**The Ethical Indefensibility of an EU Fundamental Right to Abortion**

COMECE’s Working Group on Ethics has now been restructured as a Commission on Ethics under H.G. Mgr. Anton Jamnik, Bishop Delegate of the Slovenian Bishops’ Conference to COMECE, as its President; Professor Emmanuel Agius as its moderator; and Dr Friederike Ladenburger as its secretary.

In its first meeting the Commission discussed the ethical foundations of the European project, the changes in the regulation of genetically modified plants in view of new genomic techniques, and the recognition of abortion as an EU fundamental right.

On the latter thorny issue, the Commission on Ethics considers that:

1. Human dignity is an overarching value in the EU Treaties and Charters. 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. In fact, some international conventions, like the American Convention on Human Rights, establish that the right to life “shall be protected by law, and, in general, from the moment of conception” (Article 4).
3. The EU Charter of Fundamental Rights does not address the issue of abortion because the Charter, which is a binding document of the personal freedoms and rights of EU citizens, applies only to EU institutions (European Parliament, European Court of Justice, European Court of Auditors, etc.) and to the transposition and implementation of EU legislations in Member States, based on Article 51 of the Charter.
4. 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.
5. The European body with competence to address abortion in relation to human rights is the European Court of Human Rights. A condition *sine qua non* for being a member of the EU is to be a signatory of, and to abide by, the European Convention of Human Rights. The regulatory authority on the Convention, i.e. the supreme authority that determines what the Convention means and how it is to be applied, is the European Court of Human Rights. This Court has NEVER declared abortion to be a human right protected by the Convention. On the contrary, it has declared the right to life as a fundamental human right. Furthermore, it has restricted itself to matters of procedural justice in relation to abortion when this is recognized by the national law of 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.
6. 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 statues that impose requirements and limits on the practice of abortion. In no state is unlimited access to abortion regarded as a fundamental human right.
7. The view of the Commission is that respect for the inalienable dignity of the human being, and the fundamental right to life which flows from that dignity, applies in every stage of its life, especially in situations of complete vulnerability. From this perspective it is never legitimate to seek to end the life of an unborn child and interventions that lead to the death of the unborn child indirectly are only justified in the gravest circumstances, such as when there is a serious and imminent threat to the mother’s life or health.
8. The Commission recognises, nevertheless, that the role of determining abortion law is for Member States through democratic processes and legal precedent and subject to the judgements of the European Court of Human Rights. It is for that court to determine whether EU Member States are respecting the human rights of citizens in relation to the issue of abortion.

Brusseles, 9th July 2023

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President of Commission on ethics COMECE