

Statement of the Commission on Ethics of COMECE

The Ethical Indefensibility of an EU Fundamental Right to Abortion

Regarding the ethical indefensibility of an EU fundamental right to abortion the Commission on Ethics of COMECE considers that:

1. Human dignity is an overarching value in the EU Treaties and Charter. The founding fathers of the European Union, based on the genuine humanistic tradition that makes Europe what it is, were very conscious of the fundamental importance of the inalienable dignity of the human being. Respect for the dignity of every human being in every stage of its life, especially in situations of complete vulnerability, is a fundamental principle in a democratic society.
2. From a legal perspective, there is no recognized right to abortion in European or International Law. Neither the EU Charter of Fundamental Rights nor the European Convention of Fundamental Rights (ECHR) endorse such a right to abortion.
3. The legislative competences of EU Member States and the principle of conferral whereby the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein (Article 5.2 of the Treaty of the European Union) should be respected. There are no competences at the EU level for regulating abortion and it must be seen that fundamental rights cannot establish competences of the Union.
4. The European Court of Human Rights has never declared abortion to be a human right protected by the European Convention on Fundamental Rights. On the contrary, it has declared the right to life as a fundamental human right and confirmed in its case law that it is legitimate objective for the Contracting States of the Convention to protect the unborn life. Furthermore, it has restricted itself to matters of procedural justice in relation to abortion when this is recognized by the national law of the Council of Europe Member States. If the conditions for abortion are regulated by domestic law, then it is a breach of the Convention to restrict or deny the application of domestic law.
5. The general doctrine of the European Court of Human Rights is that in matters that engage more than one fundamental human right, and on which reasonable citizens and democratic states take different views, the Member State enjoys a “*wide margin of appreciation*” in how these rights are balanced. Abortion engages the right to privacy in family life, but the State also has a legitimate interest in protecting unborn children and has a duty to ensure that laws do not reinforce discrimination against people with disability or undermine the rights of conscience of healthcare professionals. Abortion is a legitimate focus of criminal and civil law, and the great majority of States have specific statutes that impose requirements and limits on the practice of abortion.
6. Regarding the European Union and the repeated call to implement in the future a new fundamental right to abortion into the EU Charter of Fundamental Rights, the Commission on Ethics underlines, that the change of the EU Charter of Fundamental Rights would require a very complex procedure. According to the legal requirements of Art. 48 TEU ratification by all Member States is a prerequisite for treaty amendments. In addition, a convention consisting of representatives of all national parliaments, the heads of States and governments and the European Parliament and the Commission would be necessary.

Furthermore, there is a great diversity in how the Member States balance the rights of pregnant women with the rights of the *nasciturus*. With regard to the constitutional traditions, a very different picture emerges within the EU. Respect for the diversity of these regulations and the great importance of each constitutional tradition in weighing divergent fundamental rights in a conflict over pregnancy suggest not to constitute a right to abortion as a general principle of the Union’s law.