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Strasbourg, November 1st, 2014

Call against the torture and infanticide of babies surviving abortion

Mr Commissioner,

The *International Catholic Child Bureau*, the *World Union of Catholic Women's Organisations*, the *Federation of Catholic Family Associations in Europe* and the *European Centre for Law and Justice* are calling on you to denounce the ill treatments and torture inflicted to children born alive after late abortion. Every year, hundred of infants are born alive after an abortion. Once a child slated for death by abortion is born alive, no medical help is offered to them. On the contrary, they are left to die, or even killed.

Most of the time, these babies are left to die without any care, not even a blanket¹, left alone in a room or a closet. Sometimes they are even killed, either by lethal injection or asphyxiation. "*Guidance from the Royal College of Obstetricians and Gynaecologists recommends babies over 22 weeks which survive abortion should have their hearts stopped by lethal injection*"². In other words, doctors are recommended to murder these newborns, while they are trying to save premature babies of the same gestational age.

With the advances in medicine, premature babies can be saved as early as 21 weeks, that is to say even before the limit of viability defined by the World Health Organisation (22 weeks). The figures in the United Kingdom show that five babies born at less than 22 weeks gestation out of 247 born alive lived for at least a year, 11 out of 171 born at 22 weeks lived, and 76 out of 332 born at 23 weeks survived³.

¹ In early 2008, the British Association of Perinatal Medicine said new guidelines were being drawn up to cover babies born alive after abortion.

² <http://www.dailymail.co.uk/health/article-512129/66-babies-year-left-die-NHS-abortions-wrong.html> and <http://www.lifesitenews.com/news/66-british-babies-survived-abortion-all-were-left-to-die-without-medical-ai>

³ <http://www.telegraph.co.uk/health/healthnews/9598649/One-in-ten-babies-born-under-abortion-limit-survives.html>

At present in the United Kingdom, abortion is available on demand until 24 weeks of pregnancy and until birth in case of serious anomaly (ground E)⁴. In other words, abortion is possible in the United Kingdom for viable fetuses, even healthy fetuses. Late abortion is technically difficult to perform (the complication rate is 10 times higher than before 12 weeks) and it happens that viable babies who were supposed to be aborted are born alive. After 21 weeks, some can breathe unaided for a long while. In 2005, *the British Journal of Obstetrics and Gynaecology* published the findings of Dr. Shantala Vadeyar, a researcher at Manchester's St. Mary's Hospital, who said that children as young as 18 weeks had been known to survive for a time outside the womb after attempted abortions. Vadeyar revealed that in the North West, between 1996 and 2001, at least 31 children survived attempted abortions⁵. In 2007, a study published in the *British Journal of Obstetrics and Gynecology*⁶ concluded that about 1 in 30 abortions after 16 weeks' gestation result in a born-alive infant. At 23 weeks' gestation, the number reached 9.7%.

In the CEMACH 2007 Perinatal Mortality report, which gathered data from hospitals in England and Wales during 2005, it was revealed that:

“Sixty-six of the 2235 neonatal deaths notified in England and Wales followed legal termination (predominantly on account of congenital anomalies) of the pregnancy i.e. born showing signs of life and dying during the neonatal period. Sixteen were born at 22 weeks' gestation or later and death occurred between 1 and 270 minutes after birth (median: 66 minutes). The remaining 50 fetuses were born before 22 weeks' gestation and death occurred between 0 and 615 minutes after birth (median: 55 minutes)” p. 28⁷. In other words, one of these newborns breathed unaided for more than ten hours.

CEMACH chief executive Richard Congdon said lethal injection had not been given in the 16 abortions over 22 weeks' gestation because death was "inevitable"⁸. In other words, they were left to die. The following reports do not include any information about children born alive after an abortion.

In 2004, delegates to the British Medical Association's annual conference in Llandudno voted 65 per cent in favour of a motion that said children born alive after an attempted abortion should be given the same care and treatment as other infants⁹.

The issue is not limited to the United Kingdom, it happens in all countries allowing late abortion. 622 infants were born alive in Canada after fail abortions between 2000 and 2011¹⁰. In Norway, from 2001 to 2009, five babies were aborted after the 22 weeks limit. Between 2010 and 2011, 12 such late-term abortions were carried out. Some of the aborted

⁴ However, such serious anomaly is not necessarily fatal. For example in 2012, according to official statistics, there were 4 ground E abortions (before 24 weeks) due to cleft lip or palate, 191 for cardiovascular system anomalies, including 12 after 24 weeks, although many could have been treated by surgery, 149 for spina bifida, including 5 after 24 weeks, and 544 for Down's syndrome, including 3 after 24 weeks.

⁵ <http://www.lifesitenews.com/news/66-british-babies-survived-abortion-all-were-left-to-die-without-medical-ai>

⁶ <http://onlinelibrary.wiley.com/doi/10.1111/j.1471-0528.2007.01279.x/abstract>

⁷ <http://www.hqip.org.uk/assets/NCAPOP-Library/CMACE-Reports/41.-April-2007-Perinatal-Mortality-2005.pdf>

⁸ id.

⁹ <http://www.lifesitenews.com/news/66-british-babies-survived-abortion-all-were-left-to-die-without-medical-ai>

¹⁰ "Termination of pregnancy, affecting fetus and newborn" [P96.4] <http://www5.statcan.gc.ca/cansim/a26>

children's hearts continued beating for between 45 and 90 minutes¹¹. As a consequence, Norway prohibited abortion after 22 weeks in January 2014. In 2010 in Italy, a baby aborted because of a cleft lip and palate at 22 weeks was discovered alive 20 hours after his birth and lived one more day; there was a similar case in 2007¹². In most countries, no information is given.

Because there is an urgent need to denounce and stop this inhuman practice, we ask you to denounce it publicly and to recall that all born alive children, as human persons, are entitled to all human rights, and should be treated the same way. Letting some of them die without care just because they were not wanted is inhuman; it is an unacceptable violation of their human rights and dignity.

Killing infants or letting them die is infanticide: a direct violation of their right to life (guaranteed at article 2 of the ECHR), a inhuman treatment (prohibited at article 3 of the ECHR); it is also a discrimination in access to health care services¹³ based on the circumstances of their birth¹⁴ (contrary to article 14 of the ECHR). All premature babies should have the same right to life and access to health care services without discrimination. Every possible care and medical help should be afforded to everybody, regardless of the conditions of their birth. Even when they are not viable, these children should be accompanied until death. Leaving them to die alone, without being fed, clothed or cradled is cruel and inhumane. Such barbarian treatment constitutes torture.

In your declaration of January 15, 2014, entitled "*Sex-selective abortions are discriminatory and should be banned*", you recalled the case law of the ECtHR¹⁵ according to which: "*Member States, within their wide margin of appreciation, should find ways to put in place laws, policies and practices that allow the different legitimate interests involved to be taken into account. In the vast majority of Council of Europe member states, where abortion is legal, this includes an adequate framework that reconciles the possibility to have an abortion with the fight against discrimination*". Several States in Europe (among which Estonia, Finland, Germany, Netherland, Norway, Russia, or Ukraine) take into account, as a legitimate interest, the threshold of viability and ban abortion after 22 weeks. Such restrictions to abortion shall also be encouraged.

¹¹ <http://www.newsenglish.no/2014/01/02/total-ban-on-late-term-abortions/>

¹² <http://www.telegraph.co.uk/news/worldnews/europe/italy/7646540/Baby-boy-survives-for-nearly-two-days-after-abortion.html>

¹³ See in particular the 1989 Convention on the Rights of the Child, Article 24: "1. *States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.* (...)"

¹⁴ Article 14 of the Convention: "*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as (...), birth or other status*".

¹⁵ Council of Europe Commissioner on Human Rights, Nils Muižnieks, [declaration on sex-selective abortions of January 15, 2014](#) . This quote synthesises the underpinning principle of the case law of the ECHR on abortion according to which if and "*once the State, acting within its limits of appreciation, adopts statutory regulations allowing abortion in some situations*", "*the legal framework devised for this purpose should be shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention*". (P. & S. v. Poland, no. 57375/08, 30 October 2012, para. 99 ; see also A., B. & C. v. Ireland, no. 25579/05, 16 December 2010, para. 249 ; and R. R. v. Poland, no. 27617/04, 26 May 2011 para. 187

In this declaration, you also declared that “*Sex-selective abortions must be criminalised*”. As well, killing or letting die premature newborn should be criminalised in all circumstances. Those practices are clear and flagrant violations of universal human rights and of the European Convention on Human Rights, in particular articles 2, 3 and 14.

We call especially on you because those flagrant and structural violations of Human Rights cannot be properly addressed by the ECtHR because the victim, the newborn, has obviously no possibility to address the Court, and his parents, who are the ones having the legal ability to represent him before the Court, are not more likely to make an application as they are themselves the cause of his death.

Therefore, this practice will continue as long as the national authorities will tolerate it. Only an international and independent human right’s institution, like the Commissioner for Human Rights can address this issue.

Unfortunately, the Committee of Ministers of the Council of Europe has failed to address this issue. On July 9 2014 the Committee declared that “*owing to a lack of consensus, it has not been possible to adopt a reply*” to a written question (No. 655) submitted on this matter on January 31 2014. This question asked, inter alia,: “*What specific steps will the Committee of Ministers take in order to guarantee that fetuses who survive abortions are not deprived of the medical treatment that they are entitled to – as human persons born alive – according to the European Convention on Human Rights?*” The Committee of Ministers failed to reaffirm the basic human rights. This failure is shameful for the Council of Europe, as it implies the silent consent to infanticide.

A premature baby born alive, even during a late abortion, is a human being and is entitled of all human rights.

Therefore, we respectfully urge you to promote awareness of and respect for human rights in the member states:

1- Recalling that all human being born alive have the same right to life guaranteed under article 2 of the ECHR, and that all human being should receive the appropriate and necessary health care services¹⁶, without discrimination based on the circumstances of their birth¹⁷, in accordance with article 14 of the ECHR.

2- Investigating on children born alive after late abortion in countries allowing late abortion. What was done with them? What methods are used for late abortion? Is foetal pain taken into account?

¹⁶ See in particular the 1989 Convention on the Rights of the Child, Article 24: “1. *States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. (...).*”

¹⁷ Article 14 of the Convention: “*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as (...), birth or other status*”.

3- Requesting that States permitting late abortion review their legislation in order to ban this practice, taking into account as a “*legitimate interests involved*” the threshold of viability of the human foetus at stake and his pain.

Signatories

European Centre for Law and Justice (ECLJ): the ECLJ is an international, Non-Governmental Organization founded in 1998 dedicated to the promotion and protection of human rights in Europe and around the world. The ECLJ holds special Consultative Status before the United Nations/ECOSOC since 2007. The ECLJ acts within the judicial, legislative, and cultural domains. The ECLJ defends, in particular, the right to religious freedom, the life and dignity of persons before the European Court of Human Rights and the other mechanisms afforded by the United Nations, the Council of Europe, the European Parliament, and the Organization for Security and Cooperation in Europe (OSCE). The ECLJ bases its actions on “*the spiritual and moral values which are the common heritage of [European] peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy*” (Preamble of the Statute of the Council of Europe)

International Catholic Child Bureau (Bureau international catholique de l'enfance): Created in 1948, BICE is an international catholic network of organisations engaged in the promotion and protection of the children’s rights and of their dignity. A French non-profit association, BICE is present in 66 countries on 4 different continents through its member organisations and its partners.

BICE also enjoys a special status with the Economic and Social Council of the United Nations (ECOSOC) and it takes an active part in the Human Rights Council and the Committee on the Rights of a Child. Our organisation is also acknowledged by the Holy See. Our association operates within a Christian perspective. Our objective being the integral development of all children, we do our very best to promote children’s dignity and enforce their rights, that are still too often violated. In this respect, BICE relies on the United Nations’ Convention on the Rights of the Child (CRC) that it contributed to draft and which application it supports.

World Union of Catholic Women’s Organisations (WUCWO) was founded in 1910 and now represents 100 Catholic women’s organisations worldwide, active in 66 countries including all continents and some island states, representing more than five (5) million Catholic women of every walk of life. WUCWO’s aim is to promote the presence, participation and co-responsibility of Catholic women in society and the Church, in order to enable them to fulfil their mission of evangelisation and to work for human development, particularly in increasing educational opportunities, poverty reduction and the advancement of human rights beginning with the fundamental right to life.

Federation of Catholic Family Associations in Europe (FAFCE) was founded in 1997. It is recognised by the Council of Europe as a Non Governmental Organisation with a participatory status. The General secretariat is based in Brussels. FAFCE works both towards the institutions of the European Union and the Council of Europe. FAFCE ensures a political representation for family interests from a catholic perspective, on the basis of the Catholic Church’s Social and Family teaching as well as of the testimony of faith and experiential

knowledge of Christians in Church and in society. FAFCE is an umbrella organisation that serves as a European liaison platform for exchange of experiences of pastoral care of the family and family policy issues for its members. Our member associations provide important catholic expertise and contacts on the national and local levels. FAFCE is the only European family organisation that explicitly refers to the social teaching of the Catholic Church.