly related to the pregnant woman's physical health. This means that in respect of the pregnant woman, a medical procedure to end the life of the foetus can occur if two medical practitioners that are certified in the consent of the act[12] believe that:

[12] The medical practitioners shall according to article 7.2 be "a) one shall be an obstetrician who practices as such at an appropriate institution, and b) "the other shall be a medical practitioner of a relevant specialty." (Protection of Life During Pregnancy Act 2013).

"(i) there is a real and substantial risk of loss of the woman's life from a physical illness, and (ii) in their reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) that risk can only be averted by carrying out the medical procedure,"
(Art. 7.1.(a), Protection of Life During Pregnancy Act 2013).

This means that pregnant women with certain physical illnesses can terminate the pregnancy, even though article 40.3.3., in the Eighth Amendment in Irish Constitution acknowledges "the right to life of the unborn child". Pregnant women can also have an abortion in an emergency related to a woman's physical illness if a medical practitioner believes the woman's life is threatened. By that, the medical practitioners can perform an abortion immediately if their opinion is that it is the only way to save the pregnant woman's life (Art. 8.1-8.2., Protection of Life During Pregnancy Act 2013). However, it is also possible to terminate a pregnancy in relation to the pregnant woman's psychological health if:

"(i) there is a real and substantial risk of loss of the woman's life by way of suicide, and (ii) in their reasonable opinion (being formed in good faith which has regard to the need to preserve unborn human life as far as practicable) that risk can only be averted by carrying out the medical procedure,"
(Art. 9.1.a, Protection of Life During Pregnancy Act 2013).

Although, in the context of suicide, three medical practitioners have to approve to terminate the pregnancy. However, it is important that:

"(a) one shall be an obstetrician who practises as such at an appropriate institution,
(b) one shall be a psychiatrist who practises as such at an appropriate institution, and
(c) one shall be a psychiatrist who practises as such— (i) at an approved centre, or (ii) for, or on behalf of, the Executive, or both."
(Art. 9.2., Protection of Life During Pregnancy Act 2013).

It is also important that one of the two psychiatrists "shall be a psychiatrist who provides, or who has provided, mental health services to women in respect of pregnancy, childbirth or post-partum care." (Art. 9.3.2.). If these three medical practitioners agree that an abortion is

necessary and with the agreement by the pregnant woman, a medical procedure that terminates the pregnancy can be performed.

#### 6.2.1.2. Health (Regulation of Termination of Pregnancy) Act 2018

The "Health (Regulation of Termination of Pregnancy) Act 2018" is provided further to regulate any performance of termination of a pregnancy. The act also prescribes further "rights" for pregnant women to have an abortion since the act provides more legal ways to terminate a pregnancy. Although, even if the act shall respect pregnancy and make it more available to have an abortion. The act still has this responsibility to the foetus or so-called unborn child due to the regulation in article 40.3.3., in the Eighth Amendment in the Irish Constitution.

In the "Health (Regulation of Termination of Pregnancy) Act 2018", there are four more main sections that particularly relate to different circumstances when a termination of pregnancy is possible. These are: "Risk to life or health"; "Risk to life or health in emergency"; "Condition likely to lead to death of foetus"; and "Early pregnancy". The section that contributes to further understanding abortion concerning "Risk of life or health" is regulated in article 9 in four different sections and additional paragraphs. According to article 9.1. "A termination of pregnancy may be carried out in accordance with this section where 2 medical practitioners[13], having examined the pregnant woman, are of the reasonable opinion formed in good faith that -":

"(a) there is a risk to the life, or of serious harm to the health, of the pregnant woman,

(b) the foetus has not reached viability[14], and

(c) it is appropriate to carry out the termination of pregnancy in order to avert the risk referred to in paragraph (a)."

(Art. 9.1. in the Health (Regulation of Termination of Pregnancy) Act 2018)

The second section, "Risk to life or health in emergency", is stated in article 10 in the "Health (Regulation of Termination of Pregnancy) Act 2018". In contrast, termination of pregnancy can be carried out if a medical practitioner believes that:

[13] The medical practitioners shall according to article 9.2. be: "(a) one shall be an obstetrician, and (b) the other shall be an appropriate medical practitioner." (Health (Regulation of Termination of Pregnancy) Act 2018).
[14] According to the Health (Regulation of Termination of Pregnancy) Act 2018, ""viability" means the point in a pregnancy at which, in the reasonable opinion of a medical practitioner, the foetus is capable of survival outside the uterus without extraordinary life-sustaining measures."

"(a) there is an immediate risk to the life, or of serious harm to the health, of the pregnant woman, and
(b) it is immediately necessary to carry out the termination of pregnancy in order to avert that risk."
(Art. 10.1. in the "Health (Regulation of Termination of Pregnancy) Act 2018").

In this section, only one medical practitioner needs to approve the termination of pregnancy after he/she has examined the pregnant woman and believes that it is to save the pregnant woman (Art. 10.1.). The third section, "Condition likely to lead to death of foetus", regulate when a termination of pregnancy can be performed concerning the foetus status and is stated in article 11.1.:

"A termination of pregnancy may be carried out in accordance with this section where 2 medical practitioners[15], having examined the pregnant woman, are of the reasonable opinion formed in good faith that there is present a condition affecting the foetus that is likely to lead to the death of the foetus either before, or within 28 days of, birth.".

It is essential here that both medical practitioners agree a termination of pregnancy is the best outcome and that it aligns with the statement in article 11.1. Otherwise, the procedure to end the pregnancy will not be legal. In the fourth section, "Early pregnancy" is stated in article 12 in the act and referred to a pregnancy that "has not exceeded 12 weeks of pregnancy" (Art. 12.1.), which is "construed in accordance with the medical principle that pregnancy is generally dated from the first day of a woman's last menstrual period." (Art. 12.5.). This section is probably the only section that is more "appropriate" to women's rights and the pregnant woman's rights. Since pregnant women can have an abortion if:

"(1) A termination of pregnancy may be carried out in accordance with this section by a medical practitioner where, having examined the pregnant woman, he or she is of the reasonable opinion formed in good faith that the pregnancy concerned has not exceeded 12 weeks of pregnancy."

[15] The medical practitioners shall according to article 11.2. be: "(a) one shall be an obstetrician, and (b) the other shall be a medical practitioner of a relevant specialty." (Health (Regulation of Termination of Pregnancy) Act 2018).

(Art. 12.1.).

By this newly adopted act, abortion is legal in Ireland, although, as demonstrated above, there are many different conditions to have a legal abortion. How the updated law by the Irish policymakers have affected pregnant women in Ireland will therefore be further analysed in the "Analysis and discussion" chapter.

### 6.2.2. Hungary

In similarity to Ireland, pregnant women in Hungary have experienced issues related to their pregnancy due to the Roman Catholic Tradition since it is a central part of the country. By these traditions, the government has faced difficulties in the Hungarian Constitutional Court to protect women rights and prenatal life. This as the court has not found a correct balance that protects both lives without discriminating against the other, especially with "women's human dignity and interests in prenatal life" (Cook & Dickens, 2003, p. 27). However, in 1992 Hungary legislated a law that makes it possible for women to have an abortion in the first trimester if requested. Although, the legislation itself was not easy to justify since the court needed to have an extended clarification from the National Parliament of a "severe crisis" concerning abortion (Cook & Dickens, 2003). The law itself does not legalise abortion, as the law only permits termination of pregnancy in certain limited circumstances (Act LXXIX of 1992 on the protection of fetal life).

Regardless of the legislated law in 1992 (Act LXXIX of 1992 on the protection of fetal life), the Hungarian General Assembly adopted new additional regulations about protecting the fetal life in 2011. The updated Fundamental Law of Hungary (2011) states in section "Freedoms and Responsibilities" in article II:

"Human dignity shall be inviolable. Everyone shall have the right to life and human dignity; the life of the fetus shall be protected from the moment of conception".

The updated version of the Fundamental Law of Hungary (2011) states that "the life of the foetus" shall be protected immediately after conception, which means that the foetus is protected the entire pregnancy and has rights before being born. This as the foetus is considered to have rights as soon as the egg cell is fertilised into an embryo, which becomes a foetus. A

foetus with equal rights as any other life and has further rights with the updated version, despite the extended rights in the Act LXXIX of 1992 on the protection of fetal life.

#### 6.2.2.1. Act LXXIX of 1992 on the protection of fetal life

The "Act LXXIX of 1992 on the protection of fetal life" (from now on referred to as "the act" or only used by article/paragraphs numbers) is regulated to protect the fetal life since it is a life that starts from conception and deserves all the protections and respect as any other life. Nevertheless, the Parliament of Hungary believes that "the termination of pregnancies is not a means of family planning and birth control" and is one reason why the act (1992) is adopted. Article 1 in the act (1992) describes the foetus in the following words:

> "The fetus, which emerges from the union of the female and male reproductive cells and which develops in the mother's womb, and the pregnant woman deserve support and protection."

After the first article, there are different means and methods in the form of different articles and additional paragraphs supporting and protecting fetal life. There are, for example, multiple paragraphs about how the state shall act in the protection of the foetus, this as they "shall support activities and organisations that serve the protection of fetal life, especially those that provide financial help to pregnant women in need," (Art. 2, para. 3(c)). There is also an importance to ensure better labour laws for pregnant women, to both support and increase the protection of the bearing woman, that in the end, support the fetal life (Art. 2, para. 3(d)). Likewise, to support the pregnant woman's family in various means, for example, "crisis counselling" for the mother and, if needed to the entire family (Art. 2, para. 3(b)). The act also regulates how families shall be provided with family protection services that contribute with assistance in a crisis (Art. 2, para. 2). Likewise, as both:

> "Primary and secondary education institutions shall be responsible for education on the value of health and human life, a healthy way of life, responsible relationships, family life that is consonant with human dignity, as well as birth control methods that are not harmful to health."
>
> (Art. 2, para. 1)

This provides extended support and methods to protect the foetus and the pregnant woman. Beyond this, article 3, paragraph 3(2) complements additional information regarding prenatal care to ensure the healthy development of the foetus regarding the pregnant woman's lifestyle and prenatal care. For example, article 3, paragraph 2(a) states the importance of how:

"the pregnant woman shall be informed of the lifestyle necessary for the healthy development of the fetus, of healthy nourishment and of the importance of avoiding effects (especially smoking and alcohol consumption) that are harmful for fetuses,"

There is also additional information about prenatal care in the form of screening tests (Art. 3, para. 2(b)) and how "the pregnant woman shall be assisted in preparing for delivery, breastfeeding, and looking after newborn babies and children." (Art. 3, para. 2(c)). This provides a healthy environment for the foetus to develop. Therefore, it is also important that the state funds the requested screenings test to control and deliver a healthy development of the foetus (Art. 3, para. 2(a-b)).

Furthermore, there is a section in the act (1992) specifically related to the termination of pregnancy (Art. 4), a section that provides different legal conditions of how to terminate a pregnancy. Likewise, there are additional reviewing steps concerning the request from the pregnant woman to terminate her pregnancy. These steps can be read about in article 9 in the act (1992) in the attached appendices in this thesis. However, as mentioned, the pregnant woman has to write a request to terminate her pregnancy, although, if the termination of pregnancy needs to happen due to health grounds, a written request is not required. Otherwise, all kinds of termination of pregnancy have to be requested on a written consent basis by the pregnant woman[16] (Art. 7, para. 1). The pregnant woman can request a termination to end the pregnancy until the 12th week of pregnancy, although only if one of the following conditions is fulfilled:

"a) the pregnant woman's health is severely endangered,
b) the fetus is likely, on medical indication, to suffer from a severe disability or other impairment,

[16] This does not apply if the pregnant woman is either "a partially incapacitated person, it is necessary to obtain a statement by the guardian that he has taken notice of the request for a pregnancy termination." (Art. 8, para. 2). Or it the pregnant woman is "a fully incapacitated person, the guardian shall submit the request for the termination of the pregnancy on behalf of the incapacitated person." (Art. 8, para. 3).

c) the pregnancy is the result of a criminal act, or
d) the pregnant woman is in a severe crisis situation."
(Art. 6, para. 1(a-d)).

Additionally, termination of pregnancy can be permitted in different crises concerning the pregnant woman's physical or physiological health and if the pregnancy is endangered (Art. 5, para. 1-2). Termination of pregnancy can also be possible until week 24 of the pregnancy. This "[...] if the probability of the fetus' having a genetic or teratological malformation reaches 50%" (Art. 6, para. 3). However, the pregnancy can also be terminated regardless of the gestational age of the foetus, if: "a) the life of the pregnant woman is endangered by a medical condition, or b) the fetus has a malformation that renders postnatal life impossible" (Art. 6, para. 4(a-b)). In other circumstances, termination of pregnancy can be performed if the pregnant woman "did not recognise the pregnancy in time due to health reason for which she cannot be held responsible, or due to a medical error, or if the period under subsection (1[17]) elapsed because of the failure of a health institution or authority" (Art. 6, para. 2(b)). This additional paragraph gives pregnant women some extended rights with abortion, although the rights prescribed in the act (1992) are limited on the pregnant woman's behalf.

### 6.2.3. Slovakia

In 1989 when the communist rule ended in former Czechoslovakia, the state dissolved into two separate states: the Czech Republic and the Slovak Republic. The United Nations officially marked the dissolution of Czechoslovakia in 1993, when the new states became respective member countries of the United Nations. However, in 1992 the newly independent state, Slovakia, recognised the Constitution of the Slovak Republic (1992). A constitution which included the rights of the foetus in article 15.1:

"Everyone has the right to life. Human life is worthy of protection even before birth."
(Constitution of the Slovak Republic, 1992).

The article recognises that every human life is worthy of life, and every human life shall be protected, even the lives that have not yet been born. This protects the life of the foetus in

[17] "(1) Pregnancies may be terminated up to the 12th week if" (Art. 6, para. 1).

Slovakia. Beyond this, other regulations have become national laws in Slovakia concerning fetal rights and especially regarding abortion. These are as followed:

1. Act no. 73/1986 Coll. as amended by Act No. 419/1991 Coll. of 23 October 1986 on Artificial Interruption of Pregnancy
2. Act no. 576/2004 Coll. on Health Care, Service related to the Provision of Health Care and on Amendments to Certain Act (Health Care Act)

These two acts are in relation to fetal rights in Slovakia and are specially designed in the context of a termination of a pregnancy and will be further examined in separated sub-chapters below. However, it is essential to note that medical abortion in Slovakia is not legal, only surgical abortions, which means that it is illegal to take an abortion pill in Slovakia. A much safer method than a surgical abortion but still not legal (Pietruchova, 2020).

#### 6.2.3.1. Act no. 73/1986 Coll. as amended by Act No. 419/1991 Coll. of 23 October 1986 on Artificial Interruption of Pregnancy

"Act no. 73/1986 Coll. as amended by Act No. 219/1991 Coll. of 23 October 1986 on Artificial Interruption of Pregnancy" is an act that was adopted before Slovakia was an independent state, during the time as the former Czechoslovak Republic. After the independence of Slovakia, this act became an official act in their legal system in 1993. It regulates the so-called "artificial interruption of pregnancy", basically when an abortion can be performed and when it is illegal. The act also provides further information about how to prevent unwanted pregnancy, as well as "the life and health of the woman and in the interest of planned and responsible parenthood." (Art. 1). In the act, three articles provide certain conditions when a termination of pregnancy can occur. Article 4 provides with following regulations:

> "A pregnancy shall be artificially interrupted if the woman makes a written request to this effect, the pregnancy has not surpassed the twelfth week, and there are no contraindications due to health reasons for the woman."

Article 4 is the main article that regulates when an abortion is legal, which is before the twelfth week of pregnancy. According to article 4, the pregnant woman must write a written request to have the procedure. Although, termination of pregnancy can be possible in other cases, depending on the circumstances, which is further explained in article 5:

"A pregnancy may be artificially interrupted on health grounds with the woman's consent, or at her instigation, if her life or health or the healthy development of the fetus are endangered, or if fetal development manifests genetic anomalies."

By that, termination of pregnancy can be performed if either the pregnant woman's health or life is threatened, and the pregnant woman has given her consent that abortion is the best course of action due to her medical circumstances. However, article 5 also provides other medical reasons, which regulates when an abortion can be legally performed. These medical reasons are in the context of the foetus's health and life, for example, if the foetus's healthy development is endangered or if there is any possibility of genetic anomalies.

It is important to notice that a termination of pregnancy can occur in these circumstances after the first trimester[18] of pregnancy. However, article 6 provides further regulations following article 4 (section 4) of how and when a termination of pregnancy can be possible in relation to the pregnant woman's age. Article 6.1. states as followed:

"In the case of a woman who has not yet reached the age of 16, artificial interruption of pregnancy in accordance with Section 4 may be performed with the consent of her legal representative or of the person who has been assigned responsibility for raising her."

The section is further regulated by article 6.2., which provides with following additional conditions:

"If artificial interruption of pregnancy in accordance with Section 4 has been performed on a woman between 16 and 18 years of age, the health facility shall notify her legal representative."

Beyond these regulations of the conditions of when a termination of pregnancy is legal, other conditions regulate different circumstances concerning the termination of pregnancy. For example, who shall perform the procedure and what the pregnant woman can do if the physician

[18] The pregnancy is divided into three trimesters, whereas the first trimester is week 0-13; the second trimester is week 14-26; and the third and last trimester is week 27-40 (UCSF Health, 2021).

would disagree that a termination of pregnancy aligns with the conditions of when to interrupt a pregnancy artificially. Thereby, if the pregnant woman wants to do an abortion, there are a few points she has to follow as according to article 7:

"The woman shall submit a written request for an artificial interruption of pregnancy to the gynecologist of the health facility serving her place of permanent residence, place of work, or school. The gynecologist shall inform the woman of the possible health consequences of an artificial interruption of pregnancy and instruct her in the use of methods and means of contraception. If the woman insists on an artificial interruption of pregnancy and the gynecologist finds that the conditions therefor are satisfied, he shall specify the health facility where the operation is to be performed."

These regulations provide how the gynaecologist shall inform, amongst other things, what an artificial interruption of pregnancy can affect the pregnant woman. Furthermore, there can be, as explained, cases when the physician disagrees with the pregnant woman and that she fulfils her rights to interrupt her pregnancy artificially. If this would happen, the pregnant woman can, under article 8.1.:

"[...] within three days, make a written request that her case be examined by the director of the health facility, who shall examine the request within two days of its submission. When examining the request, the director of the health facility shall consult two additional physicians specializing in obstetrics and gynecology and, if necessary, a physician specializing in another field. If he deems that the conditions for an artificial interruption of pregnancy are satisfied, the physician shall inform the woman as to the health facility in which the operation for an artificial interruption of pregnancy is to be performed."

However, suppose neither the director considers that the pregnant woman fulfils the conditions in article 4 or 5. In that case, the director shall, by article 8.2., write to the pregnant woman that "the decision taken as result of the examination, this decision shall be final". Since the decision is the final decision and the decision that has been made cannot be overruled. Thereby, the procedure cannot be performed, even if the pregnant woman wishes to end her pregnancy by performing an abortion.

#### 6.2.3.2. Act No. 345/2009 Coll. of Laws Amending Act No. 576/2004 Coll. on Healthcare, Healthcare-related Services and Amending and Supplementing Certain Acts

Act No. 345/2009 Coll. of Laws is an amendment of Act No. 576/2004 Coll. on healthcare, healthcare-related Services and on amendment and supplementing of certain laws. The act provides additional paragraphs about the "Informed consent in the case of an induced abortion". This means that there are several instructions on legally giving informed consent to have a legal abortion. Since the pregnant woman must provide her legal consent after she has been informed with following additional information in article 3, paragraph 6b:

> "a) the purpose, nature, procedure and consequences of the induced abortion,
> b) the physical and mental risk associated with the induced abortion
> c) the current development stage of an embryo or a foetus whose development is to be terminated, and the entitlement to obtain a recording from an ultrasound examination,
> d) alternatives to having an induced abortion, in particular on the possibility;
>
> 1. to conceal her identity in connection with a childbirth
> 2. to give the child up for adoption after the birth
> 3. to receive financial, material or psychological assistance during pregnancy provided by civic associations, non-profit organizations, foundations, churches and religious communities."

However, other requirements are needed to be followed in different cases, for example, paragraph 6b, section 3(3) acknowledges that there is an obligatory waiting period of 48 hours to perform an abortion after the informed consent. The physician also has to provide a list with the following things to the pregnant woman: "civic associations, non-profit organizations, foundations, churches and religious communities that provide financial, material and psychological assistance to women during pregnancy" (Paragraph 6b, section 3(3)) to aware the pregnant woman of all different circumstances concerning pregnancy and potential termination of the pregnancy.

### 6.2.4. Poland

Compared to the other chosen countries that have been examined above, Poland does not include fetal rights in their constitution. Yet, Poland's highest court did declare in 1997 that any form of abortion is unconstitutional (Holc, 2004), and the discussion is still ongoing in the

country. In 2020 Amnesty International reported how "Poland's Constitutional Tribunal Rolls Back Reproductive Rights". This as the Polish Constitutional Tribunal wants to have additional constitutional rulings regarding abortion, due to impacts and how it according to article 4a, paragraph 2, cause "severe and irreversible fetal defect or incurable illness that threatens the fetus' life" (The Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993). Concerning this new law proposition, the Polish abortions policies will be even stricter and violate women's rights and reproductive health. Nevertheless, cause "situations where women's physical or mental health is at risk" (Amnesty International, 2020).

Furthermore, as reported in the analysis by European Parliament and the author Dorota Szelewa (2015), there are stringent laws in Poland in relation to abortion and foetus health since it is only legally possible to terminate a pregnancy by three different and specific circumstances. Although in a historical perspective, there has been more of a state-socialism in Poland, which means that the country has been more open on a legal basis concerning abortion because of social grounds. However, in January 1993, Poland legislated a new law called "Family Planning, Protection of Human Embryo and Conditions of Termination of Pregnancy Act", a law that includes fetal rights and the protection of the foetus, specifically in Article 4a. These new regulations consequently caused limited rights for pregnant women in relation to the protection of fetal life (Szelewa, 2015). This act will be further examined in the next sub-chapter.

#### 6.2.4.1. The Family Planning, Protection of Human Embryo and Conditions of Termination of Pregnancy Act of 7 January 1993

"The Family Planning, Protection of Human Embryo and Conditions of Termination of Pregnancy Act", hereafter only "the act" or referred with an article, is provided to recognise the right to life as "a fundamental right of a human being" and the protection of life shall also include "the prenatal phase" (Art. 1) This means that the foetus is also protected within the act (1993) as article 2.1. states:

> "Public administration and local self-government bodies, within the limits of their respective competences, as specified in particular regulations, shall be obliged to provide medical, social and legal aid to pregnant women, in particular, through:
>
> 1) prenatal care for the fetus and medical care for the pregnant woman, [...]."

This article provides further regulations of how the local states bodies shall support the foetus in relation to providing medical care for the pregnant woman to give prenatal care. In the regulations about termination of pregnancy, and as mentioned above in sub-chapter 6.2.4., article 4a paragraph 1 provides the following regulations of how "1. A termination of pregnancy may be performed only by a doctor, when:

"1) The pregnancy poses a threat to the life or health of the pregnant woman,
2) Prenatal examinations or other medical conditions indicate that there is a high probability of a severe and irreversible fetal defect or incurable illness that threatens the fetus's life,
3) There are reasons to suspect that the pregnancy is a result of an unlawful act,"

These paragraphs provide further information about how a written consent is needed from the pregnant woman to terminate the pregnancy. Especially in cases when the pregnant woman is a minor or has a particular mental state, both require a legal representative/guardianship. It is also essential to know that in the case when a legal representative is not present, termination of pregnancy can only be possible in "[...] the consent of the guardianship court [...]" (Art. 4a, para. 4[19]). There is also additional information to paragraph 1(2) in relation to how "the termination of pregnancy shall be permissible until the fetus is capable of living independently outside the body of the pregnant woman;" (Art. 4a, para. 2). This means that abortion is not possible if the foetus can indecently live outside the pregnant woman's womb, even if the foetus may have potential defects, which can be a threat to fetal life. There is an additional part in paragraph 2 (Art. 4a) which contributes with information on how an abortion is not possible if the pregnancy has exceeded 12 weeks, even if there is a possibility that the pregnancy has occurred through an illegal act (Art. 4a, para. 1(3)).

In relation to the pregnant woman's written consent to terminate her pregnancy, paragraphs 6-7 (Art. 4a) contribute with additional information on how pregnancy can be terminated. Suppose a primary care doctor/qualified person has performed a consultation on the pregnant woman and written certification in her favour. In that case, her written consent to end her pregnancy can be performed. Although, the termination of pregnancy can only be performed if the pregnant woman still desires to terminate her pregnancy after three days from the consultation (Art. 4a, para. 6). However, to receive a written certification, certain objectives

[19] See extended version in appendices.

have to be considered in relation to abortion, "in particular, to determine the health and life situation of the woman" (Art. 4a, para. 7). Likewise, other medical aspects and methods, and means can be read more about in the additional appendices in this thesis. Termination of pregnancy is legal in very restricted ways in Poland, and many different things have to be coordinated to perform a legal abortion. If the abortion is not correctly performed and it is illegal, it will contribute to a criminal offence, either with a fine or up to 10 years imprisonment or both (Szelewa, 2015).

# 7. Analysis and discussion

In this chapter, the empirical findings will be analysed through Foucault's biopolitics and biopower in the state's regulation about fetal rights. This to clarify how the development of fetal rights in policy documents can be associated with the discussion of how pregnant women are fetal containers and(/or) second-class citizens.

## 7.1. Analysis of the countries adoption of fetal rights in policy documents

The following sub-chapters analyses the different policy documents examined in "Empirical finings" and how the regulations by the states can be seen through biopolitics and biopower. Likewise, how the development of fetal rights can be identified in how women are fetal containers and(or) second-class citizens.

### 7.1.1. Ireland

In Ireland, the Eight Amendment of the Constitution Act (1983) includes the "the right to life of the unborn child" (Part II, art. 3), it also includes that the unborn child shall have "equal right to life of the mother" (Part II, art. 3). Thereby, shall the bearing woman and the foetus have equal rights, and the pregnant woman is entitled to being a mother even before birth. Apart from this, both "Protection of Life During Pregnancy Act 2013" and "Health (Regulation of Termination of Pregnancy) Act 2018" are a part of the Irish legal system and have been regulated by the state. These two acts, as can be seen in the empirical findings, regulate the protection of the fetal life regarding abortion or "intentionally destroy unborn human life" (Art. 22.1., Protection of Life During Pregnancy Act 2013), which include many different

regulations that concern abortion. Especially the regulations of when, how, and who shall perform the abortion on the pregnant woman.

The regulations of the articles and additional paragraphs that concern the pregnant woman in the "Protection of Life During Pregnancy Act 2013" and "Health (Regulation of Termination of Pregnancy) Act 2018" are regulated through favouring the foetus. This by protecting the fetal life by regulating multiple conditions to perform an abortion on the pregnant woman. Therefore, as can be seen in these articles and paragraphs, the pregnant woman can have a legal, medical procedure to terminate her pregnancy regarding her own physical or psychological health. Although, the pregnant woman can also terminate the pregnancy following the new additional "Health (Regulation of Termination of Pregnancy) Act 2018", if it is early pregnancy and the foetus has not yet reached viability (Art. 9.2). However, this section provides additional circumstances that concern if it is possible to terminate the pregnancy, since two medical practitioners, as mentioned in the empirical findings, have to examine the pregnant woman and believe that the best outcome is to proceed with a termination of pregnancy, to the best interest of the pregnant woman's health. However, according to article 12.1. (2018), a pregnant woman can have an abortion to end her pregnancy if the pregnancy has not exceeded 12 weeks. Although, there are extended additional paragraphs that subscribe with conditions to when an abortion is possible in this case.

These conditions, as any of the other regulations, can be seen through "anatomo-politics" (Foucault, 1990, p. 139) and how the state regulated these disciplines that regulate the human body (Foucault, 1990, p. 139). This as the Irish government has regulated these acts with different regulations to administer life from a biological perspective. A perspective that gives regulatory control of the population in the form of biopolitics (Foucault, 1990, p. 139). Therefore, in the regulations to protect fetal life in the Eight Amendment of the Constitution Act (1983), as well as: "Protection of Life During Pregnancy Act 2013" and "Health (Regulation of Termination of Pregnancy) Act 2018". The Irish government has biological power over the process of life from "propagation, births and mortality" (Foucault, 1990, p. 139). A power referred to as biopower, and thereby, with these conditions, they have a regulatory control of when and how the termination of pregnancy can be performed. The government has the power to control women's lives, especially pregnant women, to protect fetal life through their beliefs. This can be seen through the viability of the foetus and how the foetus has extended rights when it has reached viability (Carnegie & Roth, 2019. p. 117).

Nevertheless, since Ireland is a "Catholic-driven state ideology" (Carnegie & Roth, 2019. p. 111), with strong beliefs in the Roman Catholic Tradition, the traditions favour the foetus, as the foetus is an unborn child and a life, from the moment of conception (Cook & Dickens, 2003). Therefore, if something happens to the foetus or pregnant woman, it will be a legal discussion of life against another life, since they are seen as individuals and that the foetus is separate from the pregnant woman (Purdy, 1990, p. 276). This means that the government can control both lives, although this control means that the government has to favour one of these lives, which contributes to violating the other life and, in this context, the pregnant woman.

### 7.1.2. Hungary

In the Hungarian society, the traditions are as in Ireland also a part of the beliefs in the Roman Catholic Church, which makes the fetal life a human life, and the life of the foetus shall therefore be equally protected from the moment of conception as any other human life (Cook & Dickens, 2003). Although, in this case, Cook and Dickens (2003) describes in their research how the National Parliament in Hungary have experienced issues due to how both fetal life and the pregnant woman's life shall be fully protected in the legal system, without violating the other life. Since an abortion shall be possible in favour of the pregnant woman's rights, although, this shall not mean that the fetal life is not prioritised, as both are human life. Therefore, as mentioned in the empirical findings, the foetus's life is protected through its own regulations in the legal system in Hungary. The Hungarian General Assembly has adopted additional information in their constitution (Fundamental Law of Hungary, 2011), which protects fetal life (Section: "Freedoms and Responsibilities, art. II). A regulation that creates additional regulatory power by the Hungarian government to control the pregnant woman, to protect the life of the foetus.

However, the "Act LXXIX of 1992 on the protection of fetal life" was the first act that subsequently legalised abortion in Hungary, even if the Hungarian government did not technically legalise abortion. Since the act (1992) provide ways to terminate a pregnancy in favour of the foetus and by that, the Hungarian government is "taking charge of life" (Foucault, 1990, p. 143), in this case, the pregnant woman's life. The act (1992) categorised the pregnant woman as a mother, even before birth, which can contribute to how fetal rights can anticipate if the pregnant woman is a "bad mother" through the described "maternal-fetal conflict" (Cosgrove & Vaswani, 2020; Roth, 2000). Nevertheless, the government governs through the adjustment of different articles and additional paragraphs to have a biopolitical power over the

individual body (Foucault, 1979b, p. 139). In terms of "bad mother", the state can prosecute the pregnant woman with criminal acts due to how the pregnant woman does not live to the benefit of the foetus and how this can indicate that the pregnant woman will become a "bad mother" (Annas, 1986).

In the "Act LXXIX of 1992 on the protection of fetal life" article 3, paragraph 2(a) mentions important information to the pregnant woman concerning her "lifestyle" to provide the right kind of environment for the foetus to have a healthy development. This consists of, for example, Annas (1986) research about how the state has legal control in this particular area and how it causes women to uphold their bodies during pregnancy and how women have to live by other rules than before pregnancy. Rules that the state has provided for pregnant women to live under the state's preference to provide a healthy development for the unborn child, by making sure the pregnant woman shall have healthy nourishment. This, to be able to provide a healthy environment for the foetus to grow inside the pregnant woman's womb before birth. Annas (1986) describes this through how pregnant women are fetal containers since the pregnant woman's main task is "childbearing" and shall thereby live by the unborn child. However, since the pregnant woman cannot choose over her own body, it contributes to inequality and violation of self-determination, which also contributes to second-class citizenship. Especially, as the pregnant woman suddenly has not the universal rights as before and is thereby treated differently (Purdy, 1990, p. 289) since the woman is a fetal container during pregnancy.

### 7.1.3. Slovakia

Even though women have a legally binding court decision by the Slovakian Constitutional Court in 2007 that women shall have their rights to their own and free choice (Pietruchova, 2020), women are violated of their rights due to the restrictions of abortion in the country and how abortion is a part of fetal rights. Thereby, as explained, the above acts that are examined are, more or less, acts that relate to abortion to save the foetus, although they do remark some contexts of pregnant women's health and their rights. However, as mentioned earlier, in Slovakia, the only legal way to have an abortion is surgical. Any other way is not legal, which can be endangered for pregnant women since a surgical abortion is riskier (Pietruchova, 2020).

Regarding termination of pregnancy in Slovakia, a pregnant woman can, if she desires to, have a legal procedure to end her pregnancy within the first trimester of pregnancy with her written request. Termination of pregnancy can also be possible in the second trimester if the pregnant

woman fulfils different medical reasons according to the "Act no. 73/1986 Coll. of the Slovak National Council on artificial termination of pregnancy (Act)". Yet, with the adoption of the "Act no. 576/2004 Coll. on Health Care, Services related to the Provision of Healthcare and on Amendments to Certain Acts (Healthcare Act)" and with the amendment to the act in 2009, the government chose to add additional information and requirements of how and when a termination of pregnancy is possible. Since it consists of different obligations that the pregnant woman needs to inform in a written informed consent and also provides information that the woman has to be informed with before her request of an abortion can be written. Above this, there is an additional waiting period of 48 hours, which means that the pregnant woman has to wait 48 hours from giving her informed consent to actually have the procedure to terminate the pregnancy. The additional information and requirements can be discussed from how the Slovakian government can require pregnant women to live through unnecessary suffering due to this obligatory waiting period and requirements to have an abortion.

The Slovakian government regulations provide a reality that can be even tougher since reports shows how pregnant women may be forced to perform and view a pre-abortion ultrasound in Slovakia. Due to how Christian lawmakers have drafted a law with six anti-abortion bills with restricted abortion rights (Stoklasa, 2020; International Campaign for Women's Right to Safe Abortion, 2020). These rights can be seen from how the foetus is a "person with civil rights" (Holc, 2004) and how the state can deny full rights for the pregnant woman because of the protection of fetal life through the regulation of fetal rights. Therefore, are pregnant women second-class citizens since they do not have full rights, which the woman would have if she were not pregnant (Grossman, 2010). The Council of Europe Commissioner for Human Rights (Mijatović, 2020, p. 1) also reports how this newly drafted law does not align with international human rights law and would "limit women's access to their sexual and reproductive rights". Nevertheless, it would contribute to extended health risk for the pregnant woman since the obligatory waiting period of 48 hours would, with the new law, extend to 96 hours. Amongst the other additional regulations within this law, the Council of Europe Commissioner for Human Rights (Mijatović, 2020) mentions how it would violate both the CEDAW (1979) and ICESCR (1966).

Pregnant women in Slovakia are regulated through the laws that are provided by the state and indicate how pregnant women cannot live by their full rights (Grossman, 2010. p. 585). Nevertheless, the state has chosen to only have a surgical abortion due to the conservative

institution's unwillingness to legalise abortion pills (Pietruchova, 2020). These regulations undermine women's rights to self-determination and control their bodies (Cosgrove & Vaswani, 2020), denying full rights and contributing to second-class citizenship (Grossman, 2010, p. 585). Nevertheless, it contributes to public health concerns since these abortions can be unsafe (Cook & Dickens, 2013, pp. 17-19) and puts the pregnant woman unnecessarily at risks (Pietruchova, 2020, p. 14).

### 7.1.4. Poland

The empirical findings identify "the Family Planning, Protection of Human Embryo and Conditions of Termination of Pregnancy Act of 7 January 1993" as the main act regarding fetal rights in Poland. Szelewa (2015) further describes how Poland has stringent abortion laws, and there are only three legal ways to have an abortion. These circumstances are provided in the previously mentioned act, in Article 4a paragraph 1 (see chapter 6.2.4.1.) and contribute to how a pregnant woman in Poland can only have an abortion if the pregnant woman can be categorised in one of these three conditions by a doctor. However, even though this act is the only legalisation that provides fetal rights regarding abortion and Poland do not have any existing legalisation of fetal rights in their constitution. "The Family Planning, Protection of Human Embryo and Conditions of Termination of Pregnancy Act of 7 January 1993" provide strict regulations that contribute to that only around 1000 pregnant women had a legal abortion during 2019 (BBC, 2020; Statistia, 2021). Yet, the estimated number of pregnant women that had an abortion by travelling to another country to have an abortion is 80 000 - 120 000 pregnant women in Poland in 2019 (BBC, 2020). These numbers show how a single act, with very string abortion legislation (Art. 4a, see Appendix 1), can contribute to a difficult reality for pregnant women since pregnant women in Poland cannot live by their basic rights to their own reproductive health (Szelewa, 2015, pp. 5, 22-23).

By the legalisation of these restrictions concerning abortion, as well as the protection of fetal life in 1993. The Polish lawmakers have a power that serves the benefit of having legal control of life, or in other terms, biopower (Foucault, 1990). Especially over women in the context of their obligation to reproduce humankind and how pregnant women become fetal containers since the foetus is seen as a separate life and not a part of the pregnant woman. Therefore, by these legislations about abortion, the pregnant woman is seen as a container to the foetus, and she shall provide a safe and healthy environment for the foetus to grow. Likewise, the foetus shall have its rights to develop and grow inside the bearing woman, as she will bring the foetus

into actual life, or a foetus that is viable and can live by itself (Purdy, 1990, pp. 274-76). Cook and Dickens (2003, pp. 47-8) further describe this through how the government has a form of "governmental manipulation of information" since the government denies the basic rights to the pregnant woman during her time as most vulnerable. Due to how the government has, by these legislations, an authority over the pregnant woman to deny her self-determination, in this case, to end her pregnancy according to her wishes. A human right that is stated in article 1.1. in the ICCPR (1966):

> "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.".

Nevertheless, this human right is a citizenship right that is violated and contributes to the discussion of how pregnant women are second-class citizens since pregnant women are, in this case, denied their full rights as citizens as they do not have the freedom to choose by their desire (Grossman, 2010, pp. 584-85).

## 7.2. Biopolitics and biopower in relation to fetal rights

In the realisation of biopolitics and biopower in the context of fetal rights, the two concepts can be related to different fertility policies and women's rights (Stopler, 2015). Nevertheless, in the regulation of fetal rights in policy documents to protect fetal life, the regulations are influenced by a biopolitical project related to neoliberalism (Foucault, 2010). Specifically, since biopolitics serves as a "function to regulate, monitor and surveil a population rather than an individual" (Cosgrove & Vaswani, 2020, p. 47). This is further grounded in the discussion of how women are seen as fetal containers or as argued by feminist jurisprudence scholars, as "receptacles" rather than women are seen as citizens (Cosgrove & Vaswani, 2020). Regarding how women are fetal containers, the biopolitical perspective, together with biopower, focuses on "such as the ratio of births to deaths, the rate of reproduction, [and] the fertility of [the] population." (Stopler, 2015, p. 171). Stopler (2015, pp. 172-74) further describes this through the perspective of how biopower can be "misuse" or "disuse", which can be applicable in this study since the use of biopower in the selected countries contributes to inequality. This, as the governments have a biopolitical perspective in these regulations that is central for the fetal life and not the pregnant woman and the male gender, is not even a part of the discussion. By that, the government rules through a political context that is not female-friendly and is dominated

by the perspective of extended rights to the foetus, which violates women's rights, especially pregnant women's rights. Nevertheless, regarding inequality, the male gender is not a part of this discussion, which makes the female the unprioritized gender, which suffers by the political decisions since biopolitics, together with biopower, focuses on ruling the individual bodies and the population (Foucault, 1990, pp. 138-39). That, itself, makes biopolitical ruling discriminating and unsuitable in a liberal society (Stopler, 2015, p. 173) since according to Stopler (2015, p. 172), Foucault version of biopolitics have a "male centered understanding of both individual rights and of state power". Thereby, with the male-centric politics, pregnant women lack full reproductive and liberal rights and do not have the same reproductive justice (Stopler, 2015, pp. 172-74), which further leads to the perspective of a liberal society.

The perspective of liberal society is thereby discussed since the respect of our bodies, in this case, the bodies of pregnant women, is important in a liberal society and with the development of fetal rights, the respect of the female body increases (Purdy, 1990). Therefore, by the development of fetal rights in the selected countries, the biopolitical acts to rule over the population (Foucault, 1990, p. 139) can be problematic since the question remains of how much the government can control their population without discriminating against individual rights (Stopler, 2015, p. 174). Nevertheless, the development of fetal rights causes a restriction on women's rights during pregnancy (Johnsen, 1986; Purdy, 1990).

## 7.3. Summarised discussion of empirical findings and analysis

The empirical findings and analysis consist mainly of policy documents from the selected countries (see Table 1). These policy documents regulate requirements and circumstances regarding pregnant women's possibility to have an abortion in these countries. The development of fetal rights in policy documents is, according to Roth (2000, pp. 1-2) and, as mentioned earlier, often referred to abortion laws, which are seen from these policy documents that are discussed in the empirical findings and analysis. The provided fetal rights laws show different regulations regarding abortion and how, when and where an abortion can be legally possible. Subsequently, these regulations provide further restrictions and discrimination of the reproductive health of the pregnant woman and her own choice over her body. This shows how the government in the selected countries has biopolitical control over their population and how they have power over life itself, referred to as biopower (Foucault, 1990, pp. 139-44). However, as discussed in the previous chapter (7.2.), biopolitical ruling and the tool of biopower over the

individual life cause inequality since the female body is not prioritised, especially in a liberal society with biopolitical aspects. Therefore, in societies where biopolitical projects exist, such as fetal protection laws, pregnant women are fetal containers and not citizens since the government regulates the female body (Cosgrove & Vaswani, 2020, p. 47). Nevertheless, due to how pregnant women cannot experience full rights as citizens, pregnant women are therefore categorised as second-class citizens (Grossman, 2010, pp. 584-85).

# 8. Conclusions

The examined policy documents in this thesis of the state's regulations of fetal rights through biopower and biopolitics serve how biopower and biopolitics in the regulations of fetal rights in the selected countries contribute to a governmental ruling of the human body and the control of life itself. It contributes to how the government can have regulatory control of pregnant women and the reproduction of humankind (Foucault, 1990, p. 139). The examined policy documents indicate that they do not benefit the life of the pregnant woman but the foetus's life, which means that the regulation of fetal rights is beneficial to the fetal life and not the pregnant woman (Purdy, 1990; Roth, 2000, p. 2). The exciting articles and paragraphs in the analysed policy documents in the study also show how fetal life is prioritized over pregnant women and how these regulations contribute to how pregnant women in these countries are both fetal containers and second-class citizens. Especially since the states have a regulatory control that consists of biopower and biopolitics, as the policy documents regulate pregnant women's lives since they cannot decide on their own and have to "live up" to the requirements in the policy documents. This means that the foetus's life is more valued than the pregnant woman. The woman, as described above, is only a container for the foetus during pregnancy and does not have equal rights in society and can thereby also be classified as second-class citizens.

## 8.1. Future research

This study has contributed to the discussion of how fetal rights are associated with the concepts of fetal containers and second-class citizens. The research has focused on fetal rights in various policy documents in Ireland, Hungary, Slovakia, and Poland and how these laws contribute to how pregnant women are fetal containers and second-class citizens in these countries. Likewise, how both biopolitics and biopower are a part of the state's regulations concerning

the protection of the foetus. During the analysing of the examined policy documents, other questions above the thesis aim and research questions have been developed and considered for future research. These questions are as followed:

- How can the perspective of fetal containers and second-class citizens differ in countries where fetal rights do not exist on the same basis? Are pregnant women fetal containers and second-class citizens in these countries too?
- Can it be possible that biopower and biopolitics in the context of fetal rights can be a contributor to how women are fetal-containers and second-class citizens?

Therefore, to contribute further to the discussion of fetal containers and second-class citizens, these questions can be considered in future research. To clarify how the concepts are seen in other societies and how both biopolitics and biopower is a part of the discussion.

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# Appendices

## Appendix 1. Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993 (Poland)

The following text is directly taken from Article 4a in the Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993:

"Article 4a. 1. A termination of pregnancy may be performed only by a doctor, when:
1) The pregnancy poses a threat to the life or health of the pregnant woman,
2) Prenatal examinations or other medical conditions indicate that there is a high probability of a severe and irreversible fetal defect or incurable illness that threatens the fetus's life,
3) There are reasons to suspect that the pregnancy is a result of an unlawful act,
4) (repealed).

2. In the cases referred to in paragraph 1(2), the termination of pregnancy shall be permissible until the fetus is capable of living independently outside the body of the pregnant woman; in the cases referred to in paragraphs 1(3) or 1(4), if not more than 12 weeks have elapsed since the beginning of the pregnancy.

3. In the cases referred to in paragraphs 1(1) point 1(2), the termination of the pregnancy shall be performed by a doctor at a hospital.

4. The written consent of woman is necessary to terminate the pregnancy. In the case of a minor or fully incapacitated woman, the written consent of her legal representative is required. In the case of a minor over 13, her own written consent is also required. In the case of a minor under 13, the consent of the guardianship court is required, and the minor has the right to express her own opinion. In the case of a fully incapacitated woman, her written consent is also required, unless her mental state renders her incapable of consenting. In the absence of the consent of the legal representative, in order to terminate the pregnancy, the consent of the guardianship court is required.

5. A doctor, other than the one who terminates the pregnancy, ascertains that the circumstances referred to in paragraphs 1(1) and 1(2) have occurred, unless the pregnancy is a direct threat to the woman's life. The circumstances referred to in paragraph 1(3), shall be ascertained by the public prosecutor.

6. In the case referred to in paragraph 1(4), the woman shall submit a written statement, and, moreover, certification of consultation with a primary care doctor, other than one

terminating the pregnancy, or another qualified person of her choice. The pregnancy may be terminated if three days after the consultation, the woman still maintains her intention to terminate the pregnancy.

7. The objective of the consultation referred to in paragraph 6, shall be, in particular, to determine the health and life situation of the woman, to help solve her problems by presenting, among other things, accessible forms of assistance for women in relation to pregnancy and after giving a birth to a child, informing the woman about the legal protection of life in the prenatal phase, medical aspects of pregnancy, termination of pregnancy, as well as methods and means of contraceptives. With the consent of the woman, her partner, family members or another close person may participate in the consultation.

8. Separate regulations shall apply to private clinics where termination of pregnancy is performed, with respect to professional and sanitary requirements for the premises and the equipment of the private clinics, as well as with respect to the medical documentation and management of those clinics.

9. The Minister of Health and Social Welfare after consultation with the Polish Chamber of Physicians and Dentists will determine, by regulation, the professional qualifications of doctors that entitle them to perform a termination of pregnancy, as well as the qualifications of doctors referred to in paragraph 5.

10. The Minister of Health and Social Welfare in consultation with the minister competent for social security will determine, by regulation, the qualifications of persons other than a doctor, who are entitled to serve as consultants, as referred to in paragraph 6, the way to establish a list of consultants and the manner and mode of performing consultations."

## Appendix 2. Act LXXIX of 1992 on the protection of fetal life (Hungary)

The following text is cited from the unofficial translation of the "Act LXXIX of 1992 on the protection of fetal life" in English:

"The Parliament of Hungary, realizing that

- fetal life, which starts with conception, deserves respect and protection,

- the protection of fetal life may be realized through the increased care of pregnant women, however it is primarily the parents' responsibility to create the circumstances that ensure the healthy development of the fetus,

- the termination of pregnancies is not a means of family planning and birth control,

- family planning is the right and responsibility of parents,

has adopted this Act.

**1. §** The fetus, which emerges from the union of the female and male reproductive cells and which develops in the mother's womb, and the pregnant woman deserve support and protection.

*The means and methods of support and protection*

**2. §** (1) Primary and secondary education institutions shall be responsible for education on the value of health and human life, a healthy way of life, responsible relationships, family life that is consonant with human dignity, as well as birth control methods that are not harmful to health.

(2) State family protection services or the family protection services approved by a public health administration authority shall perform the counseling, shall assist in the resolution of crisis situations and shall organize information campaigns on family planning outside of educational institutions.

(3) The state

*a)* shall advance the use of contraceptive preparations and devices for a reduced price by those in need, the publishing of information publications serving the protection of fetal life and on birth control, as well as the presentation of these in the mass media,

*b)* shall advance the development of a system of crisis counseling that is available for the mother as well as the whole of the family, and has sufficient professional background, and shall regulate the circumstances and forms of cooperation between state actors and civil society organizations involved in counseling,

*c)* shall support activities and organizations that serve the protection of fetal life, especially those that provide financial help to pregnant women in need,

*d)* shall ensure the increased protection of pregnant women at work through the means of labor law,

*e)* and the local government shall help the pregnant woman and her family to keep the unborn child through providing child welfare and child protection provisions.

**3. §** (1) The following shall be entitled to prenatal care free of charge:

*a)* a Hungarian citizen who is a resident of Hungary,

*b)* a person entitled to free movement and residence in Hungary for over three months under the act on the movement and residence of persons with the right to free movement and residence, provided that they have a residence that has been declared as required by the act on the registry of personal data and addresses of citizens, and

*c)* a person with immigrant or resident status under the scope of the act on the movement and residence of third-country nationals.

(2) Through prenatal care

*a)* the pregnant woman shall be informed of the lifestyle necessary for the healthy development of the fetus, of healthy nourishment and of the importance of avoiding effects (especially smoking and alcohol consumption) that are harmful for fetuses,

*b)* the screening tests checking the healthy development of the fetus and ensuring the protection of the pregnant woman's health shall be performed,

*c)* the pregnant woman shall be assisted in preparing for delivery, breastfeeding, and looking after newborn babies and children.

(3) The Minister responsible for health (hereinafter: „Minister") shall issue a decree regulating the detailed rules of prenatal care and the range of screening tests that are obligatory and those available on request free of charge, funded by the state.

**4. §**

*Termination of pregnancy*

**5. §** (1) A pregnancy may only be terminated if it is endangered or if the woman is in a severe crisis situation, under the circumstances laid down in the present act.

(2) A severe crisis situation shall mean a situation that causes bodily or psychological disarray or renders the woman's social existence impossible.

**6. §** (1) Pregnancies may be terminated up to the 12th week if:

*a)* the pregnant woman's health is severely endangered,

*b)* the fetus is likely, on medical indications, to suffer from a severe disability or other impairment,

*c)* the pregnancy is the result of a criminal act, or

*d)* the pregnant woman is in a severe crisis situation.

(2) The pregnancy may be terminated up to the 18th week if the circumstances under subsection (1) are met and if the pregnant woman

*a)* is partly or fully incapacitated,

*b)* did not recognize the pregnancy in time due to a health reason for which she cannot be held responsible, or due to a medical error, or if the period under subsection (1) elapsed because of the failure of a health institution or authority.

(3) A pregnancy may be terminated up to the 20th week, or in the event of a delay in diagnostic procedure up to the 24th week, if the probability of the fetus' having a genetic or teratological malformation reaches 50%.

(4) A pregnancy may be terminated irrespective of gestational age where

*a)* the life of the pregnant woman is endangered by a medical condition, or

*b)* the fetus has a malformation that renders postnatal life impossible.

**7. §** (1) The termination of the pregnancy, unless on health grounds, shall be performed at the written request of the pregnant woman.

(2) In addition to persons referred to in 3(1), a foreign national may also request a pregnancy termination if she

*a)* has been staying in the territory of Hungary for over 2 months with a valid residence permit,

*b)* has requested asylum,

*c)* has been acknowledged by the asylum authority as a displaced person or temporarily protected person, or

*d)* may not be expelled from the territory of the country or may not be returned under international treaties as defined in a special act of parliament.

**8. §** (1)The pregnant woman shall present her request for a pregnancy termination to the staff member of the Family Protection Service (hereinafter: "staff member") in person and shall submit the certificate of an obstetrician-gynecologist establishing the pregnancy.

(2) In the case of a partially incapacitated person, it is necessary to obtain a statement by the guardian that he has taken notice of the request for a pregnancy termination.

(3) In the case of a fully incapacitated person, the guardian shall submit the request for the termination of the pregnancy on behalf of the incapacitated person.

**9. §** (1) On receiving the request for a pregnancy termination, the staff member, with due respect for the pregnant woman's dignity and feelings, and possibly in the presence of the father of the fetus, shall inform the pregnant woman or, in cases under 8(3), her guardian, with the aim of keeping the pregnancy, of the following

*a)* the possibilities of financial aid and assistance in kind from public and private sources if she decides to keep the child,

*b)* the existence and activities of organizations and institutions that provide moral and financial support if she decides to keep the child,

*c)* the possibilities and conditions for adoption,

*d)* the forms of support coming from the state, local government or society suitable to resolve the conflict situation, and offer assistance in utilizing those, and inform her at the same time of the possibility to place the child in an incubator with the intent of consenting to the child's adoption, at a public health institution meeting the requirements as stipulated by a separate legal regulation,

*e)* conception, fetal development, the dangers of pregnancy termination and its effect on any later pregnancy,

*f)* the need to repeatedly participate in family protection counseling on the 3rd day at the earliest after the information under points *a)* to *e)* has been provided, in case the pregnant woman maintains her intention to terminate the pregnancy.

(2) Where the applicant maintains her request to terminate the pregnancy in spite of the counseling under subsection (1) the staff member, except as under subsection (7), shall inform the applicant of the following after the period of time under (1)*f)* at the earliest

*a)* the legal conditions governing pregnancy termination,

*b)* the circumstances and the method of pregnancy termination,

*c)* the health institutions that perform pregnancy terminations, and

*d)* the assistance provided by the Family Protection Services after the termination of the pregnancy, at the same time offering help with adequate family planning, including contraceptive methods suited to the applicant's personal circumstances,

*e)* on the possibility to use contraceptive methods at a reduced cost.

(3) After providing the information in subsection (2), the staff member shall draw up the request in writing. The applicant and, where applicable, the father of the fetus shall sign the request and shall name the health institution where the pregnancy termination is to be performed.

(4) The staff member shall countersign the request and shall hand it to the applicant.

(5) The staff member shall send a copy of the written and countersigned request to the chosen health institution within 24 hours of the handing over of the request to the applicant.

(6) Persons acting as staff members shall be bound by professional confidentiality.

(7) Where the pregnancy is the result of a criminal act, the provisions under subsection (1) on the content of the counseling, the following waiting period and repeated counseling need not

be applied. The applicant shall be informed of the possibilities and conditions for adoption in this case, as well.

(8) The pregnant woman shall not be obliged to provide her personal identification data in a way that makes it possible to identify her before the point where the request for a pregnancy termination is drawn up.

**10. §** (1) The pregnant woman shall present herself no later than 8 days following the countersignature at the health institution of her choice. The health institution shall inform the staff member countersigning the application of the termination of the pregnancy within 8 days of the termination.

(2)

(3) The pregnant woman shall confirm her decision with a signature on the day of the termination.

(4) Where the pregnant woman does not present herself within 8 days, the health institution shall inform the staff member of this by returning the copy of the application form.

(5) If the medical specialist of the institution where the termination is to be performed establishes that the pregnancy has exceeded the duration laid down in this act, or that performing the termination would severely endanger the woman's health, he shall refuse the termination. In this case, the pregnant woman may request a professional review. The pregnant woman shall be informed of the possibility of requesting a review and the agency competent in that matter.

(6) The Minister shall issue a decree regulating the range of those professionals entitled to perform a professional review.

(7) A termination authorized in a review procedure shall be performed in the health institution performing the review.

**11. §** (1) If the pregnant woman does not present herself at the professional review within 10 days of the refusal of the termination, or the termination is refused in a final way, the person responsible for the professional review shall send the copy of the application form back to the staff member, who shall notify the competent travelling nurse of the applicant's residence.

(2) The pregnant woman

*a)* who has been refused a termination of pregnancy in a final manner, or

*b)* who has not presented herself at the professional review

shall be taken into care as a woman carrying an endangered pregnancy.

**12. §** (1) The health indications that justify the termination of the pregnancy of a pregnant woman shall be established by the unanimous opinion of two medical specialist doctors who have the necessary professional competence.

(2) Health indications concerning the fetus shall be established by the unanimous opinion of medical specialists on the staff of any two of the following institutions: the genetic

counseling service, the center for prenatal diagnosis, or the department of obstetrics and gynecology of the hospital designated by the competent national institute.

(3) The Minister shall issue a decree determining the persons authorized to provide a professional review where there is a difference of opinions.

(4) The health indications referred to in subsections (1) and (2) shall be established based on the methodological directives formulated by the competent national institute or college.

(5) Where the pregnancy is the result of a criminal act, the criminal act or a substantiated suspicion thereof shall be certified by the authority proceeding in the criminal act.

(6) The pregnant woman or, if she is incapacitated, her guardian shall certify the existence of a severe crisis situation by signing the request. Where the pregnant woman is incapacitated, she shall be provided with the opportunity to state her opinion of the pregnancy termination in the procedure of the family protection service.

*Institutions performing pregnancy terminations*

**13. §** (1) A pregnancy termination may be performed only in health institutions that meet the conditions provided by law.

(2) State health institutions and institutions run by local governments that have an obstetrics-gynecology department shall ensure that at least one group that performs pregnancy terminations shall operate in the institution.

(3) The minister shall issue a decree that determines the list of health institutions where pregnancies beyond the 12th week may be terminated.

**14. §** No physician or other health worker shall be obliged to perform a pregnancy termination or to participate therein, except if the pregnant woman's life is endangered.

**15. §** It is forbidden to encourage anyone to terminate her pregnancy or to propagate pregnancy termination by any method.

**16. §** (1) The cost of the pregnancy terminations shall be covered by the Health Insurance Fund where a pregnancy is terminated because of a health condition of the pregnant woman or the fetus.

(2) The fee payable for pregnancy termination in cases not falling under subsection (1) shall be the same as the fee payable under financing by social insurance. The minister shall issue a decree determining the detailed rules of paying the fee, including rates reduced on the basis of social grounds.

(3) As an advance, the Health Insurance Fund shall pay the health institution performing the pregnancy termination in accordance with the fee payable under social insurance. The national budget shall pay the Health Insurance Fund the part of the advance that the fee collected does not cover.

**16/A. §** (1) The government shall be authorized to issue a decree appointing the national Family Protection Service.

(2) The government shall be authorized to issue a decree on the detailed rules governing the authorization of the operation of the Family Protection Service.

(3) The minister responsible for health insurance shall be authorized to issue a decree determining the conditions under which a person in need is eligible to a reduced fee for contraceptive devices and preparations.

**17. §** (1) This Act shall enter into force on 1 January 1993.

(2)

*Compliance with European Union Law*

**18. §** This act provides partial compliance with the following laws of the European Union:

*a)* Council Directive *2003/109/EC* of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Article 11(1) *d)*and Article 21,

*b)* Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, Article 24.”