THE CATHOLIC CHURCH
IN THE EUROPEAN UNION

Position paper of the secretariat of COMECE on the REPORT ON THE SITUATION OF SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS IN THE EU, IN THE FRAMEWORK OF WOMEN'S HEALTH [2020/2215(INI)]

European Parliament's Committee on Women's Rights and Gender Equality
Rapporteur: MEP Predrag Fred Matić

Human health is a core concern of the Catholic Church. The right to health is a fundamental human right and constitutes an essential basis for a dignified life. Standing up for human rights is a central component of the Church's social-ethical proclamation; it sees human rights as the basis for peaceful coexistence between peoples and is convinced that they correspond profoundly to the Christian and biblical understanding of the dignity of the human being.

Against this background, we value positively the fundamental concern of the report to protect the health and rights of women.

At the same time, we are very concerned about a number of the representations and arguments made in the draft resolution in question.

1. We note with regret that the draft resolution is characterised by a one-sided perspective throughout, particularly on the issue of abortion, which does not take full account of the life situations of the persons concerned and of their corresponding human rights.

   The draft resolution does not reflect the tragedy and complexity of the situations in which mothers considering aborting their unborn child find themselves. A pregnancy conflict can be seen in terms of a "*relationship between three persons*". "*All too easily*", however, "*the independent right to life of the child is left out of the consideration and it is overlooked that the unborn child is not the property of the parents, but precisely in its defencelessness is only entrusted to them.*"[1] There is no question that the life of the unborn cannot be protected against the mother, but only with her. Taking care of women who are in distress or in a conflict situation because of their pregnancy is a

[1] Human Dignity and Human Rights from the Beginning, Joint Pastoral Word of the German Bishops on the Ethical Evaluation of Abortion, No. 57, 26 September 1996, p.4

central part of the diaconal ministry of the Church and should be also a duty of our societies.

Abortion is advocated in the draft resolution as an "*essential health service*" that should be available to everyone.[2] In our view, this classification is ethically untenable. A medical intervention of such magnitude cannot and must not become a normal practice; its qualification as an essential service degrades the unborn child. As Church, we are convinced that human life from the beginning, including unborn life, possesses its own dignity and independent right to protection. In the Church's view, abortion is not a means of family planning or part of ordinary health care.

We see the unborn child as an independent life created in God's image and owing its existence to His will. The unborn child has a human right to life. In its Brüstle decision[3], the European Court of Justice was unable to rule out the possibility that the unborn human life is endowed with its own dignity and therefore recognised the embryo as the bearer of this human dignity.

The European Court of Human Rights has confirmed in its case law that it is a legitimate objective for the Contracting States of the Convention to protect unborn life.[4] Invoking this objective, States may restrict the rights of the mother guaranteed in the Convention, more specifically the right to respect for private life under Article 8 of the European Convention on Human Rights, and in particular, create a legal framework for the performance of abortions.

The draft resolution presents the "*health service*" of abortion as a human right, so that Member States comply with their obligations under international human rights treaties when they ensure its provision.[5] This is not the case. There is no international human rights, or other international treaty, that provides for such a general "human right to abortion" or a corresponding obligation of States. Even the international treaties mentioned in the FEMM Committee's draft resolution do not contain such a right. This applies particularly to the International Covenant on Civil and Political Rights [ICCPR], the International Covenant on Economic, Cultural and Social Rights [ICESCR], the United Nations Convention on the Elimination of All Forms of Discrimination against Women [CEDAW] and the European Convention on Human Rights [ECHR].

2. We also note with concern and regret that the draft resolution negates the fundamental right to conscientious objection, which is an emanation of freedom of conscience (Article 10.1 of the Charter of Fundamental Rights of the European Union). The human right to refuse medical treatment on grounds of conscience was

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[2] E.g. in recital I,J,V

[3] Judgment of the Court (Grand Chamber) of 18 October 2011.,Oliver Brüstle v Greenpeace eV., points 32 to 36.

[4] ECtHR (GC) 16.12.2010, A, B and C v. Ireland, No. 25579/05, para. 222 et seq.

[5] E.g. recital 35

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recognised by the democratically legitimised Parliamentary Assembly of the Council of Europe in Resolution 1763 (2010) on "*The right to conscientious objection in medical treatment*". As stated in its first provision: "*No person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia, or any act which could cause the death of a human foetus or embryo, for any reason*". While other rights such as the right to life can take precedence in specific situations, we are alarmed that the text questions the mere existence of a right of medical institutions and their staff to refuse to provide certain health services, including abortion, on the basis of conscience clauses. This reference entails a blatant disregard for the right of organisations based on religion or belief to follow their ethos and to organise their services in accordance with them. It also neglects the right of individuals to follow their conscience.

3. We welcome the fact that in principle the draft resolution recognises the legislative competence of the Member States in the area described with the collective term "*sexual and reproductive health and rights*".

   However, in its argumentation, the report does not do justice to this premise.

   We recall that a fundamental principle of the European Union is 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).

   In principle, the European Parliament can also express itself in political matters in which it does not have legislative powers. In the area of health, however, the provisions of the Treaty on the Functioning of the European Union go beyond a mere allocation of legislative powers: according to Article 168(7) TFEU, any "Union action shall respect the responsibilities of the Member States for the definition of their health policy and the organisation and delivery of health services and medical care". With its detailed calls to the Member States for a specific design of matters covered by Article 168(7) TFEU, the draft resolution disregards this responsibility of the Member States. This is also and especially true in highly sensitive areas such as the regulations adopted by the Member States on the conditions for abortion.

Medical accompaniment of people is a noble, but also a sensitive and complex task. It requires a lawful and ethical balancing of all rights involved. We call on the European Parliament to take this into account in the position it takes in this area.

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