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A REVIEW OF THE POSSIBILITY OF ABORTION ACCORDING TO THE BRAZILIAN LEGAL ORDER

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Abstract: This work consists of presenting the results of research into the criminalization of abortion in the Brazilian legal system and its compatibility with the national constitutional project. The research was carried out based on the dialectical-dialogical methodology. where the position of national and supranational courts on the issue of abortion and its possibility is presented, aligning it with statistics made available by the World Health Organization. Finally, it is concluded that the criminalization of abortion in the Brazilian legal system does not violate the basis of the dignity of the human person inserted in the Brazilian constitutional project, but a new interpretation is necessary, so that free abortion is admitted, as long as it is consented by the pregnant woman, before the 20th week of pregnancy and, subsequently, in specific cases, authorized by the legislator.
Keywords: criminal law; dignity of human person; personhood; abortion; World Health Organization.

INTRODUCTION

The topic of abortion is a fertile field for discussion. In recent years, several cases have been presented to the Judiciary not only in Brazil, but around the world and even to Supranational Courts. The debates generally involve the well-being of both the pregnant woman and the unborn child and are related to humanitarian purposes and the protection of human dignity.

The prominence that the topic received is not, however, directly proportional to substantial advances, either in the interpretation of current legislation or in its updating. This is due to the high load of moral judgments that involve the discussion and that influence national legal systems.

As an example, these moral positions include both norms that prohibit abortion without any type of exception – which is generally due to religious doctrines – and norms that authorize abortion until the moment before birth, regardless of justification.

The Constitution of the Federative Republic of Brazil of 1988 (CRFB, 1988), currently in force, in its first provision, sets out the foundations of the Democratic Rule of Law that it recognizes. And among them is the dignity of the human person. In this sense, discussions on the interruption of pregnancy are included, carried out in this present work, which aimed to present results on research into the criminalization of abortion in the Brazilian legal system and its compatibility with the national constitutional project.

Regarding the methodology chosen to achieve this objective, it was the dialectical method, based fundamentally on dialogued discussion with the development of arguments in constant falsification, so that the final result is adequate and also consistent. In this step, as already noted, we are not looking for an answer that reveals itself as an absolute truth (a dogma) nor as an obvious truth (an axiom), much less we intend to sell the discussion (in the case of eristics), but rather to establish connections for a dialogue.

As a result, it was obtained that the criminalization of abortion in the Brazilian legal system does not violate the foundation of human dignity included in the Brazilian constitutional project, but that a new interpretation is necessary, so that free abortion is admitted, as long as it is consented by the pregnant woman, before the 20th week of pregnancy and, subsequently, in specific cases, authorized by the legislator.

THE DISCUSSION ABOUT THE BEGINNING OF LIFE: STATISTICS AND CASES

The discussion about abortion is, by definition, a discussion about the beginning of life. The World Health Organization, according to its statistical surveys, highlights that laws that restrict the practice of abortion do not contribute to reducing its practice. In countries whose laws prohibit abortion or only allow it to be performed to save the woman's life or physical health, only 25% of abortions are safe, while in countries whose laws authorize their practice, 90% are safe.

This information came from the World Health Organization report "Health worker roles in providing safe abortion care and post-abortion contraception", carried out in 2015, which showed that even in the face of safe and effective interventions, the annual average of unsafe abortions is of almost 22 million, which greatly contributes to the high rates of mortality and maternal morbidity. The reason for such numbers to remain is a set of barriers normally associated with national abortion policy, such as the lack of trained people, stigmas, regulatory and political issues, among others.[1].

The same World Health Organization "has a clinical practice manual for safe abortion"[2]. Relevant information about the practice of abortion can be found in this document. As can be seen from the guide, there are two types of abortion procedures: one with medication, which is called "medical abortion", and one with surgery, called "surgical abortion".

Medical abortion is a procedure that involves several steps and consists of the administration of two medications (mifepristone and misoprostol) and/or multiple doses of just one of them (misoprostol), the combination being more effective. It is recommended that it be carried out no later than the 12th week, although it can be carried out after the first trimester of pregnancy.

Surgical abortion, in turn, is not recommended when the pregnancy is less than 12 weeks long and is performed through cervical surgery associated with the administration of misoprostol until the 19th week, using osmotic dilators, preferably from the 20th week. week. It must be noted, therefore, that the UN admits the possibility of abortion after the 20th week.

In the document: *Safe abortion: technical and policy guidance for health systems*, the World Health Organization presents information, updated until 2019, with a summary of the reasons why abortion is permitted around the world depending on the location of the country. Seven reasons were compiled, which appear in the following order: to save the pregnant woman's life, to preserve the woman's physical health, to preserve the woman's mental health, resulting from rape or incest, fetal disability, economic or social issues, the order.

The previously mentioned document, made available by the World Health Organization in 2019, allows us to identify some countries where abortion is prohibited without exception, namely: El Salvador, Nicaragua, Suriname, Haiti, Dominican Republic, Gabon, Madagascar, Honduras, Mauritania, Congo, Senegal, Philippines, Palau, Andorra, Vatican, San Marino, Malta, Libya, South Sudan, Afghanistan, Bangladesh, Guatemala, Myanmar, Paraguay, Syria, Venezuela, Yemen and Sri Lanka[3].

1. WORLD HEALTH ORGANIZATION. *Health worker roles in providing safe abortion care and post-abortion contraception*. 2015, p. 3. [consult: october 2, 2020] Available on the internet: <https://apps.who.int/iris/rest/bitstreams/812804/retrieve>.

2. WORLD HEALTH ORGANIZATION. *Clinical practice handbook for safe abortion*. 2014. [consult. 02 out. 2020] Available on the internet: <https://apps.who.int/iris/rest/bitstreams/454713/retrieve>.

3. Cf. MARTÍNEZ-RODAS, Oscar Ramón, GONZÁLES-CASTRO, Gloria Mercedes, PARODI-TURCIOS, Karla Isabel. Eficacia del misoprostol como tratamiento en abortos menores a 12 semanas. Hospital Materno Infantil Mayo-Julio 2019. *Revista*

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In El Salvador, the practice of abortion, in any of its forms, is classified as a crime and does not admit causes of exclusion. There are several famous cases in the literature, here one of them was chosen, which reached the Inter-American Court of Human Rights (CIDH)[4]. At the age of 22, a woman, B, was admitted to the Dr. Raúl Arguello Escalón Maternity Hospital in El Salvador. Her medical records identified the existence of a serious pathology (discoid lupus erythematosus aggravated by lupus nephritis) and an anencephalic pregnancy.

At a time when the pregnant woman was 13 to 15 weeks pregnant, the Hospital Medical Committee decided against abortion, since before the 20th week the risk of complications is lower. On the contrary, from the 20th week onwards, the risks of severe obstetric hemorrhage, worsening of the pathology, kidney failure, severe pre-eclampsia, infections and death of the mother are greater.

The case was taken to the Supreme Court of Justice of El Salvador, with the Ministry of Health informing the court that the situation was indeed an abortion and urgent. The Pan American Health Organization, through the responsible body, also spoke out for abortion. The Director of the Maternity Hospital confirmed the need for abortion. The Legal Medical Institute was the only one of the experts who decided not to terminate the pregnancy.

As this was an urgent case and the pregnant woman was around 18 weeks pregnant and the National Court had not decided, a support appeal was filed to protect the pregnant woman's rights. About two weeks later, the National Court ruled the possibility of abortion (20th week) unfounded.

The Salvadoran Court's decision was challenged by the Inter-American Commission on Human Rights, which was called in to ask the State to decide the case. The national decision safeguarded the rights of the unborn child, whose probability of extra-uterine survival was practically non-existent, to the detriment of the rights of the pregnant woman. Therefore, in B v. El Salvador, the IACHR (2013) granted, based on article 63.2 of the American Convention on Human Rights (ACHR), a precautionary measure to authorize abortion, in the 26th week of pregnancy, since all medical evidence contributed to such a choice, without criminal liability for doctors.

The World Health Organization also highlights some countries that, as a rule, prohibit abortion, but allow it to be carried out in certain cases, as well as explaining permitted justifications, such as: economic or social issues, fetal deficiency, rape, incest, mental or cognitive disability of the pregnant woman, preserving the woman's mental health, preserving the woman's physical health or general health issues.

The most common case among those admitted to justify abortion is that of serious harm to the woman's health, which necessarily includes the risk of death if the pregnancy goes ahead. In this sense, for example, the "Tysiąc v. Poland", in which the European Court of Human Rights (ECtHR) considered the case of a pregnant Polish woman whose medical reports showed that continuing her pregnancy would result in a worsening of her health, including a serious risk to her vision[5].

The hospital had been notified and, despite

Internacional de Salud Materno Fetal. vol. 5, n. 1, p. 11-17, 2020, p. 12.

4. CORTE INTERAMERICANA DE DIREITOS HUMANOS. *Caso B v. El Salvador*. MC 114/13. Resolución de la Corte Interamericana de Derechos Humanos de 29 de mayo de 2013. Medidas Provisionales respecto de El Salvador. Asunto B. [consult. 25 set. 2020] Available on the internet: <https://www.corteidh.or.cr/docs/medidas/B_se_01.pdf>.

5. TRIBUNAL EUROPEU DE DIREITOS HUMANOS. *Caso Tysiąc v. Polônia*. Application no. 5410/03. Sentença de 20 de março de 2007. [consult. 25 set. 2020] Available on the internet: <https://hudoc.echr.coe.int/eng#{%22itemid%22: [%22001-79812%22]}>.

the reports, denied the abortion. After birth, the mother suffered retinal hemorrhages, which severely impaired her vision. As a result, the pregnant woman filed a criminal complaint against the head of the Hospital's Gynecology and Obstetrics Department, and the ECtHR upheld the request to award compensation. In other words, the ECtHR understands, just as it had already stated in "Case A, B and C v. Ireland"[6], and in line with the IACHR, that if there is serious harm to the health of the pregnant woman, abortion can be performed.

For example, both in Argentina [7], by the decision of the Supreme Court of Justice of the Nation, as in Chile [8], by the decision of the Constitutional Court, it was established that the distribution of emergency contraceptive pills, due to their abortifacient nature, would not be authorized. In the Argentine case, the Court focused on the moment of the beginning of life, concluding that the appropriate moment would be fertilization, which is why the manufacture, marketing and distribution of the morning-after pill cannot be authorized. In the Chilean case, the Court recognized the unborn child's status as a person from conception.

It is worth highlighting that Argentina in 2020 obtained the approval of the legalization of abortion, based on the Law, number: 27,610, which provides for access to voluntary termination of pregnancy and advocates, among other things, the obligation to offer full coverage and free. Thus, coming into force throughout the Argentine territory on January 24, 2021[9].

Costa Rica follows the same example as Chile, that is, the human embryo is considered a person from conception, although not for the purpose of being a passive subject of crime. [10]. However, unlike Chile, which only allows abortion in cases of rape, Costa Rica only allows it to preserve the health of the pregnant woman.

In 2017, the Constitutional Court of Chile declared constitutional a law that decriminalizes cases of voluntary termination of pregnancy in cases of rape, the unviability of the fetus, or the risk of death of the pregnant woman. Therefore, the recognition of exceptional and delimited causes of exclusion is possible in the Chilean legal system.

In Brazil, abortion is also usually prohibited, but the legislator allows it, like other South American countries, which in certain cases poses a risk of death to the pregnant woman and rape. In addition to these, national jurisprudence, according to decisions handed down by the STF, allows abortion if the human embryo is unviable, by analogy to the constitutionality of Biosafety Law 11,105/2005[11]; in cases of unwanted pregnancy up to the 12th week; and in cases

6. TRIBUNAL EUROPEU DE DIREITOS HUMANOS. *Caso A, B e C v. Irlanda*. Application no. 25579/05. Sentença de 16 de dezembro de 2010. [consult. 25 set. 2020] Available on the internet: <https://hudoc.echr.coe.int/eng#{%22itemid%22: [%22001-102332%22]}>.

7. ARGENTINA. *Sentença de 5 de março de 2002. Corte Suprema de Justiça da Nação*. P. 709, XXXVI. [consult. 25 set. 2020] Available on the internet: <https://sjconsulta.csjn.gov.ar/sjconsulta/documentos/verUnicoDocumentoLink.html?idAnalisis=516601&cache=1527630605077>.

8. CHILE. *Sentença Rol 740-07, de 18 de abril de 2008.* Tribunal Constitucional. [consult. 25 set. 2020] Available on the internet: <http://www.tribunalconstitucional.cl/descargar_sentencia2.php?id=914>.

9. Lei 27.610/21. Argentina. Disponível em: https://oig.cepal.org/sites/default/files/2020_ley27610_arg.pdf.

10. COSTA RICA. *Sentença 442, de 7 de maio de 2004*. Corte Suprema de Justiça. [consult. 25 set. 2020] Available on the internet: <https://www.poder-judicial.go.cr/saladecasacionpenal/images/jurisprudencia/sentencias/2004/0442-04.DOC>.

11. BRASIL. *Ação Direta de Inconstitucionalidade 3.510/DF.* Supremo Tribunal Federal. Relator Ministro Ayres Britto. Plenário. Brasília, 29/05/2008. Available on the internet: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=611723>. Acesso em: 24 set. 2020.

of anencephaly from the 12th week onwards [12], when it is possible to detect any pathology that prevents extrauterine life.

Finally, the countries in which abortion is permitted, up to a certain point in the course of pregnancy, are: Canada, which has regions that allow it at any time and others that only allow it until the 15th, 19th or 20th week of pregnancy. In Australia the situation is the same, with regions that allow it without limitation, regions that do not and among those that limit it, it is fixed at a maximum of up to the 24th week. And also, in the United Kingdom.

There is no uniformity of justifying causes, but, when compiled, they can refer to issues such as lack of income or financial conditions to raise a child, lack of mental conditions to have a child, unviability of the fetus, risk of death for the pregnant woman, rape, malformation or abnormalities of the fetus, medical issues, serious damage to the physical or mental (psychological) health of the mother, failure of contraceptive means (in the case of married women).

It must be noted, however, that in most countries that are liberal in relation to abortion, a maximum period within pregnancy is established for it to be carried out, and they impose conditions. This is the case in Germany [13]. According to the Federal Constitutional Court, abortion must be preceded by a specific recommendation, since the unborn child is understood as an independent human being, constitutionally protected, therefore preventing the free choice of the pregnant woman without medical support.

The need for prior recommendation cannot be such that it makes the possibility of carrying out an abortion an illusion. This is what the Supreme Court of Canada decided [14], when judging the Case R. v. Morgentaler. In this precedent, doctors who publicly defended abortion as a woman's sovereign right, regardless of the rite established by Canadian law, were acquitted. According to the Court, once the possibility of abortion is admitted by the constituent, the legislator cannot unduly restrict the exercise of the right by pregnant women. In the same step, Slovakia[15], in a decision handed down by its Constitutional Court.

It therefore seems to be a general recommendation to have preconditions, as long as they do not prevent the procedure from being carried out. In this regard, in the United States of America (USA), the Supreme Court judged six cases that deserve to be highlighted, because they reflect this point of view. In Whole Woman's Health v. Hellerstedt, tried in 2016[16], decided, along the same lines as Slovakia and Canada, that the right to abortion could not be suppressed by regulations that were too bureaucratic.

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12. BRASIL. *Arguição de Descumprimento de Preceito Fundamental 54/DF*. Supremo Tribunal Federal. Relator Ministro Marco Aurélio. Plenário. Brasília, 12/04/2012. Available on the internet: <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=3707334>. Acesso em: 24 set. 2020.

13. ALEMANHA. *Sentença de 25 de maio de 1975*. Tribunal Constitucional Federal. BVerfGE 39,1. [consult. 25 set. 2020] Available on the internet: <https://www.servat.unibe.ch/dfr/bv039001.html>; ALEMANHA. *Sentença de 28 de maio de 1993*. Tribunal Constitucional Federal. 2 BvF 2/90, 2 BvF 4/92, and 2 BvF 5/92. [consult. 25 set. 2020] Available on the internet: <https://www.bundesverfassungsgericht.de/e/fs19930528_2bvf000290en.html>.

14. CANADÁ. *Sentença de 1998*. Suprema Corte do Canadá. R. v. Morgentaler. [consult. 25 set. 2020] Available on the internet: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/288/1/document.do>.

15. ESLOVÁQUIA. *Decisão PL.ÚS. 12/01, de 4 de dezembro de 2007*. Tribunal Constitucional. [consult. 25 set. 2020] Available on the internet: <https://www.ustavnysud.sk/documents/10182/992296/1_07a.pdf/88e635ba-300a-4cf3-a71b-99ecfe2c8e54>.

16. ESTADOS UNIDOS DA AMÉRICA. *Sentença de 27 de junho de 2016*. Suprema Corte. Whole Woman's Health v. Hellerstedt. [consult. 26 set. 2020] Available on the internet: <https://caselaw.findlaw.com/us-supreme-court/15-274.html>.

In addition, the Court established in *Gozales v. Carhart*, de 2007[17], that the procedures could not be inhumane, which follows its understanding established in Stenberg v. Carhart, 2000,[18] and in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, de 1992[19], *that legislation cannot impose an undue burden on a pregnant woman's right to choose, as long as the precedent established in Roe v. Wade, from* 1973[20], by which it was established that the State can only regulate the practice of abortion after the 12th week of pregnancy, with the observation that in the USA the fetus is only considered a person when its extrauterine survival is demonstrated, being sufficient, as also established in 1973, in Doe v. Bolton [21], the medical decision.

In the same sense, most countries that are liberal about abortion. As is the case in France, which, in general, allows it to be done up to the 12th week of pregnancy. There are, however, cases that authorize medical termination of pregnancy after the first trimester, which can be done up to the ninth month, as long as the unborn child has an incurable disease or there is a risk to the health of the pregnant woman.[22].

In Northern Ireland [23], authorization for abortion is only in health cases. The understanding of your Supreme Court is interesting. According to her, abortion is legal in cases of real and substantial risk to the pregnant woman's life, but must be carried out outside the country.

As a result, three women living in the country, who became pregnant without intending to do so, petitioned the European Court of Human Rights (ECtHR) to challenge the possibility of carrying out an abortion on Irish soil, as well as the lack of monitoring of their health. in Ireland after having an abortion abroad.

In the *case: A, B and C v. Ireland*[24], the ECtHR decided that Ireland's prohibitive legislation must be observed, with the exception of cases in which there was a real and substantial risk to the life of the pregnant woman whose only treatment would depend on the termination of the pregnancy.

This entire analysis allows us to conclude that, despite the fact that there are many countries still with a total ban and the few with a partial ban, there is a tendency, especially based on the information provided by the World Health Organization, towards the legalization, even if partial, of abortion.

17. ESTADOS UNIDOS DA AMÉRICA. *Sentença de 18 de abril de 2007*. Suprema Corte. Gonzales v. Carhartigo [consult. 26 set. 2020] Available on the internet: <https://supreme.justia.com/cases/federal/us/550/124/opinion.html>.

18. ESTADOS UNIDOS DA AMÉRICA. *Sentença de 28 de junho de 2000*. Suprema Corte. Stenberg v. Carhartigo [consult. 26 set. 2020] Available on the internet: <https://supreme.justia.com/cases/federal/us/530/914/case.html>.

19. ESTADOS UNIDOS DA AMÉRICA. *Sentença de 29 de junho de 1992*. Suprema Corte. Planned Parenthood of Southeastern Pennsylvania v. Casey. [consult. 27 set. 2020] Available on the internet: <https://supreme.justia.com/cases/federal/us/505/833/>.

20. ESTADOS UNIDOS DA AMÉRICA. *Sentença de 22 de janeiro de 1973a*. Suprema Corte. Roe v. Wade. [consult. 27 set. 2020] Available on the internet: <https://supreme.justia.com/cases/federal/us/410/113/case.html>.

21. ESTADOS UNIDOS DA AMÉRICA. *Sentença de 22 de janeiro de 1973b*. Suprema Corte. Doe v. Bolton. [consult. 27 set. 2020] Available on the internet: <https://supreme.justia.com/cases/federal/us/410/179/case.html>.

22. DRECHSEL, Denise. Afinal, a França aprovou ou não o aborto até 9 meses de gravidez? Entenda. *Gazeta do Povo*. 11 de agosto de 2020. [consult. 25 set. 2020] Available on the internet: <https://www.gazetadopovo.com.br/vida-e-cidadania/afinal-a-franca-aprovou-ou-nao-o-aborto-ate-9-meses-de-gravidez-entenda/>.

23. IRLANDA DO NORTE. *Decisão de 30 de novembro de 2015*. Corte Superior de Justiça. The Northern Ireland Human Rights Commission's Application [2015] NIQB 96. [consult. 28 set. 2020] Available on the internet: <http://www.globalhealthrights.org/wp-content/uploads/2016/03/Termination-of-Pregnancy.pdf>.

24. TRIBUNAL EUROPEU DE DIREITOS HUMANOS. *Caso A, B e C v. Irlanda*. Application no. 25579/05. Sentença de 16 de dezembro de 2010. Available on the internet: <https://hudoc.echr.coe.int/eng#{%22itemid%22: [%22001-102332%22]}>. Acesso em: 25 set. 2020.

DIGNITY OF HUMAN PERSON

The functions of a Constitution, as taught by Julio Siqueira, can be summarized, historically, in three: organization of the State, division of power and limitation on the exercise of power.[25] Rights make up the group of limitations, which can also be extracted from the lesson of Paulo Bonavides, for whom rights have as their main objective the protection of society, individuals and the environment in which they live.[26]

The dignity of the human person, as the foundation of the Brazilian State, does not lose its status, however, as the highest principle of current Democratic States governed by the rule of law. After all, as Fábio Konder Comparato recalls, dignity cannot be seen other than as an intrinsic attribute of the human being, which has been with him since the first hominids appeared, but whose recognition and protection is recent.[27]

Luís Roberto Barroso recalls that from Greco-Roman Classical Antiquity to the crisis of the Old Regime, dignity could not be seen as anything other than "[...] a concept associated with the personal status of some individuals or the prominence of certain institutions".[28] It is very interesting, in this sense, that although it currently seems somewhat inappropriate, dignity was used to refer not only to people, but it was also used for public institutions and functions, with the same meaning as authority or importance.

It is possible to affirm this, alongside several other jurists, who study the history, characteristics and relationships of the dignity of the human person, as is the case of Maria Celina Bodin de Moraes[29], Antonio Junqueira de Azevedo[30] and Peter Häberle[31], that the recognition of the dignity of the human person in national Constitutions and international documents is not their creation, but something that, even culturally, is much earlier, although it cannot be confused with the origin of the expression: *dignitas homini*.

Therefore, dignity must not be reduced to its formal recognition and protection, since only they are recent in the history of humanity, having appeared with greater vigor in the post-Second World War, after the terrible experiences allowed in concentration camps, as Ana Paula de Barcellos and Luis Roberto Barroso remember[32]. With the overcoming of totalitarianism, the approximation of law and morality was observed, which was a fertile field for the flourishing of the dignity of the human person as the foundation of many democratic orders in the world, therefore, the

25. SIQUEIRA, Julio Pinheiro Faro Homem de. A ideia de Constituição: uma perspectiva ocidental – da Antiguidade ao Século XXI. *Cuestiones Constitucionales*. vol. 34, 2016. Available on the internet: <https://www.sciencedirect.com/science/article/pii/S1405919316300063>. Acesso em: 13 out. 2020.

26. BONAVIDES, Paulo. A evolução constitucional do Brasil. *Estudos Avançados*. n. 40, 2000. [consult: october 13, 2020] Available on the internet: <https://www.scielo.br/scielo.php?script=sci_arttext&pid=S0103-40142000000300016&lng=pt&tlng=pt>.

27. COMPARATO, Fábio Konder. *A afirmação histórica dos direitos humanos*. 5. ed. São Paulo: Saraiva, 2007, p. 12.

28. BARROSO, Luís Roberto. *A dignidade da pessoa humana no direito constitucional contemporâneo: a construção de um conceito jurídico à luz da jurisprudência mundial*. Belo Horizonte: Ed. Fórum, 2014, p. 13.

29. MORAES, Maria Celina Bodin de. O princípio da dignidade humana. In: MORAES, Maria Celina Bodin de (coord.). *Princípios do direito contemporâneo.* Rio de Janeiro: Renovar, 2006, p. 14.

30. AZEVEDO, Antonio Junqueira de. Caracterização jurídica da dignidade da pessoa humana. *Revista da Faculdade de Direito da Universidade de São Paulo*. vol. 97, 2002, p. 107. [consult. 13 out. 2020] Available on the internet: <http://www.revistas.usp.br/rfdusp/article/view/67536>.

31. HÄBERLE, Peter. A dignidade humana como fundamento da comunidade estatal. In: SARLET, Ingo Wolfgang (org.). *Dimensões da dignidade: ensaios de filosofia do direito e direito constitucional*. Porto Alegre: Livraria do Advogado, 2005, p. 116-118.

32. BARROSO, Luís Roberto. *A dignidade da pessoa humana no direito constitucional contemporâneo: a construção de um conceito jurídico à luz da jurisprudência mundial*. Belo Horizonte: Ed. Fórum, 2014, p. 18-19.

essentiality of the dignity of human person is a consensus between democratic states of law,

As is easily intuited from reading the CFRB/1988, the dignity of the human person is a principle not in the sense that distinguishes it from rules, but rather in the sense that places it as the foundation of the Brazilian constitutional order. That is why, despite the title under which article 1, item III is written, the option for the nature of the foundation of the Brazilian State, which the original constituent gave it, proves to be appropriate.

There is a discussion among jurists that is as fruitful as it is inconclusive according to which legal norms are distinguished between rules and principles. This perspective is normally attributed to Alexy, for whom the rules require full compliance, and can only be fulfilled or not, while the principles do not have the same requirement, because they admit degrees of optimization according to the factual and legal possibilities of their application.[33]

Therefore, if it is true that dignity constitutes a legal norm of attested hierarchical and systematic superiority, as pointed out by Mariano Garcia Canales [34] and André Ramos Tavares,[35] so, as a matter of logic, it cannot be attributed, within the theory that distinguishes the types of legal norm, either the nature of a principle or a rule, because that would be equivalent to taking away its superiority. However, this does not mean that human dignity is not applied as a rule.

It is, but within the theory that considers legal rule and norm synonymous, which allows its classification as an absolute rule, even though it is neither a dogma nor an axiom.

Therefore, it can be stated that dignity is, within the country's constitutional project, an attribute inherent to the human being, more precisely to the human person. This way, the legal concept of a human person must be determined. Therefore, the function of the dignity of the human person in the national constitutional project is to recognize the human being with a characteristic (dignity) that is prior to his capacity and his personality, and, thus, to his birth alive, which is why, it can be said that, in Brazil, live birth does not define the beginning of a human person's life.

THE LEGITIMACY OF ABORTION IN THE BRAZILIAN LEGAL ORDER

The Brazilian legal system establishes the existence of a person before the acquisition of civil personality, which, in turn, only arises with the person's live birth (article 2, first part, of the Civil Code). In this step, as the status of a person predates birth, it must be concluded that the acquisition of this status appears at some point during pregnancy, in this case, from the 20th week of pregnancy.

This point is evidenced in article 2 of the Civil Code which, when interpreted in accordance with the Federal Constitution of Brazil of 1988, considering the already outdated biological perspective that the unborn child would be viable from conception. Thus, the constituent demands that the interpretation be constitutionalized, which results in two guidelines.

The first is based on the existence of the person before birth alive and since then they have acquired civil personality; the second is

33. ALEXY, Robert. Sistema jurídico, principios jurídicos y razón práctica. *Doxa*. n. 5, 1988, p. 143-144. [consult. 13 out. 2020] Available on the internet: <https://edisciplinas.usp.br/pluginfile.php/4191689/mod_resource/content/1/Leitura%20Obrigat%C3%B3ria%20Semin%C3%A1rio%2007%20%28texto%202%29.pdf>; ALEXY, Robert. *Teoria dos direitos fundamentais*. São Paulo: Malheiros Ed., 2008, p. 575.

34. GARCIA CANALES, Mariano. Principios generales y principios constitucionales. *Revista de Estudios Políticos (nova época)*. n. 64, 1989, p. 149. [consult. 13 out. 2020] Available on the internet: <https://dialnet.unirioja.es/servlet/articulo?codigo=27029>.

35. TAVARES, André Ramos. Elementos para uma teoria geral dos princípios na perspectiva constitucional. In: LEITE, George Salomão (org.). *Dos princípios constitucionais: considerações em torno das normas principiológicas da Constituição*. São Paulo: Malheiros Ed., 2003, p. 24.

that the law protects the rights of the unborn only from the moment they can be considered a human person, precisely by virtue of the constitutional foundation of the dignity of the human person.

To demonstrate this, we start from the theory of weighting or balancing – clarified below – to identify the parameters used by the Brazilian legislator and compare them with the constitutionally adequate interpretation of the beginning of human life and acquisition of the status of a person.

THE WEIGHTING THEORY

The theory of weighting or balancing is argumentative. According to Ana Paula de Barcellos, it is based on the perception that "[...] the person applying the law, especially the magistrate, cannot use arguments or reasons that only make sense for a group, and not for the totality of people".[36]

This means that when making choices or decisions, whether public or private, the use of thoughtful procedures is essential for an adequate result.

The balancing thesis, according to Robert Alexy, is based on the understanding that constitutional (fundamental) rights belong to a class of legal norms that restrict and direct the exercise of public power, which can be constructed in two ways, strictly as rules and comprehensively as principles.[37]

Therefore, weighting is, in principle, a procedure related to the application of principles, not rules. Therefore, the first step in applying legal norms is always the subsumption procedure, through a deductive structure with the application of a logical pattern:[38] when facts described in the factual-hypothetical part of a legal norm occur in the concrete world (for example, the commission of a homicide), a positive or negative conduct described in the consequent of that norm must occur (i.e., not committing homicide), but if the prescribed does not occur (murder is committed) and this conduct is observed by a competent authority, an institutionalized sanction must, theoretically, be applied (deprivation of liberty sentence).

According to Alexy, if a constitution guarantees certain fundamental rights, then legal decisions that restrict the freedom of individuals must be understood as interference with these rights, which are only admissible if they are justifiable, which necessarily means saying that they are proportional. Therefore, proportionality judgments presuppose balancing.[39]

Arthur Sanchez Badin highlights that the balancing judgment covers both the ends to be pursued and the means that must be used.[40] In both phases, you must choose what is appropriate. For example, if in a given situation it becomes clear that abortion is necessary because it is appropriate for the pregnant woman, appropriate means must be used to guarantee her well-being and, thus, preserve her dignity as a human person.

Weighting as an argumentative procedure is based on three key pillars: reasonableness, proportionality and rationality. This shows that weighting and proportionality are not confused, even though Alexy states, contrary

36. BARCELLOS, Ana Paula de. Ponderação, racionalidade e atividade jurisdicional. In: BARROSO, Luís Roberto (org.). *A reconstrução democrática do direito público no Brasil: livro comemorativo dos 25 anos de magistério do professor Luís Roberto Barroso*. Rio de Janeiro: Ed. Renovar, 2007, p. 277.

37. ALEXY, Robert. Constitutional rights, balancing, and rationality. *Ratio Juris*. vol. 16, n. 2, 2003, p. 131. Available on the internet: <https://www.corteidh.or.cr/tablas/a63.pdf>. Acesso em: 13 out. 2020.

38. ALEXY, Robert. On balancing and subsumption. A structural comparison. *Ratio Juris*. vol. 16, n. 4, 2003, p. 435.

39. ALEXY, ref. 129, p. 436.

40. BADIN, Arthur Sanchez. *Controle judicial das políticas públicas: contribuição ao estudo do tema da judicialização da política pela abordagem da análise institucional comparada de Neil K. Komesar*. São Paulo: Malheiros Ed., 2013, p. 12.

to what is adopted here,[41] that balancing is a phase of the principle of proportionality.

CONSIDERATION AND RATIONALITY

Rationality, as Cristiano Carvalho reminds us, is instrumental, because it works with the adequacy of the means to be used with the results we seek to achieve.[42] In this step, rationality contributes to making a consistent and appropriate choice, which must necessarily be made by an expert. Otherwise, the risk of not correctly interpreting all existing information and not using available and appropriate resources would be too high.

Ana Paula de Barcellos observes that "[...] every minimally rational human decision involves some type of consideration".[43] Discretionality is, in this type of case, minimal, because the criteria to be evaluated by the doctor must be as objective as possible, even if they vary between pregnant women. This is because not only the private interest is at stake, but also the public interest, since its scope is both the well-being of the pregnant woman (private interest) and the non-commitment of criminally typified conduct (public interest).

For example, in the case of abortion of an anencephalic fetus, even though there is strong scientific evidence that the unborn child has a very low expectancy in extrauterine life, it is necessary to consider whether the interruption of the pregnancy will be more beneficial to the pregnant woman than the death of her child after born. In this type of case, the consideration shows the existence of priority of a certain norm that recognizes rights to the detriment of another, due to the lack of possibility for both to converge or coexist in the situation.

It is notable that in the case of the option for abortion there is no preference for the rights of the pregnant woman to the detriment of any rights of the unborn child. José Emílio Medauar Ommati recalls that any conflict between rights recognized by legal norms is merely apparent, because "[...] in the concrete situation it is possible to understand who has the right and who does not".[44]

José Sérgio Cristóvam adopts this same perspective on the unbridled use of the pondering procedure. The author postulates that the theory of weighting, once consolidated, allows for the elaboration of a State model of weighting that is undoubtedly dynamic, open and pluralistic. However, it is essential that we can carefully review the issues of legal uncertainties, that is, we cannot admit that the weighting paradigm results in an insuppressible space of these uncertainties, "of day-to-day and casuistic relativization of rights, with the progressive erosion of notions of legality and legal security and the consequent deficit in social, political and economic stability of the community." The rationality of the doctrine lies exactly there, in preventing consideration from becoming a single remedy applicable to all ills.

WEIGHTING AND REASONABLENESS

In the course of this argument, the procedure must also be built on two other pillars: reasonableness and proportionality. These pillars, despite the mistaken understanding that they are coincident in doctrine and even in jurisprudence, must be highlighted that, although there is proximity, there is no equivalence.

It is observed, according to Virgílio Afonso da Silva, that unreasonableness, in relation to the requirements of the tests of

41. ALEXY, Robert. *Constitucionalismo discursivo*. Porto Alegre: Livraria do Advogado Ed., 2007, p. 110.
42. CARVALHO, Cristiano. *Teoria da decisão tributária.* São Paulo: Ed. Saraiva, 2013, p. 55.
43. BARCELLOS, Ana Paula de. *Ponderação, racionalidade e atividade jurisdicional*. Rio de Janeiro: Renovar, 2005, p. 1.
44. OMMATI, José Emílio Medauar. *Uma teoria dos direitos fundamentais*. Rio de Janeiro: Ed. Lumen Juris, 2014a, p. 47 e 50.

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the proportionality rule, is much less intense, and is even intended merely to exclude acts that are too unreasonable. And this identity gap between the terms becomes more explicit during the debate on the Human Rights Act of 1998 in England, when the British Conservative Party announces, at its convention, that if it wins the election it would revoke human rights, an unreasonable action in the extreme.

This convention gave rise to a noticeable interest in English legal doctrine regarding the application of the proportionality rule. Nowadays, there is a debate about the role that the rule of proportionality must play in accordance with the principle of unreasonableness, demonstrating that they are not synonymous terms, because if they were, this discussion would be unnecessary.

A crucial point to highlight is that a disproportionate act will not always be unreasonable "at least not in the terms that English jurisprudence established in the Wednesbury decision, since, to be considered disproportionate, it is not necessary for an act to be extremely unreasonable or absurd."[45]

According to Virgílio Afonso da Silva, some situations in the European Court of Human Rights demonstrate actions in which there is a decision for the proportionality of a measure even admitting its reasonableness. Confirming the assertion, currently, in the United States Supreme Court there is an association between proportionality and reasonableness in its jurisprudence, based on what they call substantive due process, something close to what the STF, here in Brazil, also tends to do.

Reasonableness, following this path, refers, as Jane Reis Gonçalves Pereira adds, to "[...] substantive judgments that transcend the analysis of the relationship between ends and means and the related verification of adequacy, necessity and proportionality in strict sense of restrictions on rights".[46]

Therefore, as José Emílio Medauar Ommati emphasizes, "[...] reasonableness is one of the elements of proportionality, with which it must not be confused".[47] Therefore, it can be said that reasonableness is an element that will signal to the interpreter whether the proportionality judgment will be necessary or not. This means that its purpose is to verify whether the assets and/or interests whose consideration is required are, in fact, options whose balancing is necessary.

WEIGHTING AND PROPORTIONALITY

Proportionality, as Jane Reis Gonçalves Pereira reminds us, is also closely related to the weighting procedure.[48] In fact, it is an integral part of it, although, as highlighted previously, it is not always necessary. Even if there is an entire social structure set up for the prevalence of the capitalist perspective, this does not mean that positive rights cannot prevail over negative rights, that is, that some manifestation of freedom cannot give rise to a certain social right, such as health or education.

In fact, a very relevant example emerged in 2020, with the health crisis generated by the new coronavirus pandemic, with the State,

45. Ibidem.

46. PEREIRA, Jane Reis Gonçalves. Os imperativos de razoabilidade e de proporcionalidade. In: BARROSO, Luís Roberto (org.). *A reconstrução democrática do direito público no Brasil: livro comemorativo dos 25 anos de magistério do professor Luís Roberto Barroso*. Rio de Janeiro: Renovar, 2007, p. 162.

47. OMMATI, José Emílio Medauar. *Liberdade de expressão e discurso de ódio na Constituição de 1988*. 2. ed. Rio de Janeiro: Ed. Lumen Juris, 2014b, p. 125.

48. PEREIRA, Jane Reis Gonçalves. Os imperativos de razoabilidade e de proporcionalidade. In: BARROSO, Luís Roberto (org.). *A reconstrução democrática do direito público no Brasil: livro comemorativo dos 25 anos de magistério do professor Luís Roberto Barroso*. Rio de Janeiro: Renovar, 2007, p. 163.

rightly, establishing restrictive measures on the exercise of freedoms to protect a social good, whether public or collective, which is the case of health.

Alexy notes that necessity operates as follows: if there is more than one way in which the realization of an interest is possible, the one that least restricts the interest identified as conflicting must be adopted, that is, it has to do with the intensity with which in which one interest is affected so that another is realized.[49]

Jane Reis Gonçalves Pereira states that the stage is similar to "[...] the notion of prohibiting excess, imposing a comparative analysis between the different means that can help in meeting the objective sought, in order to choose the one that is less burdensome for the affected right".[50]

The proportionality judgment in the strict sense has the purpose, finally, of verifying whether, in practice, it is possible to restrict a right to achieve a purpose arising from another right, or, in other words, whether the final right can determine the restriction of the right-middle.

IN BRAZIL, ABORTION IS ALLOWED: DISCUSSING THE CENTRAL POINT

The definition of abortion used in this work is identical to that of the World Health Organization, which, as recalled by Martínez-Rodas, Gonzales, Carrasco and Parodi, consists of "[...] uterine expulsion of an embryo or fetus weighing less than 500 grams, which corresponds to a gestational age of 20 to 22 weeks" [51]. The technical definition does not, however, rule out the moral perception normally associated with the issue of abortion.

Luís Roberto Barroso highlights, in this sense, that "the voluntary termination of pregnancy is a highly controversial moral issue throughout the world", so that "the laws of different countries range from criminalization and complete prohibition to practically unrestricted access to abortion". In fact, the statement is true, as found in the first chapter (item 1.2).

Furthermore, statistics on abortion reveal that whether the practice is illegal or permitted, it continues to occur, what makes one group of countries different from another "[...] is the incidence rate of risky or unsafe abortions"[52]. The portion of the population that suffers most as a result of this is that which does not have the resources to, even clandestinely, carry out an abortion.

Abortion is a difficult case. In two senses. Firstly, because in specific cases, as in other types of collisions between rights or principles, it is difficult to choose the interest that will

49. ALEXY, Robert. Epílogo a la teoría de los derechos fundamentales. *Revista Española de Derecho Constitucional*. vol. 22, n. 66, set./dez. 2002, p. 28-29. [consult. 13 out. 2020] Available on the internet: <https://dialnet.unirioja.es/descarga/articulo/289390.pdf>.

50. PEREIRA, Jane Reis Gonçalves. Os imperativos de razoabilidade e de proporcionalidade. In: BARROSO, Luís Roberto (org.). *A reconstrução democrática do direito público no Brasil: livro comemorativo dos 25 anos de magistério do professor Luís Roberto Barroso*. Rio de Janeiro: Renovar, 2007, p. 183.

51. MARTÍNEZ-RODAS, Oscar Ramón, GONZÁLES-CASTRO, Gloria Mercedes, CARRASCO, D., PARODI-TURCIOS, Karla Isabel. Eficacia del misoprostol como tratamiento en abortos menores a 12 semanas, Hospital Materno Infantil Mayo-Julio 2019. *Revista Internacional de Salud Materno Fetal*. vol. 5, n. 1, p. 11-17, 2020, p. 12.

52. BARROSO, Luís Roberto. *A dignidade da pessoa humana no direito constitucional contemporâneo: a construção de um conceito jurídico à luz da jurisprudência mundial*. Belo Horizonte: Ed. Fórum, 2014, p. 99-100.

be less fulfilled or even put aside. This is the conflict that is usually pointed out, related to the collision between values and fundamental rights of the pregnant woman (life, health, physical and mental integrity) and the fetus (life), which reveals, as Barroso observes, that from the point of view of dignity of the human person, "[...] there is only one fundamental right favoring the anti-abortion position – the right to life – contrasted by two fundamental rights favoring a woman's right to choose – physical and psychological integrity and equality" [53].

However, it is a difficult case also in a second sense, especially given the existence of a doctrinal and jurisprudential insistence on stating that the rule in Brazil is the prohibition of abortion. This type of conclusion, although it arises directly from the Penal Code and indirectly from the Civil Code, does not find any support in the Federal Constitution of 1988. In other words, it does not conform to the Brazilian constitutional project.

On the topic of criminal abortion, we have five provisions in the Brazilian Penal Code, namely: articles 124 (self-abortion or consent for a third party to perform it on oneself), 125 (heteroabortion without consent), 126 (heteroabortion with consent), 127 (abortion aggravated) and 128 (excluding).

As noted, abortion is included in the chapter of crimes against life and in the title of crimes against the person. Therefore, it can be said that abortion was considered by the legislator in criminal matters as a crime against a person's life. Analysis of the articles referred to allows us to affirm that abortion is only possible and viable if two necessary conditions are present: the unborn child and the pregnant woman. Therefore, it cannot be said that there is an abortion before conception, nor after the birth of the child alive. Therefore, if abortion is classified as a crime against life, it is clear that there is a conflict of rules between the Penal Code and the Civil Code. This is because in the Civil Diploma the provision is that there is only life at birth: "a person's civil personality begins from birth alive" (article 2, 2nd part, of the Civil Code).

In Alexy's sense, these two normative texts, the penal set and the civil isolated, are rules and, as such, would not enter into a weighty conflict. However, above the rules mentioned here is the constitutional principle of human dignity. Therefore, consideration is required, especially for the purpose of providing unity and coherence to this national project.

According to the analysis of the biological perspective, which is the field of human knowledge that must serve to clarify this situation, until the 20th week of gestation, human life is not viable and, being unviable, we cannot speak of the existence of a person. In this sense, it can be said that the taxonomy of Brazilian criminal classification is also wrong, since abortion is not a crime against life, but only against the person. It differs from other crimes such as homicide, aiding suicide and infanticide, for which it is assumed that the victim has already been born alive.

It is worth noting that when the causes that exclude abortion are mentioned, which are in cases of necessary abortion, that is, to save the life of the pregnant woman, and in cases of pregnancy resulting from rape, it is clear that there is no mention of life of the unborn child. Therefore, it is clear that the classification adopted by the legislator in the Penal Code is wrong.

In fact, abortion could not be linked to a crime against life, since there is no clarification in the Penal Code about when life begins. But not only because of this, since the understanding of what life is confusing. According to Augusto and Daniel Damineli, the word "life" is often had in an obvious

53. Ibidem, p. 100-101.

definition, however, the complexity leads it to be conceived in a plural form.[54].

Citing the area of Psychology, the authors highlight the meaning of psychic life, mentioning sociologists highlights social life, when referring to theologians they mention the meaning of spiritual life, to common subjects, "life" can be the ills or pleasures. Thus they provide that:

> For a (relatively small) part of people, it brings to mind images of forests, birds and other animals. Even this image is partial, since the vast majority of living beings are invisible organisms. Microbes make up the majority of living beings, the majority (80%) living below the earth's surface, totaling a mass equal to that of plants. However, microbes still do not occupy the appropriate dimension in our imagination, despite more than a century of use of the microscope and frequent news in the media involving the powerful action of microbes, sometimes causing diseases, sometimes curing them, being part of the ecosystem or influencing food production. This situation is due to the fact that life is still a recent topic in the scientific field, compared to its antiquity in philosophical and religious thought."[55]

Therefore, if there is no reasonable scientific criterion to identify when life begins before birth, it is not up to the legislator to establish it. As a result, the most appropriate perspective is that established in the Civil Code, so that abortion is a crime whose victim is a person. And as the criminal legislator did not define who is or is not a person, that prescription of the civil legislator updated by the constitutionally compliant interpretation applies, which states that only a fetus from the 20th week of gestation can be considered a person.

Applying a rational, reasonable and proportional judgment, as described above, if the constituent legislator wanted to protect the dignity of the human person even before his birth alive, then it must be concluded that Brazil cannot position itself as a country whose legal system prohibits abortion.

The national penal doctrine understands, however, and mistakenly, that abortion consists of the death of either the embryo or the human fetus, with the unviability of the unborn child not being essential.[56] The reading made by the doctrine does not delve into the relationship with what is foreseen in the Civil Code nor does it bear fruit in the Constitution, summing up to assuming that the cessation of pregnancy after implantation [57] or the conception [58]constitutes abortion.

It must be noted that there is no discussion about the difference between a fetus and an embryo or about at what period of gestation the fetus is likely to be born alive, even if the birth is extremely premature. It is, however, impossible, based on legal technique, to determine the occurrence of abortion before the 20th week. And this is derived from the constitutionalized interpretation of the national legal system, since, before this period, the unborn child does not have exactly the condition that is essential for the occurrence of abortion: being a person.

54. DAMINELI, Augusto, DAMINELI, Daniel Santa Cruz. Origens da vida. *Estudos Avançados*. vol. 21, n. 59, 2007, p. 263. [consult. 13 out. 2020] Available on the internet: <https://www.scielo.br/scielo.php?script=sci_arttext&pid=S0103-40142007000100022>.

55. DAMINELI, Augusto, DAMINELI, Daniel Santa Cruz. Origens da vida. *Estudos Avançados*. vol. 21, n. 59, 2007, p. 263. [consult. 13 out. 2020] Available on the internet: <https://www.scielo.br/scielo.php?script=sci_arttext&pid=S0103-40142007000100022>.

56. PRADO, Luiz Regis. *Tratado de direito penal brasileiro: parte especial (artigos 121 a 249 do CP)*. vol. 2. 3ª. ed. São Paulo: Ed. Forense, 2019. (*e-book*), page: 140.

57. NUCCI, Guilherme de Souza. *Curso de direito penal: parte especial: artigos 121 a 212 do Código Penal*. vol. 2. 3. ed. Rio de Janeiro: Ed. Forense, 2019. (*e-book*), page: 190.

58. GONÇALVES, Victor Eduardo Rios. *Direito penal: parte especial*. 8. ed. São Paulo: Ed. Saraiva, 2018. (*e-book*), page: 179; MASSON, Cleber. *Direito penal: parte especial (artigos 121 a 212)*. vol. 2. 11. ed. São Paulo: Ed. Método, 2018. (*e-book*), page: 104.

Therefore, the prohibition of abortion must be restricted to the period from the 20th (twentieth) week of pregnancy, which is why the typical criminal figures "abortion caused by the pregnant woman or with her consent" (article 124 of the CP) and "abortion caused by a third party with the consent of the pregnant woman" (article 126 of the CP), must be reinterpreted, to refer only to the period that begins in the 5th month of pregnancy. In other words, in these two cases the pregnant woman can, of her own free will, without depending on any authorization, whether from the State or her partner, interrupt her pregnancy.

In this sense, the abortive behaviors classified by the Brazilian legislator as causes of justification in article 128 of the Penal Code (CP), also in view of this new interpretation, refer, especially, to the period beginning in the 20th week of pregnancy. In other words, necessary abortion and abortion in the case of pregnancy resulting from rape are justifying causes that allow the procedure even when the fetus has already acquired the status of a person. Therefore, it must be concluded that the criminalization of abortion in the Brazilian legal order is compatible with the national constitutional project, but must be reinterpreted.

CONCLUSION

The doubt about the extent of the criminalization of abortion in the Brazilian legal system is long-standing. However, what was noticed in the preparation of this work is that, although much is said about the interdisciplinarity and multidisciplinarity of law with other areas of human knowledge, on the topic of abortion the option made is for a purely legal opinion, based on understandings already in place. consolidated and authoritative arguments, without descending into more detailed critical assessments. This, before enriching the debate, contributes to impoverishing it and relegating it to oblivion.

In this work, we opted for an initial, although brief, presentation of statistics and cases regarding abortion in the world. Statistics made available by the United Nations, through the World Health Organization, reveal that the discussion on the beginning of life is still far from reaching a consensus, although it reveals a common thread, at least based on the United Nation's position, that abortion must be allowed, even though the permission is not unrestricted.

The conclusion reached is that it is necessary to reformulate the interpretation of the acquisition of the condition (status) of a person, to establish that before the 20th week of pregnancy, according to scientific evidence, there is no natural person, and abortion can occur freely and voluntary decision of the pregnant woman. The seal must therefore be for procedures from the 20th week onwards. In short, in Brazil, abortion is allowed. Therefore, it must be made clear that abortion carried out by the pregnant woman or by third parties, with her authorization, will not always be considered a crime, thus contradicting the provisions of the Brazilian Penal Code. The Brazilian constitutional project must prevail to the detriment of the legislator's arbitrariness.

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