

## **Legal status of the unborn in the view of its right regarding the protection of life and health, redressing damage caused before the childbirth and the protection of mother's personal interest**

The result of discussions on the Roman law was the creation - already in ancient times - of a legal fiction according to which the unborn is deemed to have been born to the extent that its own benefits are concerned. Nowadays, law does not decide directly who can be defined as a human and within what kind of scope the unborn is granted legal status and legal capacity. Such a situation turns out to be a subject of disagreement between scholars, whereas both judicature and doctrine have the most significant contribution to the matter in question.

Due to the above, the article indicates vital issues regarding the legal situation of *nasciturus* consisting of the legal status - granted to the unborn under condition precedent - and the legal capacity. The author presented regulations of the Constitution, the Civil Code and the Family and Guardianship Law which emphasize the protection of legal interest of *nasciturus*, together with their analysis in judicature of the Constitutional Tribunal, the Supreme Court and the Supreme Administrative Court.

Further considerations relate to the right of the unborn child regarding the protection of its life and health. Having some material powers in a prenatal time period means that their use shall depend on respecting the abovementioned values. One of the powers is the right to bring an action to redress the damage caused before childbirth, which can be executed thereafter. Therefore, one shall ask the question: how shall we protect the unborn child so that it could effectively execute its granted rights, but simultaneously respect mother's personal interest?

The article draws attention to particular controversies related to the way of settling by a legislator a conflict between constitutionally protected values - mother's right to self-determination and life and health of the unborn child. Within this subject matter, the author also presented *de lege ferenda* postulates, which could become fundamentals in establishing effective protection of personal interest of the child.

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