CNECV – NATIONAL COUNCIL OF ETHICS FOR THE LIFE SCIENCES

STANDPOINT OF THE CNECV REGARDING THE PROCEDURE TO BE ADOPTED IN THE CASE OF LIVING FOETUSES RESULTING FROM ABORTIONS

28/CNECV/99

The Faro District Hospital addressed the CNECV on the procedure to be adopted when faced with the existence of a living foetus resulting from an eugenic abortion when the latter, in accordance with Law no. 90/97, of the 30th of July, is done by the 24th week of gestation.

In reply, the CNECV clarified the following points:

1. This Council's standpoint regarding the **problems** relating to the voluntary interruption of pregnancy has been expounded in the Opinion issued on the 10th of January 1997, based on the Report dated on the same day (*Report-Opinion 19/ CNECV/97 on the Bills relating to the Voluntary Interruption of Pregnancy*). This document was published in our *Documentação, volume IV*, CNECV (1997).

2. Reading the above mentioned Report-Opinion leads to the conclusion that the Council raised no objections to the extension of time-limits to the causes for exclusion from illicitness, since the larger ethical issue is that of the interruption of pregnancy itself, and not **of** the stage of prenatal life at which the act **takes place**. Nonetheless, the Council drew attention to the fact that such an extension of the deadline raises problems in terms of medical technique and of the interpretation and application of the Law. This is expounded in greater detail in point 11 of the Report, where it is affirmed that "it may happen that the aborted foetus be alive and that it be necessary to let it die, by omission of adequate care, which is technically very close to infanticide, or indeed configures that offence" – to which, as we know, no exclusion from illicitness applies.

3. From this request for an opinion addressed to the Council, we draw the information that such a situation (abortion of a living foetus displaying malformations) is real, unfortunately, thus confirming the difficulties foreseen in Report-Opinion 19/CNECV/97 – which were not taken into account by the legislator. It appears to be desirable, obviously, to make every effort to prevent the situation, namely by:

   a) a more precocious diagnosis of causes for exclusion from illicitness (before the 16th to 20th week);
   b) a precise medical certification of the nature and gravity of the malformation and proof of the same by means of a necropsic examination of the foetus;

c) supplying complete and unbiased information to the pregnant woman on the nature and consequences of the malformation, so as to enable her to make an autonomous, free decision over an eventual interruption of pregnancy; such information must necessarily include, if the diagnosis is established only at the 22nd to 24th week, the possibility of the aborted foetus being and remaining alive;
d) registering all the foregoing data in the clinical history record.

4. In cases when, despite all this, the situation in question could not be avoided, there is conflict between the medical duty to try and save the life of the foetus and the woman's right to interrupt her pregnancy. Such a conflict, assuredly, is not easily resolved, yet it appears that the right recognised by law will ultimately prevail over professional deontology. Thus it seems that physicians who have practised the abortion under such circumstances, in accordance with the law in force, must abstain from requesting the collaboration of any health professional who has not intervened in the process of interruption, and take upon themselves the ethical responsibility for omission of any care beyond the basic.

5. Regarding this matter, it will be useful to consult the National Council of Ethics and Deontology of the Medical Association, and to ask the legislator to specify precisely the legal framework of such situations.

National Council of Ethics for the Life Sciences
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