

American University of Armenia

Master's Paper

Abortions and Minors

By *Narine Aslanyan*

MCLS student

Advisor *Vahan Bournazian*

Abstract

The purpose of this study is to explore the legal basis for Armenian minors to legitimately terminate pregnancy and whether the parental consent law in Armenia is in accordance with International Human Rights Treaties.

YEREVAN

2007

Introduction

The purpose of this study is to explore the legal basis for Armenian minors to legitimately terminate pregnancy. The presumed client is a pregnant minor who would like to undergo abortion without parental consent and feels she cannot talk to her parents about her pregnancy, which results in her seeking an illegal abortion. An abortion is a medical process of ending a pregnancy so that it does not result in the birth of a baby.¹ Abortion is still used as the main form of birth control and there is still a high rate of abortions in Armenia.²

Dysfunctional family situations and Cultural Relativism can become problem for minors, where the minor's parents lack the basic competence to be entrusted with the decision about the minor's pregnancy.³ Restrictions on a minor's access to abortion care can lead to family violence when a minor must tell an abusive parent about her decision to end a pregnancy, and can delay a minor from seeking sooner a safer abortions thus putting her health at risk.⁴ According to the specialists' opinions, the largest number of criminal abortions falls to this age class.⁵ Minors sometimes have to travel to a nearby city to have abortions in hospitals with unsanitary conditions or to bribe physicians in their city.⁶ In Armenia abortions are a problem for minors, because they fear that they will not be afforded the same confidentiality as adult women seeking the same medical operation.⁷ On the other hand parental consent gives parents a chance to counsel their

1 Brook Advisory Centers (Brook provides free and confidential sexual health services and advice for young people under 25). "Abortion", <http://www.brook.org.uk/content/M2_5_abortion.asp>

2 Aida Ghazaryan "Triggering Agendas for Reproductive Rights in Armenia", 2003-2004 International Policy Fellow, IPF Topic area: Policy Priorities in Public Health and IPF Project: Reproductive Rights and Health in Armenia: Key Challenges. Yerevan, 2004 <<http://www.policy.hu/ghazaryan/Final%20Policy%20Paper.doc>>

³ Wikipedia, "Minors and abortions" <http://en.wikipedia.org/wiki/Minors_and_abortion>

4 ACLU (American Civil Liberties Union), "Laws Restricting Teenagers' Access to Abortion", (4/1/2001). <<http://www.aclu.org/reproductiverights/abortion/16388res20010401.html>>

5 Personal interview with physician. October 10, 2007

6 Id.

⁷ Aida Ghazaryan "Triggering Agendas for Reproductive Rights in Armenia", <<http://www.policy.hu/ghazaryan/Final%20Policy%20Paper.doc>>

minor daughter about consequences of abortion.⁸ In some cases, a parent might be able to provide relevant medical information which is either unknown to or overlooked by a young woman.⁹ Supporters of mandatory parental involvement affirm that such procedure will protect the health and promote the best interests of minor - and improve family relationship.¹⁰

Under the Armenian Constitution and international treaties individuals have a right to decide for themselves what they want to do with their bodies and the government or other individuals have no right to interfere in such decision making.¹¹ After independence, Armenia included the internationally accepted concepts of human rights into its Constitutional and legislative framework. In general human rights matters in Armenia are progressively improving. However, this is not true regarding human rights matters related to reproduction.¹² There has been no progress in bringing Armenian legislation in line with its international obligations; in many spheres Armenia still applies the legislation inherited from the Soviet times.¹³ While Armenia does not have restrictive laws on abortion, even under the liberal stance the women in reality face numerous obstacles regarding access to safe abortions. Legal defends for reproductive rights are in practice not enough to protect reproductive independence, choice and safe motherhood. The safety and privacy of women demands that there be appropriate laws that would permit women of all ages to confidentially obtain abortions. Thus, it is important that the law governing the transaction make accurate restrictions guaranteeing the protection of constitutional rights of minors, unborn children and minors' parents. The restrictions in abortion law should be equal for women of all ages without age

⁸ Wikipedia, "Minors and abortions" <http://en.wikipedia.org/wiki/Minors_and_abortion>

⁹ Wikipedia, "Parental Consent"

¹⁰ Bruce A Robinson "Parental consent/notification for teen abortions: All viewpoints", 2006-JUL-28 <http://www.religioustolerance.org/abo_pare.htm>

¹¹ Id.

¹² Aida Ghazaryan "Triggering Agendas for Reprod. Rights in Armenia", <<http://www.policy.hu/ghazaryan/Final%20Policy%20Paper.doc>>

¹³ Aida Ghazaryan "Triggering Agendas for Reprod. Rights in Armenia", <<http://www.policy.hu/ghazaryan/Final%20Policy%20Paper.doc>>

discrimination. The failure to comply with the international standards will result in violation of human rights and fundamental freedoms, thus the state will be in breach of its International obligation.

Abortion law is a disputable issue as it results in a conflict of private and public interests. Therefore, it is important to ensure that pregnant minors have access to a safe abortion only in the cases prescribed by law. The government should have sufficient mechanisms to interfere with the minor's decision and prevent her from having an illegal abortion, for the reason that the pregnant young woman's right to freedom of abortion and the right of the unborn child to life and parents' rights are to be viewed as constitutional values and "are to be viewed in their relationship to human dignity, the center of the value system of the constitution"....¹⁴ Only when all those issues are addressed can it be stated that the balance between private and public interests is found and all rights and freedoms are respected.

The intricacy of the transaction is explained by the fact that there are several presumed actors involved, each with their own private interests which often do not conform. The interests can be recognized as follows:

Pregnant minors – the interest is to guarantee that her right to the access of legal and safe abortion is protected. The right of the young woman to the free development of her personality, being free in her decision for or against parenthood. The protection of minors' rights to withhold information regarding instruction about medication or medical procedures such as abortion from their parents.¹⁵

Unborn children – the interest of these actors is the right of an independent human being to be born who should stand under the protection of the law which will be in accord with International Human Rights Treaties.

14 Comparative Legal Traditions (by Mary Ann Glendon, Michael Wallace Gordon, Christopher Osakwe, Second Edition, American Casebook Series, 1994)

15 Wikipedia, "Minors and abortions" <http://en.wikipedia.org/wiki/Minors_and_abortion>

Minor's parents – the interest of these actors to advise their minors (daughters) about the possible consequences of abortion and as a result parental involvement may reduce the number of teenage abortions. Parents protect minors from the adult males who are motivated to obtain abortion in order to keep the pregnancy secret, otherwise, they could be charged with statutory rape.¹⁶

Physicians – the interest of these actors is to have a legal right which allows them to make a decision about abortion in accordance with the law. The decision to make an abortion should be left to the physician.

RA Government – To bring the reproductive legislation in accordance with its international obligations and lack of appropriate human rights enforcement mechanisms have effected women's health status, their role and standing in society.

The most effective abortion law should take into consideration all of the above mentioned interests and stipulate a procedure that will guarantee maximum protection of the human rights of the involved actors. Pregnant minors are regarded as an unprotected group whose rights are under a high risk of being violated; therefore, it is important to ensure them by appropriate procedural protection. In many countries there is no need to parental consent before young woman can legally engage in a certain activity. Thus, to what extent the young woman's rights to liberty and security should be limited is subject to dispute. Even so abortion law should aim at securing basic standards of fundamental human rights of the woman.

Armenian Legal Framework and Implication

The procedure of termination of pregnancy (abortion) by minors in the Republic of Armenia is governed by the RA Law on Reproductive Health and Reproductive Rights of Humans and RA Criminal Code. The RA Law on Reproductive Health and

¹⁶ Wikipedia, "Minors and abortion" <http://en.wikipedia.org/wiki/Minors_and_abortion>

Reproductive Rights of Humans defines the rights of minors to terminate pregnancy (undergo an abortion) and stipulates that termination of pregnancy is allowed only in cases prescribed by the law.¹⁷ Adopted in December 2002 the long-awaited Law sets a legal framework for further and more effective implementation of the International Conference on Population and Development (IPCD) Program of Action in Armenia.¹⁸

The RA Criminal Code outlines circumstances when abortion is considered illegal. Article 122 of the RA Criminal Code is the main article that provides criminal responsibility for a physician in case of illegal abortion which was not prescribed by law.

19

The protection of maternal and child care improvement are protected by the RA Family Code. The Armenian Family Code regulates personal and property relations between family members: spouses, parents and children.²⁰ This Code regulates the rights and obligations of the parents and minors towards each other. Under this law the state guarantees the primary protection of children's rights.²¹ A child has the right of protection of his/her legal rights and interests which should be realized by parents.²² Also a child has the right to be present at any consideration of the issues touching his/her interests and express personal opinion in family, judicial and other bodies under article 43, 44.²³ Parents are considered the lawful representatives of their children and without an authorization defend the rights and interests of their children in any relations with natural and juridical persons, as well as in court. Parents bear the obligation to protect the rights and legal interests of their children. Parental rights cannot be realized contrary

17 RA Law on Reproductive Health and Reproductive Rights of Humans, Article 10

18 Aida Ghazaryan "Triggering Agendas for Reprod. Rights in Armenia", <<http://www.policy.hu/ghazaryan/Final%20Policy%20Paper.doc>>

19 RA Criminal Code, article 122 <<http://www.parliament.am/legislation.php?sel=subject&lang=eng>>

²⁰ Family Code of the Republic of Armenia, Entry into force: 19.04.2005 <<http://parliament.am/legislation.php?sel=subject&lang=eng>>

²¹ Id.

²² Id.

²³ Id.

to children's interests.²⁴ The provision of the interests of children should be the primary concern of the parents. While exercising parental rights the parents are not allowed to damage the physical and mental health of the children, their ethical development. Children's upbringing should exclude ignorant, cruel, violent attitude towards them, humiliation of human dignity, offence or exploitation. Parents who exercise parental rights in violation of the rights and interests of the children are accountable by the procedure established by law.²⁵

The right of parents and children are protected by the RA Constitution under article 3 of the Armenian Constitution the fundamental human rights and freedoms. The state shall ensure the protection of the fundamental human and civil rights in conformity with the principles and norms of the international law.²⁶ Under article 15 "Everyone shall have a right to life".²⁷ There is no definition or explanation whether human dignity refers to an unborn child and whether the unborn child can be protected under article 15. Under article 16 "everyone shall have a right to liberty and security. A person can be deprived of or restricted in his/her liberty by the procedure defined by law and only in the following cases": ensure the fulfillment of certain responsibilities prescribed by the law.²⁸ Therefore, the question remains whether the right of the minor to undergo abortion confidentially and without parental consent, under article 23 "right to private life", can be restricted as an exception under article 16, because a parental consent prescribed by the law. Under article 36 "Parents shall have the right and obligation to take care of the education, health as well as the full and harmonious development of their children".²⁹ Therefore, parental consent law can be considered as the right and obligation of the

²⁴ Family Code of the Republic of Armenia, Entry into force: 19.04.2005 <<http://parliament.am/legislation.php?sel=subject&lang=eng>>

²⁵ Id.

²⁶ THE CONSTITUTION OF THE REPUBLIC OF ARMENIA (RA Constitution), article 3 <<http://www.parliament.am/parliament.php?id=constitution&lang=eng>>

²⁷ RA Constitution <<http://www.parliament.am/parliament.php?id=constitution&lang=eng>>

²⁸ Id.

²⁹ Id.

parents to prevent and protect their children from performing illegal abortion or to protect from the adult males who are motivated to obtain abortion in order to keep the pregnancy secret, because otherwise they could be charged with statutory rape.³⁰

Under RA Constitution article 6 the international treaties are an essential part of the legal system of Armenia and if there are contradictions between international treaties and Armenian laws, the norms of the treaties shall prevail.³¹This study will explore whether there are contradictions between Armenian laws and International treaties accepted by Armenia.

Armenia is a Council of Europe member as of 2001 and as a member ratified the European Convention on Human Rights.³² Membership in the Council of Europe means that the decisions of European Court of Human Rights (ECHR) are binding on the member state.³³ The Strasbourg institution has not decided whether an unborn child is protected by article 2 and whether the parental consent and notification can be considered as a right under article 8 “right to respect private and family life showing the changeable attitudes towards abortion amongst Council of Europe states.”³⁴

In the landmark case decision (*Vo. v. France*) “the court with regard to interpretation of article 2 and 8 of ECHR stated on that occasion: “...pregnancy cannot be said to pertain uniquely to the sphere of private life. Whenever a woman is pregnant her private life becomes closely connected with the developing foetus” (parag 59).³⁵ However, the Commission did not find it “necessary to decide, in this context, whether the unborn child is to be considered as “life” in the sense of article 2 of the Convention, or whether it could be regarded as an human being which under article 8 (2) could justify

30 B.A. Robinson Essay: “Abortion Laws Dealing with Interstate Travel of Minors” , 2006-AUG-04 <http://www.religioustolerance.org/abo_stat.htm>

31 RA Constitution, article 6 <<http://www.parliament.am/parliament.php?id=constitution&lang=eng>>

32 Council of Europe Information Office in Armenia. Signed and Ratified Documents. August 2, 2007 <http://www.coe.am/en/?go=signedratifiedocs>

33 European Convention on Human Rights, article 5(3)

34 The European Court of Human Rights text-book, (by Philip Leach, Second Edition, Oxford Publishing, 2005)

35 Press release issued by the Registrar. GRAND CHAMBER JUDGMENT IN THE CASE OF “VO v. FRANCE”, 350, 8.7.2004, <<http://www.echr.coe.int/eng/press/2004/july/grandchamberjudgmentvofrance080704.htm>>

an interference “for the protection of others”(parag. 60).³⁶ The commission added that the general usage of the term “everyone” and the context in which it was used in article 2 of the convention did not include the unborn. (X v. UK, parag.12)³⁷

Armenia is a member of the United Nation (UN) of March 2, 1992; therefore as a member state, Armenia is bound by International treaties adopted by the United Nations.³⁸ On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights (UDHR).³⁹ International Covenant on Civil and Political Rights adopted and opened for signature from 16 December 1966.⁴⁰ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979. ⁴¹

There is no literature or implementation materials for UDHR to explain whether an unborn child is protected by article 3 “Everyone has the right to life, liberty and security of person” or whether this article can be considered to support a minor’s rights to undergo abortion without parental consent, or whether the parental consent or notification law can be considered as protecting parents’ rights under article 16 (3). Under article 29 everyone’s rights and freedoms can be subject to limitations, if it is determined under law for the purpose of securing due recognition and respects for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.⁴² Therefore, under this article the rights of minors to terminate pregnancy can be subject of the limitation, because the

36 Id.

37 Id.

38 Wikipedia “United Nations” <http://en.wikipedia.org/wiki/United_Nations>

39 UDHR <<http://www.unhchr.ch/udhr/>>

40 ICCPR <<http://www.ohchr.org/english/law/ccpr.htm>>

41 Committee on the Elimination of Discrimination against Women, <<http://www.unhchr.ch/html/menu2/6/cedw.htm>>

42 Universal Declaration of Human Rights (UDHR), Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, <<http://www.un.org/Overview/rights.html>>

parental consent is determined under law and can be considered as rights and freedoms of parents.

Likewise, the ICCPR does not address whether an unborn child can be considered as a human being and can be protected under article 6 “Right to life” of the Convention. There is no implementation materials whether the article 17 “the right to privacy and family life” can be considered as a minor’s right to undergo abortion without parental consent and notification and a vice versa whether it can be considered as a the parents' rights to be informed and give consent for the abortion of their minors.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 13 October 2003 ratified by Armenia,⁴³ stipulates that member states shall eliminate discrimination against women in the field of health care in order to ensure, access to health care services, including those related to family planning and that women have access to adequate health care facilities, including information, counseling and services in family planning.⁴⁴ The U.N. Human Rights Committee and the Committee on the Elimination of Discrimination against Women have repeatedly expressed concern about the relationship between restrictive abortion laws, secret abortions, and threats to women’s lives. The committees have recommended the review or amendment of punitive and restrictive abortion laws. The right to privacy is also threatened when health care providers release confidential patient information about women who seek abortions or post-abortion care. The U.N. Human Rights Committee has indicated that restrictions on access to safe and legal abortion may give rise to situations that constitute cruel, inhuman, or degrading treatment.⁴⁵ It is not clear whether the parental consent law can be considered as a discrimination against minors in the field of health care and access to adequate health care facilities under CEDAW.

43 CEDAW <<http://www.un.org/womenwatch/daw/cedaw/states.htm>>

44 CEDAW, article 10 <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>>

45 Human Rights Watch “H. Rights Law and Access to Abortion”, June 2005. <<http://www.hrw.org/background/america/argentina0605/>>

Convention on the Rights of the Child adopted and opened for signature, ratification General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.⁴⁶ Armenia ratified the Convention in 22 July 1993.⁴⁷ It is monitored by the United Nations' Committee on the Rights of the Child which is composed of members from countries around the world. The preamble of the Convention states that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, **before as well as after birth**".⁴⁸

Under article 6 of this convention Armenia is obliged to protect right to life of the unborn child and to ensure to the maximum extent possible the survival and development of the child. In this case whether the parental consent law can be considered as a tool for protection of unborn child from minor who does not able to understand the consequences of abortion. Under article 2 of the Convention of the Child States parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. Under this article parental consent can be considered as a violation of minor's right to undergo abortion, because, vis-à-vis article 3, 5 the convention affirms that for the protection of a child, the states parties shall respect responsibilities, rights and duties of the parents for giving the right direction in the exercise by the child of the rights recognized by the Convention.⁴⁹

The Committee on the Rights of the Child has, in its concluding observations, demanded governments to review legislation which restricting abortion where unsafe abortions contribute to high rates of maternal mortality. It has only expressed concern about high maternal mortality rates from abortion for teenagers without recommending

46 Convention on the Rights of the Child, <<http://www.unhchr.ch/html/menu3/b/k2crc.htm>>

47 OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS <<http://www.unhchr.ch/pdf/report.pdf>>

48 Convention on the Rights of the Child, preamble

49 Convention on the Rights of the Child, preamble

any particular remedy. It has requested that governments increase access to reproductive health care services and education, particularly for minors, and in at least one case recommended that a government ensure that abortions be conducted with due attention to minimum standards of health safety.⁵⁰

Case study

As abortion cases are criminal cases they are private and are not open to the public, so case study is based on the interviews with a physician and a nurse who perform abortions.

The first case is about one 15 year old girl, who decided to undergo an abortion with a mutual decision with her friend. Being afraid of abusive reaction of her parents, she decided to undergo abortion without informing her parents and told them that she was going to a party. The friend bribed the physician who performed the abortion without parental consent. The abortion had some difficulties and she did not come back on time. Her parents went to the police and informed about the disappearance of their daughter. The police found out that their daughter was in hospital and that she had terminated pregnancy. Being afraid of the parents' reaction she said that she did not understand what had happened, and also said that she did not want to terminate pregnancy but that the physician and her friend deceived her and the physician anesthetized her. According to the witness and her testimony during the investigation it became clear that she had performed the abortion of her own will.⁵¹

The second case is about a young girl, who decided to undergo an abortion without informing her parents. In the hospital, the physician asked her for parental consent in written form and refused to help her without parental consent. She decided to go to the city to performing abortion without parental consent which was not mandatory

50 COMMITTEE ON THE RIGHTS OF THE CHILD “
<<http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/88ce9f1259ee9747412562e3005115c7?Opendocument>>

51 Personal interview with physician. October 10, 2007

in that hospital. The abortion was performed by incompetent physician in the hospital and under unsanitary conditions. On her way back she felt bad and was transferred to the hospital. After the investigation the physicians found out that she got some infection from the poorly performed abortion, which had bad influence on her health the result of which can be sterility.⁵²

According to the article 10 of the RA Law on Reproductive Health and Reproductive Rights of Humans and article 122 of the RA Criminal Code the transaction should unfold as follow:

In Armenia abortion is legal. Under article 10 of RA Law on Reproductive Health and Reproductive Rights of Humans about the artificial interruption of pregnancy, the abortion operation is permitted till 12 weeks inclusive, on women's request (voluntary basis). More than 15 weeks - on medical or social indication. More than 22 weeks - only by the decision of the commission of the relevant medical institutions.⁵³ In the case of minor's decision to perform abortion, the patient shall get permission from her parents or a legal representative.⁵⁴

Article 122 of the RA Criminal Code does not stipulate criminal responsibility for minor who undergo abortion with violation of article 10(4) of RA Law on Reproductive Health and Reproductive Rights of Humans, but it stipulates criminal responsibility for physician who will perform abortion without parental permission.⁵⁵

International Best Practice

The United Kingdom's (UK) Department of Health guidance "Best Practice Guidance for Doctors and Other Health Professionals on the Provision of Advice and Treatment to Young People under Sixteen on Contraception, Sexual and Reproductive

⁵² Personal interview with physician. October 10, 2007

⁵³ Susanna Vardanyan (Women's Rights Center of Armenia) "Reproductive Health Services in Armenia country report", <<http://www.astra.org.pl/armeniarep.htm>>

⁵⁴ RA Law on Reproductive Health and Reproductive Rights of Humans, Article 10 (4)

⁵⁵ RA Criminal Code

Health”⁵⁶ on contraception and abortion is a good example of an abortion legislation that is in conformity with the requirements of International Human Rights treaties.

This guidance was confirmed in the 1986 House of Lords' ruling in the *Gillick v. West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402 (HL) case.

Gillick competence is a term originating in England and is used in medical law to decide whether a minor (16 years or younger) is able to consent to his or her own medical treatment, without the need for parental permission or knowledge.⁵⁷ The case is binding in England, and has been approved in Australia, Canada and New Zealand.⁵⁸ The ruling in this case protected the rights of the young people to confidential advice on contraception.⁵⁹ Thus people under 16 are legally able to consent on their own behalf to any surgical, medical or dental procedure or treatment if, in the doctor's opinion, they are capable of understanding the nature and possible consequences of the procedure. It is clearly desirable for young people to have their parents' support for important and potentially life-changing decisions. Doctors have an obligation, however, to encourage the patient voluntarily to involve parents. In exceptional cases where the doctor has reason to believe that the pregnancy is the result of child abuse, incest or exploitation, a breach of confidentiality may be necessary and justifiable. The value of parental support must be discussed with the patient. Doctors should encourage young people to discuss their situation with parents but must provide reassurance that their confidentiality will be maintained.⁶⁰

Lord Fraser in the House of Lord's case laid down guideline where require the professional to be satisfied that:

⁵⁶ Hill Dickinson “PROVISION OF CONFIDENTIAL ADVICE AND TREATMENT TO YOUNG PEOPLE UNDER 16”, February 2006. <<http://www.hilldickinson.com/downloadfile.aspx?ID=146>>

⁵⁷ House of Lords, case law: “*Gillick -v- West Norfolk And Wisbech Area Health Authority and Department of Health and Social Security*”. Coram: Lord Fraser of Tullybelton, Lord Scarman, Lord Bridge of Harwich, Lord Brandon of Oakbrook and Lord Templeman, 17 October 1985 (UK). <<http://www.swarb.co.uk/c/hl/1985gillick.shtml>>

⁵⁸ Gillick competence <http://en.wikipedia.org/wiki/Gillick_competence>

⁵⁹ House of Lords, case law: “*Gillick -v- West Norfolk And Wisbech Area Health Authority and Department of Health and Social Security*”

⁶⁰ Terry Vanderheyden “Mother Challenges Teen Abortion, UK Parental Notification Law” 8 November, 2005 (LifeSiteNews.com) - <<http://www.lifesite.net/ldn/2005/nov/05110806.html>>

“It is lawful for doctors to provide contraceptive advice and treatment without parental consent providing certain criteria are met. These criteria, known as the Fraser Guidelines, were

the young person will understand the professional's advice;

the young person cannot be persuaded to inform their parents;

the young person is likely to begin, or to continue having, sexual intercourse with or without contraceptive treatment;

unless the young person receives contraceptive treatment, their physical or mental health, or both, are likely to suffer;

the young person's best interests require them to receive contraceptive advice or treatment with or without parental consent.”⁶¹

“Although these criteria specifically refer to contraception, the principles are deemed to apply to other treatments, including abortion. Although the judgment in the House of Lords referred specifically to doctors, it is considered to apply to other health professionals, including nurses. It may also be interpreted as covering youth workers and health promotion workers who may be giving contraceptive advice and condoms to young people under 16, but this has not been tested in court.”⁶²

In 8 November 2005 Sue Axon brought the case before the court against Department of Health guidance. It is an important landmark in the law relating to children’s rights, parental rights and parental duties and it becomes a turning point in the way the medical professionals approach issues of clinical confidentiality when they are dealing with children.⁶³ In his ruling, Mr Justice Silber argued that the application raises a tension between two important principles. The first is that ‘a competent young person

61 House of Lords, case law: “Gillick -v- West Norfolk And Wisbech Area Health Authority and Department of Health and Social Security”. Coram: Lord Fraser of Tullybelton, Lord Scarman, Lord Bridge of Harwich, Lord Brandon of Oakbrook and Lord Templeman, 17 October 1985 (UK). <<http://www.swarb.co.uk/c/hl/1985gillick.shtml>>

62 Gillick competence <http://en.wikipedia.org/wiki/Gillick_competence>

63 Terry Vanderheyden “Mother Challenges Teen Abortion, UK Parental Notification Law” 8 November, 2005 (LifeSiteNews.com) - <<http://www.lifesite.net/ldn/2005/nov/05110806.html>>

under sixteen years of age (who is able to understand all aspects of any advice, including its consequences) is an autonomous person, who first should be allowed to make decisions about his or her own health and second is entitled to confidentiality about such decisions even vis-à-vis his or her parents'.⁶⁴ The second is that 'a parent of a young person has a responsibility for that young person's health and moral welfare with the consequence that he or she should be informed if a medical professional is considering providing advice and treatment on sexual matters to that young person so that the parent could then advise and assist the young person'.⁶⁵

In rejecting Ms Axon's claim, Mr Justice Silber reaffirmed the House of Lords 1986 ruling in *Gillick v West Norfolk and Wisbech Health Authority*, which 'provides much guidance on the circumstances in which medical advice and treatment can be given without parental knowledge or consent on contraception, on sexually transmissible diseases and on abortion'.⁶⁶ Mr. Justice concluded that "the medical professional is entitled to provide medical advice and treatment on sexual matters without the parent's knowledge or consent', provided he or she is satisfied:

(1) that the young person although under 16 years of age understands all aspects of the advice;

2) that the medical professional cannot persuade the young person to inform his or her parents or to allow the medical professional to inform the parents that their child is seeking advice and/or treatment on sexual matters;

(3) that (in any case in which the issue is whether the medical professional should advise on or treat in respect of contraception and sexually transmissible illnesses) the young person is very likely to begin or to continue having sexual intercourse with or without contraceptive treatment or treatment for a sexually transmissible illness;

⁶⁴ Teenage Girls May Not Need Parents Consent For Abortion, <<http://www.bio-medicine.org/medicine-news/Teenage-Girls-May-Not-Need-Parents-Consent-For-Abortion-5644-1/>>

⁶⁵ Id.

⁶⁶ Id.

(4) that unless the young person receives advice and treatment on the relevant sexual matters, his or her physical or mental health or both are likely to suffer; and

(5) that the best interests of the young person require him or her to receive advice and treatment on sexual matters without parental consent or notification.”⁶⁷

The court concluded that article 12 of the UN Convention on the Rights of the Child (ratified by UK), was contradictory with Sue Axon’s paternalistic submission as to how parental and children’s rights should relate to one another.⁶⁸ The court concluded that the interfere with a parent’s rights under article 8(1), that interference was justified since it was “in accordance with law” and “necessary in a democratic society... for the protection of health ...or for the protection of the rights ... of the others”, as well as proportionate.⁶⁹

In Canada, there are no laws regulating abortion. It is an issue to medical legislation. Under Canadian Health care system, abortion is available on demand, regardless of the woman’s age or trimester of her pregnancy. Confidentiality laws protect minors' rights to withhold information regarding medical procedures such as abortions from their parents. Canada by the law observes a minor's right to medical confidentiality, and they do not have the authority to share medical information with parents without consent of the minor.⁷⁰

In the United States abortions are legal. However, for minors under the age of 18, the laws on abortions differ from state to state. In some states, parental consent is required before a girl under age 18 can have an abortion (however, sometimes a judge can excuse you from this law in a process called "Judicial Bypass").⁷¹ In some states

67 Id.

68 Charles Foster “Gillick rules OK: The Sue Axon case”, 10/2/2006 <<http://www.ethics-network.org.uk/commentaries/gillick-rules-ok-the-sue-axon-case>>

69 Terry Vanderheyden “Mother Challenges Teen Abortion, UK Parental Notification Law” 8 November, 2005 (LifeSiteNews.com) - <<http://www.lifesite.net/ldn/2005/nov/05110806.html>>

70 Wikipedia, “Abortion in Canada”, <http://en.wikipedia.org/wiki/Abortion_in_Canada>

71 Teen Abortion Laws, <http://www.coolnurse.com/abortion_laws.htm>

there may be a 24 hour waiting period from the time of consultation with counselor in a clinic or doctor's office, until the time of the procedure.⁷²

In some states in Unites States⁷³ minors do not need parent permission to have an abortion. However, there is a law which requires girls younger than 18 to get permission from one parent to have an abortion. This law is not being enforced because of a court order.⁷⁴ The Court concluded⁷⁵ “A parental notification statute which requires that a doctor notify both parents of a minor female seeking an abortion without provision for a judicial bypass, is unconstitutional. The requirement that both parents be notified serves no legitimate state interest and could have harmful effects on the pregnant minor. By allowing a minor to show that she possesses sufficient maturity to make an informed choice or the parental notification was not in her best interests, the bypass procedure addresses the very concerns which rendered the original statute unconstitutional”.⁷⁶

The United Nations Educational, Scientific and Cultural Organization (UNESCO) is a specialized agency of the United Nations established in 1945. Its stated purpose is to contribute to peace and security by promoting international collaboration through education, science, and culture in order to further universal respect for justice, the rule of law, and the human rights and fundamental freedoms proclaimed in the UN Charter.⁷⁷

Although UNESCOs' documents are not binding on the member states, they can be regarded as the approach of the international community towards a given issue.⁷⁸ The UNESCO document (UN Educational, Scientific and Cultural Organization, titled

72 Id.

73 Alaska, Arizona, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Illinois, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Oregon, Vermont, Washington

⁷⁴ Teen Abortion Laws, <http://www.coolnurse.com/abortion_laws.htm>

⁷⁵ US Court of Appeal “Hodgson v. Minnesota” (1990)

76 Case law “Hodgson v. Minnesota” <http://www.oyez.org/cases/1980-1989/1989/1989_88_1125/>

77 Wikipedia “UNESCO”, <<http://en.wikipedia.org/wiki/UNESCO>>

78 Instruments “In international law - and in human rights law - there are different standard-setting instruments” <http://portal.unesco.org/shs/en/ev.php-URL_ID=3942&URL_DO=DO_TOPIC&URL_SECTION=201.html>

“Unwanted Pregnancy and Unsafe Abortion”, published in late 2003 called for sweeping government reform to make abortion available to all women and minors without restriction, going as far as to suggest that governments should subsidize abortions and offer “redress” to women who have been “denied” access to abortion “that should be made available to them”.⁷⁹ The document goes on to make public the UN plan to mandate access to abortion by a young girl of any age without parental consent. The document studies “whether the law allows, Government should guarantee the privacy of those seeking abortion services, especially young girls”. This document recommends “governments should make abortion legal, safe, and affordable”. The UNESCO document stating that “to require minor to obtain parental consent for abortion, this can discourage a minor from seeking a proper medical procedure and leave then seek alternative, illegal and unsafe abortions. In document “Review of International Standards for Rights of the Child and Adolescent Rights,” UNESCO describes how to pressure nations to adopt less restrictive law on reproductive life of adolescent, saying that it is now possible “to hold countries accountable on the basis of human rights violations” at the UN Office of the High Commissioner for Human Rights (UNHCHR) and the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁸⁰

Reform

The transaction can be improved if amendments are made in the RA Law on Reproductive Health and Reproductive Rights of Humans as well as if the implementation of the law is improved. One important aspect is to eliminate parental consent for the minor’s decision to undergo abortion. The law governing the transaction can afford the minors the same confidentiality as in the case of an adult woman seeking

79 UNESCO Calls Abortion on Demand "Proper" Medical Procedure for Girls

80 UNESCO Calls Abortion on Demand "Proper" Medical Procedure for Girls, October 31, 2003 <<http://www.lifesite.net/ldn/2003/oct/03103103.html>>

the same medical operation. The best solution for Armenia is to implement the Canadian way of regulation of this transaction. The transaction can be under the control of the Armenian Health Care system and become an issue of medical legislation.⁸¹

Specialized Women's NGOs should raise the awareness and support of the public concerning the minors' illegal and unsafe abortions and publicized the drawbacks of the RA Law on Reproductive Health and Reproductive Rights of Humans among the international community and organize discussions on reproductive legislation in different countries with the participation of Armenian and international experts. The NGOs with the support of the Ministry of Health may seek funds to support sexual health care education in schools and mass media (TV, Radio).⁸² The NGOs should work closely with the minors to raise their awareness as well as to suggest solutions for performing legal abortion, as well as making family planning information available in order to prevent unwanted pregnancies safely through affordable contraceptives.

The Armenian government should pay more attention to the obligation undertaken by Armenia under international human rights instruments related to the reproductive human rights issues. Armenia's International obligations and engagements of membership in the United Nations, the United Nations Educational, Scientific and Cultural Organization and Council of Europe may be a useful instrument in lobbying for changes in the legislation. The membership in these organizations is irrelevant if the government does not intend to implement the standards and recommendations that are stipulate by the organizations. Moreover, the failure to obey the international standards will result in the violation of human rights and fundamental freedoms and in this case Armenia will break its international obligations.

With respect to the RA Law on Reproductive Health and Reproductive Rights of Humans, the NGOs may publicize the drawbacks of the law among the international

81 See above. International Best Practice section.

82 Aida Ghazaryan "Triggering Agendas for Reprod. Rights in Armenia", <<http://www.policy.hu/ghazaryan/Final%20Policy%20Paper.doc>>

community and organize discussions and conferences the with participation of local and international experts to present experiences of various countries in drafting their abortion law or Health care guidance.

The RA Law on Reproductive Health and Reproductive Rights of Humans has an objective to protect the reproductive rights of minors and to provide the highest possible principles of care for them. In order to fully achieve this goal, the current Law should be amended eliminating a provision about parental consent. Before abortion a minor should demonstrate that she is capable of understanding the nature and possible consequences of the procedure. The doctors should have an obligation, however, to encourage the patient voluntarily to involve parents. In exceptional cases where the doctor has reason to believe that the pregnancy is the result of child abuse, incest or exploitation, a breach of confidentiality may be necessary and justifiable.⁸³ In terms of implementation, the NGOs shall work closely with the minors to raise their awareness on their reproductive rights as well as to recommend what solutions they have to get appropriate medical care.

▪ ***Bibliography***

- Vicki C. Jackson and Mark Tushnet “Comparative Constitutional Law”. University Casebook Series. New York, Foundation Press, 1999
- Jerome A. Barron and C. Thomas Dienes “Constitutional Law”. West’s Law School Advisory Board, 2003 USA

⁸³ see above. International Best Practice

- Hill Dickinson “PROVISION OF CONFIDENTIAL ADVICE AND TREATMENT TO YOUNG PEOPLE UNDER 16”, February 2006. <
<http://www.hilldickinson.com/downloadfile.aspx?ID=146>>
- The European Court of Human Rights text-book, (by Philip Leach, Second Edition, Oxford Publishing, 2005)
- Comparative Legal Traditions (by Mary Ann Glendon, Michael Wallace Gordon, Christopher Osakwe, Second Edition, American Casebook Series, 1994)
- National Statistical Services [Armenia], Ministry of Health [Armenia], and ORC Marco. 2006. “Armenia Demographic and Health Survey 2005” Calverton, Maryland USA, 2006
- Aida Ghazaryan “Triggering Agendas for Reproductive Rights in Armenia”, 2003-2004 International Policy Fellow, IPF Topic area: Policy Priorities in Public Health and IPF Project: Reproductive Rights and Health in Armenia: Key Challenges. Yerevan, 2004 <<http://www.policy.hu/ghazaryan/Final%20Policy%20Paper.doc>>
- Brook Advisory Centers (Brook provides free and confidential sexual health services and advice for young people under 25). “Abortion”, <http://www.brook.org.uk/content/M2_5_abortion.asp>
- UNESCO Calls Abortion on Demand "Proper" Medical Procedure for Girls, October 31, 2003 <<http://www.lifesite.net/ldn/2003/oct/03103103.html>>
- THE CONSTITUTION OF THE REPUBLIC OF ARMENIA (WITH AMENDMENTS)
<<http://www.parliament.am/parliament.php?id=constitution&lang=eng>>
- RA Law on Reproductive Health and Reproductive Rights of Humans, Article 10. IRTEK
- RA Criminal Code, Article 122
<<http://www.parliament.am/legislation.php?sel=subject&lang=eng>>

2. Making illegal abortion by a person with no appropriate higher medical education is punished with a fine in the amount of up to 200 minimal salaries or with arrest for the term of 1 to 3 months, or with imprisonment for the term of up to 2 years.

3. Actions envisaged in part 1 or 2 of this article, if they caused the death of the aggrieved or grave damage to the health by negligence, or were performed by a person previously convicted for illegal abortion, are punished with imprisonment for the term of up to 5 years, deprivation of the right to hold certain posts and practice certain activities for the term of up to 3 years.

RA Constitution

Article 3

The human being, his/her dignity and the fundamental human rights and freedoms are an ultimate value.

The state shall ensure the protection of fundamental human and civil rights in conformity with the principles and norms of the international law.

The state shall be limited by fundamental human and civil rights as a directly applicable right.

Article 6

The Constitution of the Republic has shall have supreme legal force and the norms thereof shall apply directly.

The laws shall conform to the Constitution. Other legal acts shall conform to the Constitution and the laws.

The laws shall come into force following the official publication in the Official Bulletin. Other normative legal acts shall come into force following the official publication in the manner prescribed by law.

The international treaties shall come into force only after being ratified or approved. The international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. The international treaties not complying with the Constitution can not be ratified.

The normative legal acts shall be adopted on the basis of the Constitution and laws and for the purpose of the ensuring their implementation.

RA Family Code

Chapter 10 “Rights of Children”

ARTICLE 43. RIGHT OF A CHILD’S PROTECTION

1. A child has a right of protection of his/her lawful rights and interests.

The protection of child’s rights and interests is realized by parents (lawful representatives), and in cases stipulated by the given Code, by the departments of custody and guardianship.

A minor recognized completely capable by the procedure established by law has a right to realize his/her rights (in particular the protection right) and obligations independently.

2. A child has the right to be protected from the abuse of his/her parents (lawful representatives).

In case of violation of a child’s rights and interests (in particular, violation or partial realization of the obligation of parents or one of them to rear and educate the

child, as well as the abuse of the parental rights) a child has a right to apply for help independently to the departments of custody and guardianship.

3. The officials and other citizens, who became aware of the threats to live and health of a child, as well as the cases of violation of child's rights and interests, should inform about that the departments of custody and guardianship of the virtual residence of a child. After getting such information the department of custody and guardianship should undertake necessary means for protection of a child's rights and interests.

ARTICLE 44. RIGHT OF A CHILD TO EXPRESS PERSONAL OPINION

1. A child has the right to be present at any consideration of the issues touching his/her interests and express personal opinion in family, judicial and other bodies.

2. Taking into consideration the opinion of the child above 10 is obligatory with regards to freedom of conscience, participation in particular events, rejection of extracurricular education, living with one of the parents, communication with relatives and other issues stipulated by law.

3. In cases stipulated by the given Code the courts and departments of custody and guardianship can make a decision concerning a child above 10 only with his/her consent.