



CONSELHO NACIONAL DE ÉTICA PARA AS CIÊNCIAS DA VIDA

REPORT-OPINION 19/CNECV/97

on the

LEGISLATIVE BILLS
relating to
THE VOLUNTARY INTERRUPTION OF PREGNANCY

I - REPORT

INTRODUCTION

1. On the 18th of November, 1996, the President of the Portuguese Republic requested that the CNECV issue the Opinion required of it by the Parliamentary Group of the Social Democratic Party, pursuant to item b) of Art. 7 of Law 14/90. That Opinion was to address Bill 177/VII, submitted by the Portuguese Communist Party, and Bills 235 and 236/VII, subscribed by groups of parliamentary representatives of the Socialist Party. All these documents were enclosed with the orders of the National Assembly's Presidency.

The National Council of Ethics for the Life Sciences, an independent body and a privileged forum for reflecting upon and analysing the ethical questions pertaining to the vast domain known as the Life Sciences, considers itself competent to elaborate said opinion and congratulates itself on being called upon to contribute to the debate of such a fundamental and notoriously difficult issue, in which the basic concepts and the attitudes grounded thereon are far from being consensual in Portuguese society.

In strict abeyance to its character as an impartial and independent body, this Council will steer clear of any ideological or Party-biased arguments; it will not try to analyse the texts submitted from a juridical point of view, since that would go beyond its sphere of competence; much less will it care to point out a few syntactical and spelling mistakes that inadvertently made their way into the Bills under appraisal. In short, the Council's sole intention, in the elaboration of the present Opinion, is to analyse the ethical contents of the above-mentioned Bills, reducing to the indispensable minimum the inevitable incursions into the juridical-constitutional and medical-biological fields.



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The Embryo and the Foetus: Previous positions taken by this Council

2. When Law no.6/84, of the 11th of May, providing for the exclusion of illicitness in certain cases of voluntary interruption of pregnancy, was enacted, leading to the amendment of Art.141 (presently no.142) of the Penal Code, this Council had not yet been created, wherefore, obviously, it could not produce any document regarding this matter. Nevertheless, in two Opinions elaborated on its own initiative, the Council laid down doctrine that must be recalled here, for its pertinence to the grounding of the present Report. Thus:

In the Report-Opinion on Medically Assisted Reproduction (3/CNE/93) refers the controversy over the status of the embryo, the dignity that must be accorded to the embryo, and the protection and respect it must deserve, and concludes that: *"For as long as this controversy remains unresolved and doubts persist, and always in future in whatever case, the ethical principle shall apply which establishes that it is seriously illicit to attempt against an entity that may be construed as a subject invested with full human dignity";*

Report-Opinion 15/CNECV/95, on Experimentation on the Embryo, analyses in greater length and detail the nature of the embryo and the foetus (using both designations without an exact chronological connotation, given that it is artificial to distinguish between them) and the status that may be or should be accorded to it. The Council refers the reader to this recent Report-Opinion, noting that it justifies dismissing the doctrinal, philosophical and juridical question of the identification of the embryo or foetus as a person or individual to limit the discussion to the scientifically incontrovertible assertion that, since syngamy, human life is present, because *"when the necessary conditions are guaranteed, and if it overcomes the obstacles to its implantation and intra-uterine growth, the embryo cannot but originate a representative of the human species, and it will never turn out to be an individual of any other species."* Furthermore, it states that human life deserves respect since its beginning (that is, since syngamy), and that no school of bioethical thought (not even those that admit destructive experimentation and the production of embryos for experimental purposes) refuses to concede such respect, even though they defend the principle of graduality, that is of a growing degree of respect depending on the stage of development in question. After stating that it is difficult to establish such degrees and to quantify respect according to criteria whose grounds are fragile, that Report-Opinion states: *"...human life merits respect, whatever its stage or phase, due to its essential dignity. The embryo, at any phase and from the start, constitutes the physical and biological support indispensable to the development of the human person, and we anticipate in the embryo what it will become: wherefore there are no reasons leading us to establish a scale of respect."*



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Nature and Status of the Embryo and the Foetus

3. No new knowledge, arising in the very active field of embryo research, has come to alter the grounding of the opinions previously expressed by the Council. We affirm again, therefore, that in the embryo and the foetus resides human life, which evolves inexorably to the plenitude of a person, provided it survives the many obstacles that may confront it in its vital history. For that very reason, intra-uterine life constitutes a juridical-criminal entity, and any intervention that puts an end to it is subject to penalty unless certain causes, which must be unequivocally serious, exclude the illicitness of the act.

4. From a legal point of view, the embryo/foetus enjoys legal protection, expressed in the Civil and Penal Codes, inasmuch as *"the life of someone about to be born constitutes a juridical interest or entity which cannot be disposed of..."*, as stated already in 1982 in a Memo-Opinion by the Attorney-General.¹ The position of the Constitutional Court agreed with this by means of Sentence (*Acórdão*) no.25/84, dated March 19th, 1984, of which we quote the following extracts: *"...the unborn child, insofar as it has been conceived already, is a living human being and as such deserving of protection..."* and (quoting Figueiredo Dias), *"we have no doubt that foetal life is endowed with the indispensable attributes to qualify as a juridical entity that is significant in penal terms..."*. The same Constitutional Court, in its Sentence no.85/85, dated May 29th, 1985, affirms *"that intra-uterine life is not constitutionally irrelevant or indifferent, being instead a constitutionally protected entity, sharing in the protection generally conferred to human life as a objective constitutional entity"* (CRP, Art. 24, # 1).

It is known that, despite these doctrinal positions, the Constitutional Court has not declared unconstitutional the norms that exclude the illicitness of certain cases of voluntary interruption of pregnancy (Art. 1 of Law no. 6/84 and, consequently, Articles 40 and 141 of the Penal Code), though the unconstitutionality of such norms had been defended by the President of the Republic and by the Attorney General, out of whose demands arose the Sentences mentioned above. It is also known that those Sentences were approved by simple majority of expressed votes (by a slight margin in one case). These facts are mentioned only to characterise the evident difficulty of reaching a consensus, even among high magistrates - and this merely at the level of criminal jurisprudence and the hermeneutics of the Constitution.

In any case, the concept that prevailed was that *"intra-uterine human life, while sharing in the protection that the Constitution confers upon human life... cannot enjoy the constitutional protection of the right to life "strictu sensu" - which applies only to persons - wherefore it may have to forgo that right in*

¹ Informação-Parecer da Procuradoria Geral da República, no. 31/82, dated 13.04.1982.



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the case of conflict with fundamental rights or other constitutional values. " (Sentence no. 85/85). And the same Sentence refers, as fundamental rights that supersede the value of intra-uterine life, "...*the woman's rights to life, to health, to her good and reputation, to dignity, to willing maternity, etc.*" The foetus is not the holder of fundamental rights because "*it is not [yet] a person, a human person...*".

Such is the present situation, which could be synthesised in the following sentence: in the embryo (or foetus) resides human life, and intra-uterine life shares in the protection which the Constitution confers upon human life, wherefore abortions² are penalised as criminal, which they are; however, the illicitness of the abortive intervention is excluded in specific situations wherein certain fundamental rights, in particular those of the pregnant woman, collide with the foetus's right to protection and justify the sacrifice of the latter.

This is the state of affairs which Bills 177, 235 and 236/VII propose to change.

The Amendments Proposed

5. The proposed amendments are sufficiently similar to enable their grouping, as we do below, without having to describe them separately under each Bill.

a) Exclusion of illicitness of the voluntary interruption of pregnancy when performed up to the 12th week and by request of the pregnant woman (in two of the three Bills, with one of them extending the time-limit to 16 weeks in the case of drug addicted women);

b) Extension of the time-limits allowed in the Penal Code for exclusion of illicitness, from 16 to 22 or 24 weeks in the case of eugenic abortions, from 12 to 16 (or 18, or 22) weeks in criminally-induced pregnancies ("rape", in the official terminology; "crime against sexual freedom and self-determination", in the terminology of the Bills) – this amendment is proposed in all three Bills;

c) Penalisation of any propaganda inciting to the voluntary interruption of pregnancy (proposed in one Bill);

d) De-penalisation *"of the conduct of the woman who consents to a voluntary interruption of pregnancy outside the legally stipulated*

² It would be more accurate to speak of "aborting"; and, when done with exclusion from illicitness, of "voluntary interruption of pregnancy". Nevertheless, in consonance with generalised usage, we shall not make that distinction in terminology.



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time-limits and conditions" (by the annulment of item 3 of Article 140 of the Penal Code) - a measure proposed in one of the three Bills.

Other proposals in these Bills have an institutional character, concerning the creation of family counselling centres and the organisation of health clinics, and also the creation of Technical Committees for the Evaluation of Congenital Defects (in two of the Bills). Finally, there is a proposal for amendment of the clause regarding moral objection (*objecção de consciência*), demanding its justification by the practitioner and a referral, by name, to another who does not morally object to abortions; and demanding the imposition of guaranteed confidentiality by the health professionals in those establishments where the voluntary interruption of pregnancy is practised.

Ethical Evaluation

On the basis of the set of concepts referred to in nos. 4 and 5 of the present Report-Opinion, solidly grounded on data of a biological-scientific and juridical-criminal, the following evaluation, from the perspective of the ethics of the Life Sciences, must prevail, regarding the proposals contained in the Bills under appraisal:

6. One must reject outright the exemption from illicitness of the so-called abortion on demand. Human life, even when incipient, is an asset and the pregnant woman is not free to dispose of that asset, for it is not hers and the new living being needs protection and sustenance to continue its evolution as an irrepeatable being endowed with the dignity pertaining to all members of the human family. To admit the contrary, invoking sociological or economic reasons, is to diminish human dignity (which is the guiding key concept of the Constitution of the Portuguese Republic) by means of arguments based on criteria that serve private interests. With precisely the same type of argument one can propose the institution of the involuntary euthanasia of citizens who are impaired, invalid or demential, whenever their family should be unable to provide "*reasonable conditions of subsistence and education*" or whenever the existence of such diminished persons "*might possibly create an unbearable social or economic situation*". The "*exercise of a responsible maternity*" and the "*moral integrity*", equally invoked, surely cannot be guaranteed by the simple outright elimination of such maternity. Moreover, such arguments, appearing in the preliminary considerations of two of the Bills, are mentioned in vague manner or even have no bearing on what they propose (nor could they have it, for it would be unfeasible to verify the real existence of such motivations – who could verify them?), which boils down, in practical terms, to instituting abortion on demand.



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While rejecting outright this inadmissible intrusion into someone else's life, we certainly do not ignore the scandal of clandestine abortions, nor the drama that accompanies the decision to abort, nor the consequences to the woman's physical and mental health of the abortive intervention (even when it is carried out in good quality hospital conditions). In no case does the pregnant woman (with the possible exception of those who evidence some psychic anomaly or a serious personality deviation) seek such a radical and *contra-naturam* intervention without a serious internal conflict and she does so, surely, because she discerns no other way out of a situation which seems to her unbearable. It seems clear, however, that the most efficacious means to combat the scourge of clandestine abortion are prophylactic, through the sexual education of both sexes, through follow up in consultations with the family doctor, through education of mentalities, and the real implementation of women's rights. It is a very bad solution to facilitate abortions, attributing to the pregnant woman a right that does not assist her – aiming, as the only advantage, at diminishing the risks to her health. And diminishing risks only, for some others are inevitable, as acknowledged presently by Medicine (such as infertility, increased risk of breast cancer, post-abortive syndrome, etc.).

It might be inferred from this position that one ought to oppose as well all other causes for the exemption from illicitness of the voluntary interruption of pregnancy (calling thus for a repeal of the amendments introduced in the Penal Code by the approval of Law 6/84), but in truth there are no grounds for that.

7. The situation of conflict between the life of the mother and the life of the foetus is a classic example of the convergence of ethics, the Law and the medical leges artis. When the medical situation imposes a treatment of the pregnant woman that leads directly or indirectly to sacrifice the foetus, then the arguments in favour of the protection of an incipient life (which, moreover, would have no chance, at least up to the 24th week, of maintaining itself if the mother should die) in the face of the right to life and health of the mother are no longer valid. The final decision falls to the mother, once she has been duly informed, and it will usually coincide with the medical opinion.

8. The abortion of unviable foetuses, that is, those that will surely not survive more than a few hours or days the separation from the maternal organism brought about by birth, could be interpreted as a form of pre-natal euthanasia (obviously of an involuntary kind), since it will result in speeding the death of the foetus. Nevertheless, it would be very hard on the mother to carry through to the end a hopeless pregnancy, to undergo the trauma of parturition, to delay the inevitable mourning, and suffer the eventual shock of seeing an apparently perfect child that is incapable of surviving because of some vital organ that is missing or defective. In such circumstances, it does not seem to be ethically correct to defend a life without any prospect but



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short-term extinction at the cost of a marked maternal suffering which may leave permanent emotional scars.

9. Eugenic abortion, however, raises extremely serious ethical doubts. The very name causes instinctive horror in those who recall the inhumane and criminal efforts of Nazi totalitarianism to “*improve the race*” by the elimination of the weak, the impaired, the mentally ill, epileptics and, later on, of individuals belonging to “*impure*” or “*inferior races*”. In eugenic abortions, one cannot invoke any conflict between the mother and the foetus, but only between society and the foetus: if it should present a serious malformation or an incapacitating genetic disease, it will no doubt constitute an emotional, sanitary and economic burden for the family and the society in which it participates. The implicit or explicit reasoning that leads to an abortion in this case is based on the opinion that the verification of some malformation (of what type? of what seriousness? harelip, bifid spine, inter-ventricular communication?) or the prevision of a serious disease (eventually an incurable one) constitute sufficient justification for the suppression of a life. Now, that justification, which invokes reasons of a medical, economical and social order, also implies at least two arguments that must be evaluated from an ethical point of view. The first presumes that the acceptance of the unexpected, painful and heavy consequences of one’s acts is optional, something which raises the greatest ethical reservations. The second consists in assuming that, from the point of view of an impaired person, a diminished life is not worth living; and this means that adult persons give themselves the right to consider as expendable other human lives that are already in existence (albeit in undeveloped form) - which, ethically-speaking, denies the human dignity of those lives.

The attitude subjacent to eugenic abortions is ethically censurable, both because it is discriminatory (creating citizens of different categories), and because it exemplifies the “*slide*” or “*slippery slope*” so often discussed in ethical reflection. Is the impaired citizen, the cerebral palsy patient, the trisomic 21 (mongoloid) intrinsically and essentially less valuable and less dignified than its so-called normal fellow citizen? If that were the case, would it not be equally legitimate to eliminate such citizens after birth? This conceptual “*slide*” down the “*slippery slope*”, though repugnant to most consciences, is defended by some scientists (including some Nobel prize winners) and by some authorities on ethics, who may be accused of being insensitive but not of being illogical.

On the other hand, merely at pragmatic level, the extension of the designation “*eugenic abortion*” makes it difficult or impossible to circumscribe it, due to the advances made in prenatal diagnostics and molecular genetics. In fact, it is possible today to diagnose prior to birth some serious or incurable diseases that only become manifest at a later age: e.g., Huntingdon’s Chorea; the Machado-Joseph disease; amyloidotic poly-neuropathy of the



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familiar type (the Portuguese type, also known as Corino de Andrade), etc. These are diseases whose symptoms only appear, as a rule, by the 3rd or 4th decade in life: is it ethical to abort an individual on the basis of such diagnosis, knowing that it would enjoy 30 or 40 years of normal life? Nevertheless, this is the attitude that is advised and acted upon at many institutions, including a few in Portugal.

Moreover: it is foreseeable that prenatal diagnostics will eventually enable one to identify at the stage of intra-uterine individuals who will suffer late in life serious or incurable diseases, such as *dementia praecox* or diabetes. According to the Bills under appraisal (and even to the present text of the Penal Code) there shall be no illicitness in the voluntary interruption of pregnancy in such cases.

In short: eugenic abortions lack ethical grounding. If the existence of a malformation or the prevision of a serious and incurable disease should be allowed as cause for the exemption from illicitness, then it seems indispensable to restrict severely the amplitude of this indication, limiting it to situations of serious and incurable malformations and to prevision of diseases that are not only serious and incurable (which would apply to diabetes) but also have precocious manifestation and are incompatible with an autonomous, dignified life; and to make this indication depend on an adequate medical certification. All this applies if it be the express political will to maintain a disposition of eugenic inspiration, unsupported by any valid ethical grounding, by condemning to death fetuses that are especially fragile due to malformations or marked out to have an unfortunate future.

10. Concerning crime-related abortions, ethical debate is divided into two opposing positions: one admits that the raped woman has the right to free herself from the unwanted and prolonged consequences of the crime of which she was the victim; the other that a crime, albeit abominable, is not erased by committing another, victimising an innocent being. From the viewpoint of personalist ethics, based on the respect for human dignity, the arguments of the latter school of thought are rather more convincing; but it cannot be ignored that a forced pregnancy, resulting from a very serious offence, may represent a permanent aggression to the psychic and emotional equilibrium of the victim, even to the risk of suicide, wherefore this cause for exclusion from illicitness may legitimately be included in the cases of conflict between the mother's and the foetus's life. It would be preferable, no doubt, that the mother, given full psychological and social advice and support, were able to carry through the gestation and that the child be recommended for adoption, but the radical "solution" of abortion should not be excluded, in the extreme case already mentioned.

Whatever the case, in no way must there be substitution of the term "*rape*", whose medical, forensic and criminal content is well defined, by the



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expression "*crime against sexual freedom and self-determination*", an expression whose vague and elastic significance is potentially generative of juridical conflicts (what proof could a woman provide that the pregnancy she wishes to interrupt resulted from an intercourse that was imposed by her husband or companion?).

11. The issue of the time-limits has not, in truth, any ethical relevance. Twelve, sixteen, twenty-two or twenty-four weeks as time-limits for the abortion - what significance does that have, from an ethical point of view? None. In fact, it is the decision to eliminate intra-uterine human life that is ethically serious and constitutes the fundamental issue. One of the Bills is coherent in this respect, by proposing that the abortion of unviable foetuses be allowed at any time until the end of the pregnancy, that is, without time-limits. A bit of fiction may help to understand the ethically aberrant character of this proposal. Let us imagine that a decision for the voluntary interruption of a pregnancy is not acted upon and that the human being born under such circumstances is informed, years later, of that old intention. For that human being, the result would have been the same whether he/she had been aborted on the 10th, 20th or 30th week of pregnancy - he or she would not exist.

Even though no ethical significance is seen in the adoption of time-limits does not entail that these cannot be justified, if in the thinking of the legislator there are degrees in foetal evolution, as seems to have been the case in the ruling of the Constitutional Court which states that "*whereas in the light of the cultural and juridical conscience, the stage of development of the foetus is certainly not indifferent, it has a claim to a greater degree of protection the nearer it is to birth*" (Sentence 85/85, dated May 28th, 1985). However, the fundament of that assertion are not discernible, nor are they mentioned in that Sentence. The reference to cultural aspects (?) suggests that the real motivation behind the tendency to stipulate time-limits has to do with emotional aspects: for, after the 22nd week, one is dealing with a premature infant, whose morphology is very close to that of an infant delivered at the end of pregnancy. The legal provisions echo this fact, demanding a death certificate and stipulating the burial of a foetus aborted after this time-limit. Besides the emotional aspects, there are also aspects of obstetrics that must be considered: after that same limit the procedure for abortion is the same as the induction of a premature birth; and while it is certain that, in Portuguese centres for prematures intensive care is ministered to prematures with 24 or more weeks of gestation, it may happen that the aborted foetus be alive and must be left to die, by the omission of adequate care - which, technically, is very much like infanticide, and could even be classified as such (there is no exclusion from illicitness as regards infanticide).



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In conclusion: the reasons that lead to the proposition of time-limits to the voluntary interruption of pregnancy are not of an ethical order.

12. One of the Bills proposes the de-penalisation of the pregnant woman who consents to the interruption of pregnancy outside the indications and time-limits laid down in the law. Since this Bill also includes a proposal for the exclusion from illicitness of abortions on demand, when performed up until the end of the 3rd month of gestation, it appears as the most liberalising of the three Bills, since, effectively, there would be no legal obstacle to the performance of clandestine abortions; the woman would not be penalised, in case this proposal should prevail, and whoever actively performed the abortion could only be penalised if the woman filed a complaint, which is absurd, for in this case the abortion would have been performed by her request or at least with her consent.

Even though this is a matter of criminal policy, this proposal must be vehemently opposed on ethical grounds. In the first place, because human life is an inviolable juridical-criminal asset (Portuguese Constitution, Art. 24, # 1), and to the protection granted to it corresponds the criminalisation of all attempts against human life, save for exceptional situations, that is, those situations defined as justifying the exclusion from illicitness. Secondly, because the penal law also has a preventive and didactic character which must not be underestimated. Thirdly, because it is incoherent to submit a Bill whose declared aim is to avoid clandestine abortions while, at the same time, it actually facilitates its practise, by exempting it from penalty (as regards the pregnant woman).

13. The penalisation of propaganda of the voluntary interruption of pregnancy, proposed in one of the Bills under appraisal, does not appear to have any discernible ethical foundation. In fact, if the intention is to exempt the pregnant woman from “inductive behaviours” and influences, the proposed measure is entirely redundant, since the legislation in force demands informed or knowing consent, and what characterises such consent is precisely its autonomous character, following correct, total and unbiased information.

The creation of Family Counselling Centres or of Technical Commissions of Congenital Deficiencies, whose feasibility and usefulness is more than doubtful, could also be criticised as an unjustified intrusion in the health system and in the sphere of competence of obstetricians and geneticists; nothing indicates that the response available in the present system does not offer the guarantee of quality and reliability that are deemed necessary in this matter.



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Still, there is in fact a point of great importance, which merits reflection: in the case of a situation which qualifies for exclusion from illicitness, the pregnant woman has the right to procure quick and adequate interruption of her pregnancy; but it may happen that the physicians in the centre to which she has access refuse to carry out the abortion out of moral objection. Here we have a conflict, not of rights (which would be unthinkable) but of interests. It falls to the State, through its hospital network, to guarantee the fulfilment of the woman's right, organising efficaciously the resolution of the problem. This is actually laid down in items 2 and 3 of Art.3 of Law no.6/84, so far overlooked or ignored.

14. Skipping past the intention of "*instituting the obligation of confidentiality*" on the part of health professionals, manifest in the preamble of one of the Bills but totally unnecessary, since that obligation is set in Art.5 of Law no. 6/84 (being safeguarded, moreover, by the Professional Code of health practitioners), we shall look at length at the proposals regarding moral objection. (*objecção de consciência*).

The clause on moral objection is the touchstone of the official and legal recognition of respect for the private, personal convictions and choices of each individual, this being why it is provided for in the juridical-legal systems of democracies. From an ethical point of view, it is a fundamental element, which must be proposed and defended without concessions. It is strange, therefore, that two of the Bills express the intention of obliging the objector to ground his/her objection - this is totally unacceptable, for moral objection only makes sense if it invokes personal conscience and nothing more: the objector declares himself/herself as objector and must not go, cannot go beyond this declaration.

Equally unacceptable is the proposition, which seems to be contained in all three Bills (their wording does not permit an univocal interpretation), that the objector refer someone else who will carry out the interruption of pregnancy. It is obvious that the objector can never be charged with referring a colleague who is willing to carry out the abortion; in any case, since the objection will be expressed on an *ad hoc* basis, it is evident that the Law does not allow for the division of professionals into "*pro-abortion*" and "*objector*" categories, whence such a bizarre stipulation would not be feasible, anyway. It is to the hospital system that must fall the resolution of the situation, seeing to it that the abortion is performed when exclusion from illicitness is justified, as explained in the previous item.



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FINAL OBSERVATIONS

The present Report has sought to answer the request directed at the National Council of Ethics for the Life Sciences by the President of the National Assembly (Parliament). From it may be drawn the conclusions held to be correct, in the certainty that its aim was not to obtain a wide consensus, forgoing the strategy - always censurable in ethical matters - of omitting or side-stepping divergences, or of negotiating a compromise. The initial assertion is here re-affirmed, that a stand must be taken, bearing in mind in the core of the ethical issue and the doctrine previously expounded by the Council. It is up to the recipients of the Report to reflect and criticise.

Lisbon, January 10th, 1997

The Reporter,

Prof. Dr. **Walter Osswald**



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II - OPINION

The National Council of Ethics for the Life Sciences, after analysing and discussing the "Report on the Legislative Bills relating to the Voluntary Interruption of Pregnancy", herewith enclosed, issues the following Opinion:

- 1.** Prenatal human life deserves respect and protection, because it is the foundation of the unique and unprecedented event embodied in maternity. In the light of ethical principles, prenatal life deserves an even greater protection for being fragile and incipient.

In some specific circumstances, certain values and rights may supersede , on an axiological scale, the value of prenatal life: such circumstances configure causes for the exclusion from illicitness of a voluntary interruption of pregnancy.

Among such causes there is a large ethical consensus over the life of the pregnant woman as a determining value, as an asset that supersedes the value of the life of the embryo. But, as regards causes of an eugenic nature, serious ethical difficulties are raised against them.

- 2.** Concerning the amendments to the present legal situation, proposed by the Legislation Bills under appraisal, the Council, in its ethical reflection considered that:

- a)** The voluntary interruption of pregnancy, when performed within the first twelve weeks and by request of the woman, outside the causes for exclusion from illicitness is contrary to ethical principles and the principles upon which our juridical system is based;

- b)** The extension of the time-limits for causes for exclusion from illicitness (although it creates problems to medical technique and to the interpretation and application of legal rights), does not raise difficulties of an ethical order, since the fundamental issue is the interruption of pregnancy itself and not at what the stage is prenatal life when that is done;

- c)** There are no objections to the removal of generated beings that are definitively unviable (i.e., that would survive at most only a few hours or a few days after birth), at any stage of gestation;



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d) Strong reservations apply to the proposal to de-penalise the conduct of the pregnant woman who consents to abortion outside the indications and time-limits laid down in Law. This proposal also offends the constitutionally-based value of prenatal life as an inviolable juridical asset (which admits the exclusion from illicitness of abortions only in a few special situations), and ignores the preventive and didactic aspect of the Law;

e) The clause on moral objection (*objecção de consciência*) is ethically well-grounded and must not suffer any amendments; it corresponds to a fundamental right - that no one may be forced to act against the dictates of his/her conscience, a right that is recognised in every democratic State. The proposed amendments would limit and restrict that right. The introduction of an obligation on the part of the objector to refer the name of a non-objector is inadmissible, besides being unfeasible in many cases.

3) On its own initiative, the Council recommends that the eugenic indication be the object of an ample debate, since the concept that underlies it, based on socio-economic arguments, is discriminatory and ethically unacceptable, and it is also conducive, with the progress of prenatal diagnostics, to serious risks as regards the right to life. Even more important is the debate over the conditions in which parenthood is exercised in the social, economic and cultural framework in which we live.

Lisbon, January 10th, 1997.

The Reporter,
Prof. Dr. **Walter Osswald**

The President of the CNECV,
Prof. Dr. **Luís Archer**