



## **OPINION OF THE SPANISH BIOETHICS COMMITTEE IN RELATION TO THE DRAFT ORGANIC LAW ON SEXUAL AND REPRODUCTIVE HEALTH AND THE VOLUNTARY INTERRUPTION OF PREGNANCY**

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## 1. Introduction

The Spanish Bioethics Committee, as a collegiate and independent consultation body, as articulated in article 17 of the Law 14/2007 of July 3rd on Biomedical Research, , with the function, among others, of issuing reports, proposals and recommendations for public authorities at state and regional level on matters related to the ethical and social implications of Biomedicine and Health Sciences, has agreed to raise to public institutions and opinion the arguments and considerations below with the aim of contributing to reflexions within the debate on the legislative modification of abortion, contained in the Draft Organic Law on Sexual and Reproductive Health and the Voluntary Interruption of Pregnancy.

The current debate around the draft of the reform of the legislation on the voluntary interruption of pregnancy has precedents, which it is necessary to recall. In the first place, the matter which occupies us is a 'draft of a legal reform', not the inclusion *ex novo* of the decriminalisation of abortion in the Spanish legal system. This fact is relevant in the measures in which must be circumscribed the terms of the debate that, in this document and in the frame of the competencies of the Spanish Bioethics Committee, it does not have the aim of analysing the voluntary interruption of pregnancy, rather a much more limited ethical and legal evaluation, which binds the current debate which the said reform has provoked in Spanish Society.

The assumption is that to deal with abortion is never good news, although the State is competent to establish, if it is necessary, a regulation on the voluntary interruption of pregnancy, which respects the fundamental rights and individual liberties, in this case, the legal and constitutional benefits. That some women, for different reasons, take the decision to abort is a sad reality that ought to be taken into account and to be modified in as far as is possible. This situation, however, should be faced in a realistic and analytic manner with rigour and prudence. The number of voluntary interruptions of pregnancy has risen globally, but has dropped in recent years more in those countries in which it is regulated and where there exists at the same time a politics of prevention based on contraception. Therefore, the drop in the growth of abortion has to come preferably from the greater incidence in sex education, on prevention and social support for women who have difficulties in pursuing their pregnancies and assuming the responsibilities inherent in maternity.

Such reinforcement has driven certain countries to constitute Statements of Rights for the regulation of the voluntary interruption of pregnancy with a double objective of responding to an undeniable social reality and to put in place the means necessary in order that this reality aspires to the maximum guarantees of legal and health safety, respecting, in this way, fundamental rights. Abortion is a reality that affects today – but also in the past – practically all societies and given this the Law cannot nor should not prevent it.

From such assumptions and the opinion of the Spanish Bioethics Committee, the current debate on the voluntary interruption of pregnancy and in particular on the Draft of the Organic Law on Sexual and Reproductive Health and the Interruption of Pregnancy ought to take into account, among other things, the factors contained in the following sections.

## **2. Analysis of the Current Situation**

The decriminalisation of abortion, introduced in article 417 of the Penal Code for the Organic Law 9/1985 of 5 July, has not had a satisfactory implementation. In the application of the same several deficiencies have coincided, caused, to a large extent, by the overly limited interpretation of one of the decriminalised grounds: serious danger for the physical health of the women. It is of these grounds that the majority of women that decide to interrupt their pregnancies avail themselves according to data published annually by the Ministry of Health and Social Policy, anticipating the obligatory requirement of producing a medical report authorising the abortion, but without a time limit established for submitting to the intervention. It is mainly the public service health centres which have opted to refer interruption of pregnancy to private centres avoiding in this way the State obligation to guarantee a service protected by law. Simultaneously, it is known that that not all of the interruptions of pregnancy practiced under the grounds referred to fit with the time limit considered reasonable from the perspective of extra-uterine viability of the foetus. Establishing the said limit is one of the motives that are claimed in the defence of the regulation based on the time limit (solution or system of time limits).

It is necessary to take into account, moreover, that the legal repression of abortion has not avoided its practice over the years and, conversely, could convert it in certain cases into a procedure of high risk for the life and health of the women. This situation generates discrimination amongst women themselves, since the possibility of accessing a safe abortion is very different in reality from the economic and cultural capacity of the same.

On the other hand, the current regulation, in harmony with the norm in force- based on an established number of indications, recognises in a limited form the autonomy of the women to participate in a decision which has such heightened importance for her, to the extent that the conflict which the pregnant women can face remains limited to grounds (indications) and subject to external control. The autonomy of women to decide which type of connection they wish to establish between sexual activity and reproduction has been proclaimed resolutely in the International Conferences on woman held since 1975. Once a pregnancy is produced, the recognition of abortion cannot, simply, disappear; in any case it ought to be considered with the other rights and values in play.

The step of a regulation which decriminalises abortion on pre-determined grounds to one which regulates the conditions in which it is legally acceptable to practice it in a limited time period constitutes, clearly, a qualitative jump that converts that which was merely a decriminalised action into an expression of the freedom of decision of the woman before a personal conflict. Herein lies one of the most profound discrepancies between the advocates of modification of the law on abortion and those who oppose it, given that the desirable exercise of individual liberty on the part of the woman opens an ethical and legal dilemma of great significance, bringing a direct and inevitable conflict with the protection of the life of the unborn. In consequence, this dilemma lies at the heart of the debate on the regulation of the interruption of pregnancy that must be assumed by the legislator: the greatest protection of the unborn life reduces the decision making options on the part of the woman in a matter which is of great relevance for her; conversely, a maximum consideration of her freedom to decide on the interruption of pregnancy means accepting within a limited

time period fixed by law a lack of protection for the life of the unborn, concretely, in its first phases of development. To find arguments to support one solution to the detriment of the other is not an easy task. For what must be taken into account, on one side, is the biological reality which is to be taken as a reference (the life of the embryo and of the foetus or, if it is preferred, the unborn life) and, on the other side, the framework of fundamental rights and public liberties, such as the protected constitutional benefits that a given political constitution guarantees, in our case, the Spanish Constitution.

### **3. The biological status of the embryo and its implications**

The status of the embryo and the foetus is a question which has been philosophically debated for centuries. The discussion reaches to the diverse levels of reality of the embryo and the foetus and the ontological, anthropological, ethical and legal status must be considered as much as the biological status. Other opinions include the theological status that cannot be ignored in the framework of the present discussion, the religious pluralism present in current Spanish society. Yet, it is important to signal that the different evaluation of the biological data is not irrelevant to the elaboration of a solution from other perspectives. This is so, although the scientific facts do not themselves provide solutions in relation to the status of the embryo and of the foetus on other levels; the interpretation and evaluation that the said scientific facts make influence the subsequent approximations. From science it is possible to make objective formulations on the biological reality of the human life and its development. However, although this scientific data do not automatically derive moral consequences, to ethically evaluate the actions which can be carried out or not on the embryo and the human foetus, they must be taken into account, together with other arguments. The said scientific data does not determine legislative decisions but equally appropriate reference needs to be made to them.

Embryonic and foetal development can be considered as a continual process (a *continuum*, in the words of the Constitutional Tribunal) from the moment of the fusion of the pronuclei of the sperm and the ovum until birth. From this perspective, its biological life could be identified at any moment as a human life. In addition, it admits that in this uninterrupted process there are relevant stages from the biological point of view, that mark significant moments resulting from the biological characteristics of human life in development. Where the disagreement begins is in the ontological and anthropological relevance of these qualitative differences and of their transcendence in terms of ethics and law. From among the different moments that could be considered relevant in the developmental process of the embryo and the foetus there are four which appear to concentrate the surrounding debates and their ethical consequences at the present time.

- a) The first relevant moment is fertilisation, understood as the fusion of the pronuclei of the sperm and the ovum. From this arises a new biological entity that possesses the genetic resources characteristic of the human species. For many people this biological fact has sufficient constitutive completeness. Thus, all the other facts, although relevant from the point of view of the development of the foetus, are not constitutively determinative. For the defenders of this position, the embryo of a single cell, the zygote, can be biologically identified already as a self-sufficient, complete human being. This ontological and anthropological affirmation implies that the said being can receive the legal effects attributed to people. Therefore, for those of this opinion, any form of interruption to this process of development is equivalent to the interruption of a life already born.

These ideas, however, are not shared by those who defend the genetic resources of the foetus; in this biological context, it does not alone apportion all of the information necessary for the development of the life of the new being. Genes are a necessary condition, but not a sufficient one, to grant the new being to be sufficiently constituted, that is to say the capacity to grow and develop in an intrinsic and autonomous way.

- b) The second relevant moment is the implantation of the embryo in the wall of the maternal uterus, given that this takes place in the course of the second week of embryonic development. The biological relevance of implantation stems from its being the beginning of the so called 'gastrulation stage'. Although data exists that indicates that cellular specialisation begins already in the first division of the zygote, in the gastrulation stage this process is more obvious. Before implantation, the embryo can divide itself to become monozygotic twins, which, in biological terms, sheds doubt on its individual wholeness. For those who acknowledge this biological fact of the ontological and anthropological relevance of implantation it is possible to ethically and legally accept the destruction of cryopreserved embryos or experimentation using them. However, there are those who establish limits to interventions carried out with the embryo after then.
- c) The third relevant moment is situated in the final stage of organogenesis, that is to say, the constitution of the different organs, and systemic apparatus, that take place between the eighth and twelve week of embryonic development. This process of organogenesis is considered relevant because, it produces the systemic integration of the organs, it could be considered that it ends all of the constitutive processes. It is biologically significant that, from week twelve the rate of spontaneous abortions, something very frequent and possible before this point, stabilises. Those who support the relevance of organogenesis, understand that only from this moment could the embryo be attributed an ethical status, if not equal, then very similar to those already born, and progressively more intense legal protection. In conformity with this opinion, until week twelve of the embryo's development the voluntary interruption of the pregnancy on the request of the mother will be justifiable. However, from this week, the interruption of the pregnancy alone will be possible as an extreme solution to a

conflict of values, that corresponds to the mother or the foetus, whose legal solution will be in reference to a system of 'indications'.

- d) The final relevant moment relates to the extra uterine viability of the foetus. The development of medicine, and especially the technology intensive care neonates, has permitted ever greater advances in this field. The current technology may enable the viability of foetuses born at twenty two weeks (twenty four in gestational age), though with serious problems. Those who see these facts as relevant can accept the voluntary interruption of pregnancy up until this moment.

These are, therefore, the principle positions that come from biology in the current debate on the ontological, anthropological, ethical and juridical status of the embryo and the foetus and that condition the different positions on the voluntary interruption of pregnancy.

The draft Spanish Law establishes that the pregnant woman will be able to request the interruption of pregnancy 'during the first fourteen weeks of gestation' presuming compliance with a series of requirements. It is important to signal that the expression 'of gestation' introduces a doubt in relation to whether the criterion used by the legislator refers to the gestational age or the age of the embryo. The gestational age is an obstetric consensus criterion which allows the homogenisation of health care processes for the pregnant woman. In the said context, the gestational age counts the age of the pregnancy from the beginning of the start of the last menstrual period. However, the embryonic age is counted as starting from the moment of fertilisation. Thus, the gestational age of fourteen weeks corresponds to a foetal age of twelve weeks. Given that the draft law uses the term 'gestation', it is considered of utmost importance that the concepts discussed here are defined.

#### **4. The conflict between the protection of the prenatal life and respect for the fundamental rights of the woman**

The position which affirms that the embryo of one day old deserves equivalent protection to a person already born does not take into account the related consideration contained in the legal code since at least the nineteenth century. In effect, the Right granted protection differentiates the life in formation from the post natal life and has even penalised forms of attack on the life and integrity of the latter by reason of determined circumstances and conditions differently. The legislation should articulate the social, ethical and ideological pluralism present in society within the constitutional framework, which constitutes its external limit, and which already opens one alternative among the different ones which greeted the Constitution. The prevailing Spanish norms on the voluntary interruption of pregnancy, assisted fertilisation or research with frozen embryos do not grant an absolute value to the embryo and the foetus, neither do they permit the total disposability of the same nor deny all its value, by designating it a simple 'object' or 'thing'.

The STC 53/1985 established the terms of the discussion on the voluntary interruption of pregnancy. In effect, in agreement with the said ruling, the human life is a process which begins with gestation (sic), in the course of that which a biological reality takes corporeally and sensitively the human configuration and that ends in death; it is a continuum subject to qualitative changes both somatic and physical in nature that have an influence in the public, legal and private status of the living subject. The birth is especially relevant in the unfolding vital process, but this in itself transcends the moment from which the unborn can have a life independent from its mother.

Thus, the Right grants a different meaning to these distinct manifestations of life. The *nasciturus* (or the human life in development) is a living being, existentially distinct from the mother, and although the constitutional doctrine has not recognised it as a holder of a

fundamental right to life, its life is a legal good protected by article 15 of the CE, according to said constitutional doctrine. Therefore, the legal denotation 'person' is not essential in order to obtain the protection of the constitutional arrangement. But, equally, it could be sustained that the solution of this said arrangement, in order to protect the human life, could differ by reason of the distinct biological phases and in consideration of other implicated rights and goods. Biological data constitutes, as already noted, relevant information to found and justify juridical norms but is not absolutely determinative, the Right can and should be attendant on the resolution of conflicts that require the evaluation of other facts and rights which are compromised and the solution directed by the norm.

It is unnecessary to reiterate extensively here the constitutional doctrine on the human life in development (principally it reiterates STC 53/1985 and, also, SSTC 212/1996 and 116/1999). However, it is convenient to remember that, in the ruling 53/1985, the Constitutional Tribunal establishes a double obligation for the State.

On the one hand, it should protect the dignity of the person, that which is related to autonomy and free development of the personality (CE, art. 10), to the rights of physical and moral integrity (CE, art.15), to liberty of beliefs and ideas (CE, art. 16), to honour of personal and familial privacy and to their own image (CE, art. 18.1), furthermore of other fundamental rights. The intention of such a value or principle informing the remaining rights, is precisely to take account principally of the specificity of the female condition, the precision of the same in the sphere of maternity and the unique physical, moral and social relationship, that the pregnancy represents for the woman. The dignity of the woman signifies recognising her faculty of auto determination and the responsible conduct of her own life, within the conditions imposed by the necessity of respecting the rights of others.

On the other hand, is the obligation of the State to protect the embryonic and foetal life and to refrain from interrupting or blocking the process of gestation, establishing a legal system for the defence of life, which includes, as the last solution, penal norms. This does not signify that the said protection has an absolute standing then, as happens with other

constitutional rights and goods, the right to life established in article 15 CE is not an absolute right either. This constitutional doctrine allows the State to establish, where appropriate, penal sanctions for the protection of life, although it also respects that the State can renounce these in the face of certain determined assumptions. For this reason the protection due to the *nasciturus* can collide, as we have said already, with other constitutional values and rights which are also protected, such as the life, autonomy and dignity of the woman.

Given that, as the Constitutional Tribunal established, neither of the two obligations of the State should be resolved by only taking into account the perspective of the protection of the life of the unborn or of the liberty and privacy of the woman, neither of these two goods should take priority over the other. The ruling 53/85 already states that 'to the extent that the absolute character of either of these cannot be affirmed, the interpreter of the constitution sees himself obliged to consider the goods and rights in light of the assumption set out, attempting to harmonise them if that is possible or, in the contrary case, specifying the conditions and requirements that would allow the prioritisation of one over the other to be admitted.'

The conflict has to resolve itself, by obtaining, by means of the procedure of consideration, agreement with the principle of proportionality, that is to say, that the decision adopted is suitable, necessary and proportionate in the strict sense in relation with the legitimate goal being pursued. We ought to be aware, however, that the singularity of the right to life is routed in the impossibility of pondering 'life', which already exists or not, but not admit a partial protection. This circumstance introduced systems of decriminalisation of abortion implies in every case the renunciation of legal sanctions to the interruption of pregnancy in determined cases, as much where the criteria is that of indications as it is of time limits.

#### 4.1 Indications versus time limits: legislative options

The exposition up to this point has endorsed the decriminalisation of the interruption of pregnancy, introduced by the Law 9/1985, that responds to the so titled, system of 'indications'. According to such a system abortions carried out at the request of the woman will not be penalised if they in conformity with determined requirements a) they are necessary to avoid serious danger to the life and physical or psychological health of the pregnant woman and thus stated in a ruling issued previously to the intervention by a doctor with the relevant specialisation b) the pregnancy is the consequence of an action constitutive of a crime, at all times that the abortion will be carried out in the first twelve weeks of gestation and that the facts mentioned had been reported; and c) it is presumed that the foetus will have serious physical or psychological birth defects, at all times that the abortion is carried out within the first twenty-two weeks of gestation and that the ruling, expressed previously to performing the abortion, is made by two specialists.

It should be remembered, one more time, that in the first of the indications cited - 'serious danger for the life or physical and mental health of the pregnant woman', the current law does not establish any time limit for the interruption of pregnancy, that which has enabled (specifically when serious danger for the physical health of the woman has been claimed) abortion to be performed in more advanced pregnancies, since the habitual conflict appears with the pregnancy itself and yet more exceptionally can be motivated by causes following on from the same.

One option for the legislator from the perspective of reform of this subject, might have consisted in widening the current system of indications, that is to say, to add a further assumption to those already recognised by law, improving those that already exist as guided by experience, for example, to include the so called socio-economic indication that could comprise a number of factors (very advanced or early age of the pregnant woman, the situation of aggravated economic poverty if considered in conjunction with a high number of existing descendents, necessities related to work position or promotion. In favour of the

system of indications it is claimed that it remains within the framework of conflict of interests (linked to the rights of the woman and the prenatal life as a legal good) and considerations of these same rights under the perspective of the principle of proportionality. It must be assumed also that the amplification of the current indications presents some not insignificant inconveniences, such as the difficulty for the legislator to delimit with clarity all the concrete grounds which could be relevant to such an indication, with risks of harm to legal safety, and to have resort to external procedures of supervision to verify the existence of the grounds claimed by the women. That could leave the doors open to subjectivity and imprecision to the detriment of the pregnant woman.

Another possibility for the legislator was to opt for the system of time limits, which effectively have been recognised in the Organic Draft Law on Sexual and Reproductive Health and Decriminalisation of the Interruption of pregnancy. The legal and ethical question raised now lies in the change of legal criteria, to be established in a regime that combines the system of indications, with a lesser scope, with the system of time limits.

The Draft Law opts to eliminate the said 'ethical indication' or 'criminology' that is to say that which decriminalises abortion during the first weeks when it had been caused by rape, to being fully absorbed by the new system, and retain the medical indications until week twenty two of gestational age. The first of these relates to the health of the pregnant woman and the second is to the serious risks of anomalies in the foetus or serious and incurable illness, although both are subject to differential regulation from that currently in force. It is useful to note that the indication referring to the health of the pregnant women, introduces a particularly serious element of legal insecurity, given that it partakes of a definition of health which is difficult to delimit: the definition enunciated by the WHO as 'the state of complete physical, mental and social well-being and not only the absence of infection or disease'. Having taken into account that it is impossible to specify the dimension of the expression 'complete well-being... social', the indication referred to could derive yet greater legal insecurity than that which is claimed currently in respect of the indication of danger for the physical health of the pregnant woman.

Thus retaining no indications the Draft introduces the so called 'system of time limits' decriminalising abortion during the first fourteen weeks of abortion in all cases where:

- a) Written information has been delivered to the pregnant woman in a sealed envelope, relating to the rights, public maternity help and support services, in the terms that are established in the Draft itself
  
- b) There has been at least three days, between delivery of the information mentioned in the preceding paragraph and the carrying out of the intervention.

The Committee estimates that the said information is clearly insufficient in the circumstances established by the Draft. On the contrary, the information ought to be essentially verbal, direct and personalised, that is to say, adapted to the situation in which the woman finds herself and that has originated her personal conflict, all that should be presented with documentary support and in writing.

## **4.2 The Evaluation of the time limits system**

In that which concerns the sphere of competence of the Committee, the essential now is to analyse this change of criteria and the inclusion of the system of time limits in relation with the implicated ethical and legal aspects.

It must be brought out, in the first place, that the system of time limits is constituted in the general rule and that indications, subsumed now under the title of 'medical causes', constitute 'exceptional' cases such and as the Draft itself terms them. The legislative change implies, then, that the great majority of abortions will be carried out early (up until fourteen weeks of gestational age), while the current indication relating to the physical health of the woman already opens the theoretical possibility, although little used, to exceed this period.

As it has been possible to confirm in the above, the system of time limits that brings in the foreseen reforms presents aspects which are undeniably positive for the pregnant woman, this has developed to facilitate the performance of the interruption of pregnancy agreed by her in a freely adopted decision made in a climate of least emotional tension. The arguments put forward in favour of this route are, among others, the decisive recognition of the relevance of the rights of the woman which can be compromised; granting those priority in the first phases of pregnancy, against the restriction of those that entail other regulations or models. In the same way, the recognition that is merited by the privacy of the woman in this process of taking her decision is also raised. Frequently it relies also on a gradualist perspective on the life of the unborn, stressing the different relevance of the beginning of biological development and its first phases. It is assumed that the system of time limits does not imply a complete lack of protection for the prenatal life, by limiting the interruption of the pregnancy to a determined period of time, and by demanding that the woman would, as a rule, be informed minutely and directly about other options directed towards the continuation of maternity with attention to her personal situation, these include the possibility of putting up the child for adoption, the social and economic provisions which exist for the support of pregnancy, maternity and the family, establishing in a short time for that which reflects upon and develops the decision. Finally, other reasoning which deserves to be alluded to entails that this solution is most in agreement with legal safety; the determination of a fixed time limit in line with those not very burdensome requirements is easily demonstrable and avoids excessive intrusion into the woman's privacy.

Against the system of time limits it is usually claimed that, equally, as in the amplified system of indications, there are inconveniences such as not being able to determine the motives that bring a woman to decide on the interruption of pregnancy. As such, the conflict which is presented is resolved in every case during the time limit marked in favour of the rights of the woman, without entering to mediate the intensity of the interests really opposed in each concrete situation. From such a position some understand that this generates a lack of protection for the prenatal life during a period of time (the period fixed by the law), without sufficiently justifying the information which must be presented to the woman or the period

of reflexion foreseen at the expression of her definitive choice. In this context the usual reproach is also that the ruling 53/1985 of the Constitutional Tribunal draws conclusions which are not expressed therein, and is consistent in emphasising the least constitutional value of the human life at its outset.

In comparative Law we find examples both of systems of indications and of time periods with the latter, including a reduced form of the former, uniting both criteria. It is not exceptional that other legal systems resolve the conflict between rights and goods of the woman and the protection of the developing life recognising the sphere of auto-determination of this in that, during a fixed time period, the pregnancy can be interrupted with attention to diverse criterion.

The ethical and legal evaluation of a regulation should be thought of in a different way if the norm forcibly imposes even the subject's moral position or if, as in the case of the voluntary interruption of pregnancy, the State facilitates but does not impose any conduct, permitting the pregnant woman, in determined cases and/or within time limits, within the framework of her constitutional rights and benefits to manage her personal conflict. In this process, the State must not abdicate its responsibilities to preserve the life in development via education policies, information and tutelage of the pregnant woman.

In the opinion of this committee, a regulation based on a system of time limits does not appear to be a system lacking fundamentally in relation to constitutionally protected rights and goods, including the good of the prenatal human life.

## **5. Secular societies and universal norms**

Clearly, any option regulating abortion will not satisfy those who believe that the value of the life of the foetus or embryo should prevail over and above a woman's dignity, understood as the right to decide concerning her sexual and reproductive life and to resolve

the internal conflict in which she may find herself due to a pregnancy. It is also true that the proposed reform may not satisfy those who consider the current system of indications to be sufficient, despite its uncertain application and the fact that other circumstances which may cause a woman to interrupt a pregnancy are not considered. Neither will it satisfy those who believe the coherence of the reform with respect to the constitutional protection guaranteeing any human life in formation to be doubtful.

It is, therefore, legal and ethical dilemmas which demonstrate both the difficulty of getting beyond a description of the empirical facts to the prescriptions as well as the problem of describing the facts using the same language and identical meanings. It is true that the ethical rules cannot be made without taking into account the scientific discoveries, yet it is also true that if the rules help us to make ethical decisions, they never determine them in their entirety. Not everyone describes the facts in the same way (not everyone agrees that the foetus is a person from the very moment of conception, and neither do the legal rulings), nor is it a unanimous opinion that the same rules of behaviour should be derived from them (not all the laws introduced concerning the system of deadlines coincide about what reasonable deadlines for interrupting pregnancies, in accordance with the reflections set out above, should be). There is such a plurality of opinions that only those rulings which clearly and unequivocally contradict one or more of the fundamental rights can be considered obligatory. Such rulings are few in number and are generally extremely abstract, since it is their very interpretation which causes discrepancies, as happens in this case with the meaning and scope of the right to life when it enters into conflict with other, equally basic, rights.

The ideological plurality of democratic societies does not exempt them from having to face certain conflicts by means of the establishment of regulations for all citizens. This is the democratic privilege enjoyed by the legislative powers, even though it is subservient to the balance derived from parliamentary majorities and minorities that allow any legislative action to be sustained within the corresponding constitutional framework. This, then, is what the great problem consists of: to specify, and in particular deal with, the fixing of the

limits of that constitutionally legitimate space for the voluntary interruption of a pregnancy with the desirable and greatest possible accuracy, even though it is probably a utopian and unattainable objective.

Consequently, the most suitable way to attain such regulations is not by trying to universalise the most restrictive regulations that would be accepted as valid by only one sector of society, but by imposing only that which without any doubt, contradicts the fundamental rights and aforementioned legal goods. The sentence of the Constitutional Court, to which this Opinion refers, does not declare that conception brings with it the right to life, only that it deserves constitutional protection. To aim for rulings which allow contradictory positions means to look for a balance between both interests, without penalising a woman's right to decide, yet without leaving the unborn child totally unprotected. On the other hand, a restrictive regulation of a woman's right to decide, prohibiting the voluntary interruption of a pregnancy, would bring about the generalisation of a point of view not shared by everyone.

The option of increasing the period for the voluntary interruption of a pregnancy is what would best suit a neutral, lay State in the face of discrepancies derived from citizens' different beliefs. The State cannot impose the prevalence for the value of life, prohibiting abortion, if it entails leaving women unprotected when they need to interrupt a pregnancy. Regulating the voluntary interruption of a pregnancy respects a woman's right to decide yet forces no one to have an abortion. If we were not faced with a reality that can be valued in different ways and from different ideological perspectives, we would not be making moral judgements, but simply reflecting a reality. When social perspectives seem impossible to reconcile, the best option ethically is that which gives priority to individual freedom to decide on the interruption of a pregnancy. Tolerance means admitting the existence of different points of view and beliefs.

In other words, the aim of a democratic society is not to impose a single ethical code, through legal regulations, but to recognise that a plural society generates different ethical

codes (especially in matters so closely linked to a person's intimate life and religious and ideological freedom) and to articulate a legal system which will allow the coexistence of plural values and principles and even opposing ones within a framework of common respect. One of the characteristics of democracy is that it allows different and even opposing options under the premise of the recognition of personal freedom to choose and respect for fundamental rights, as well as constitutionally protected legal goods. However, as is well known, legal and ethical discourse run on parallel lines, which may even come together, so Law has to be content with solving social conflicts in accordance with its own methodology, that is to say, in accordance with its own set of rules -and here the principle of proportionality plays a particularly relevant role-, in order to guarantee social harmony, which will include limited restrictions –without affecting the essential core of a citizen's rights and liberties in any way.

## **6. Sexual education and support for pregnant women**

Regulating the interruption of a pregnancy also implies offering women a system that allows them to decide for themselves when faced with a pregnancy associated with some kind of serious conflict. Ideally, however, women would not have to face an interruption of their pregnancy. This would be desirable for the women themselves and for society in general, since the voluntary interruption of a pregnancy is a difficult option for any woman and one which may have serious consequences. For all these reasons, creating effective measures to decrease the number of unwanted pregnancies is as important as having adequate legislation. It is necessary to focus on the roots of the problem and to change the conditions that cause unforeseen or unwanted pregnancies through prevention, education and joint responsibility on the part of both men and women; even though we cannot forget that there will always be circumstances beyond our control, such as health risks, for instance, which will require pregnancies to be interrupted.

The Council of Europe, in its report numbered 11537, of 17th March 2008, recommends that the forty seven member states adopt a regulation that “respects a

woman's right to decide", allowing a risk-free interruption of pregnancy guaranteed by the State. The Council added that the said regulation should be accompanied by more effective campaigns in the prevention of unwanted pregnancies. In no case should the voluntary interruption of a pregnancy be considered as just another contraceptive method. To educate does not mean simply to inform people of the use of condoms or to make other contraceptive methods more easily accessible. Above all, it means teaching men and women how to decide using adequate criteria and to do so responsibly. Furthermore, a great effort must be made to encourage policies that provide sufficient sex education and information, since the data indicate that access to contraceptive methods is still very deficient and even unknown within certain sectors of the population.

To this end, the provisions contained in the Organic Law 3/2007, of 22nd March, concerning the effective equality between men and women with respect to the integration of the principle of equality in health policies, which requires health policies, strategies and programmes to take into account the different needs of both women and men and the necessary measures for dealing adequately with them, should not be forgotten.

The sociological aspect of the problem of abortion must also be taken into account. Certain sectors of the population require specific educational, informative and healthcare policies of a greater intensity, as well as access to contraceptive methods. Such is the case of very young women or adolescents and those who are vulnerable for social, cultural or economic reasons. Thus, a suitable regulation of the voluntary interruption of a pregnancy that takes on such issues in depth should also be accompanied by social measures and effective public policies.

A series of social protection policies for maternity should be set up, or, to be more precise, specific help for those women who have difficulties in bringing their pregnancy to full term and therefore, against their wishes, have to take the decision to have an abortion due to desertion, lack of resources or outside pressure that supposes a real situation of violence, as has been reported by women who have experienced such situations. Policies

that remove the necessity for such women to take the decision to interrupt an unforeseen or unwanted pregnancy are needed and, in general, we need to increase and extend the policies of economic and social aid to maternity, as has already been done in several European countries.

Spain has not given sufficient attention to such provisions, and this is evident in both the low birth rate and the growth in unwanted pregnancies. In this respect, the expected reform is an excellent opportunity to legally support this kind of initiative, so that the provisions should not be merely formal or aesthetic measures. Holland is a good example of this, as the country already has a very permissive law but has also decreased the voluntary interruptions of pregnancies thanks to the implantation of good sexual education policies.

Consequently, following the above considerations, this Committee considers that the Draft Organic Law should include specific provisions to guarantee the necessary funds to develop the Law.

## **7. The reproductive freedom of minors**

Abortion regulations will have to analyse in detail the legal and ethical aspects that affect minors with respect to the voluntary interruption of a pregnancy. Clearly, the current legislation on minors shows discrepancies concerning the recognition of their maturity and, consequently, concerning the recognition of their freedom to make decisions which may profoundly affect their future life, as in this case.

Over the last few years, numerous legal codes have progressively recognised greater freedom for minors (so called “mature minors”) who show a natural capacity for understanding and judgement to make decisions that affect them directly (for instance, in healthcare questions) and which may affect their future life. This would be the case with an unwanted pregnancy of a minor and the possible decision to interrupt the pregnancy. In this sense, it is not so important to stress the possible incongruities in the current legal system concerning minors as to point out whether there are ethical and legal reasons (such as, for

instance, the repercussions for health and the vital development of an extremely early maternity) to recognise the minor's capacity to make decisions, such as terminating a pregnancy, from the age of sixteen without parental consent. In order to evaluate the legal and ethical implications of this case it could be viewed from the opposite point of view, that is, what would the legal and ethical principle be for the parents (or the minor's legal representative) to force the continuation of a pregnancy in a minor who clearly expressed her desire with manifest maturity? The case would be even clearer if the pregnancy were the result of a sexual aggression, or if the situation were life endangering. Similarly, the opposite situation may arise, in which the parents want to force the minor to have an abortion against her will.

On the other hand, the legal and ethical evaluation of maturity in a minor requires specific measures to inform the minor and the adoption by the State of particular safeguards, different from those adopted for adult women, in order to avoid the minor's decision being affected by outside pressures or any other circumstance. This aspect is not included in the Project and, in the Committee's judgement, should be explicitly contemplated in any future legislation.

Adolescence is a stage in which communication with the parents is not easy and, although young people acquire the freedom to decide, parents also have the responsibility to be aware of the relevant aspects of their children's lives. Parents cannot exercise this duty if they do not have the opportunity to get the information they need, as it is only then that they will be able to evaluate the consequences of certain decisions concerning the voluntary interruption of a pregnancy.

However, the minor's right to decide on an abortion is difficult to reconcile with the parents' parallel right to be informed, since the recognition of the said right to decide for the minor also implies that her right to privacy should also be respected, as well as her right to personal data protection with respect to the healthcare services she might need. Faced with such a premise, the legislator can adopt one of three positions regarding the voluntary

interruption of a pregnancy: a) to maintain the current exceptions, according to which a person must be over 18 (as opposed to 16, at which consent through representation established for other medical applications is not admitted) to have an abortion, make use of assisted reproduction techniques, clinical tests and donation of organs for transplant from a living donor; b) to establish a formula through which, without fully recognizing the minor's right to decide, she would be heard before any decision is taken concerning her pregnancy; or c) to repeal the exception and give the minor full freedom to decide on whether to voluntarily interrupt her pregnancy.

The Draft Organic Law (second final Disposition) has opted for the third of the aforementioned possibilities and has suppressed the exception concerning the voluntary interruption of a pregnancy in article 9.4 of the *Law 41/2002, of 14th November, regulating the patient's right to decide and the patient's rights and obligations with respect to clinical information and documentation* and has, consequently, recognised the right, for 16 and 17 year olds, to take decisions concerning whether or not to have an abortion. It should be remembered that this reform does not introduce any new legal criteria, but it does bring the requirements for consent for the voluntary interruption of a pregnancy into line with those that are already being applied for the great majority of medical interventions (except for the aforementioned exceptions) in which minors aged 16 or 17 years of age have the right to decide freely. However, in addition, the same article, in paragraph 3 c), foresees the informing and intervention of the parents in such cases where, in the doctor's judgement, the case would involve a serious risk to the minor. In this case, the parents' opinion should be taken into account before taking the corresponding decision. The intervention of the parents is thus linked to protecting the minor's health and is aimed at reinforcing the minor's welfare and tutorship when they can be affected by the risk associated with the medical intervention.

A legal and ethical evaluation of this ruling allows us to conclude that the minor's right to decide is the rule and parental intervention the legitimate exception due to serious risk.

The scarce legal and ethical basis for the imposition of a decision on the part of the parents concerning the interruption or not of a pregnancy cannot be ignored. The recognition of the right to decide for a woman under the age of 18 would seem reasonable so long as it does not impede her from asking her parents for help or advice, while, at the same time, impedes the parents from imposing a particular decision. Nevertheless, through education and other social means, a relationship of mutual confidence between parents and children ought to be maintained and encouraged. Likewise, the minor who requests the voluntary interruption of her pregnancy should also be given as much support and information as possible.

Thus, except in the case of serious risk to the minor, in which case the parents would necessarily have to be informed, the Committee believes that it would be incoherent to recognise the minor's right to decide without also recognising her right to confidentiality and the provision that it should be the minor herself who should decide to voluntarily interrupt her pregnancy. Nevertheless, the Committee considers that the information given to the minor ought to be specific, individualised and reinforced, and should also include, as common practice, a recommendation to inform the parents or, if not the parents, then some other adult close to the minor, as set out in the Law 41/2002, of 14th November, Base Regulation of Patient Autonomy, Rights and Obligations with respect to Clinical Information and Documentation.

## **8. Conscientious Objection**

Religious and ideological freedom is very closely linked to a person's dignity; they represent the area in which each human being looks to establish a personal relationship with the values in which she/he wants to uphold. Respect for this area of freedom is one of the essential defining characteristics of the democratic State and one which cannot be understood solely as the absence of religious or ideological coercion of the individual, but one which also implies a prohibition on the State from influencing the formation and existence of those same convictions. In this context, conscientious objection becomes a

refusal to obey authority's orders, in the form of a legal duty or ruling, by invoking the existence, in the realm of the conscience, of an imperious necessity that prohibits complying with the said duty or ruling, since to do so would seriously harm the individual's own conscience or his/her professed beliefs. Thus, conscientious objection is always an "exception" to a legally enforced duty, which the individual cannot avoid and did not look for.

Logically, this conflict appears, particularly, in questions where there is no unanimous social opinion, as is the case of regulating the voluntary interruption of a pregnancy. In such cases, the objector does not hope to change the rule; he/she only wishes to be allowed exemption.

The absence of explicit constitutional references to other kinds of conscientious objection other than to military service should not lead us to conclude that its incorporation into the Spanish legal system is prohibited in all cases, and nor should we assume that such an omission should necessarily suppose, in all circumstances, a constitutional lack of protection. A particular individual behaviour, still unrecognised explicitly in the Constitution as a right to decide, may be included within the contents of a constitutional right itself, whether or not it is a fundamental right by reason of its guarantees. On the other hand, we can also speak of the existence of *rights with a constitutional basis*, that is, rights, although they are not expressly recognised in the text of the constitution, whose existential basis and legal recognition can both be found in another expressly contemplated constitutional right.

In the STC 53/1985, of 11th April, quoted above on several occasions, the Constitutional Court stated, concerning the possible conscientious objection by doctors (in an *obiter dictum*, since it was a subject not in accordance with the judgement of the constitutionality of the contested ruling), that conscientious objection forms part of the fundamental right to religious and ideological freedom recognised in article 16.1 of the Constitution". The Court's sentence, in the context in which the Sentence 53/1985 was formulated, is coherent with the thesis that the Spanish constitutional ruling does not

contemplate a single option with respect to the recognition and regulation of the phenomenon of conscientious objection. Conscientious objection on the part of healthcare personnel who are opposed to carrying out abortions is not in contradiction with any other constitutional ruling that establishes the duty to carry out this type of operations; it cannot, therefore, be considered as an exemption from a nonexistent constitutional duty. Nevertheless, in the case of the voluntary interruption of a pregnancy, conscientious objection has very specific characteristics, given that it involves the procedure being carried out directly by a doctor.

However, it can be seen from the constitutional doctrine that conscientious objection is neither a *subjective public right* of a general nature, which would, as stated by the Court itself, be contradictory to the idea of State (STC 160/1982, of 27<sup>th</sup> October), but nor does it necessarily have to be reduced to that which is contained in the article 30.2 CE (conscientious objection to military service). A person's individual conscience may be taken into consideration legally or not with respect to other constitutionally protected goods, freedoms and rights that pertain to each case and, in particular, with respect to whether or not a constitutional duty in the opposite sense to the wishes of the objector exists.

Conscientious objection is always a difficult problem, yet when it arises in the area of healthcare, the consequences are of great importance in that there is usually a conflict between the religious or ideological convictions of some doctors and the right of the patient to receive a particular, legally established service. Although the best solution would be for the said conflict to be regulated in such a way as to keep both sides happy, this is not always legally possible when faced with the need to balance legally protected assets and rights.

When religious or ideological convictions enter into conflict with duties derived from the professional, public statute, freedom of conscience cannot prevail without any limits whatsoever, as this would endanger the provision of the public service. For those who exercise their professional activity in the area of the public administration, or in private entities or organisms which are financed from public funds, there may be alterations in their

freedom with respect to their obligations and duties derived from the aim of health protection on the part of the State.

On the other hand, the absence of any ruling concerning conscientious objection by healthcare personnel in the Spanish legal system has resulted in a distortion of the way the system works that leaves people unattended who desire legitimately to be attended. These same people are then forced to use specialised private centres, which in turn calls into question the principle of equality according to which the State must guarantee all the services to which the citizens have a right. Any possible regulation of conscientious objection with respect to abortion cannot ignore citizens' rights and should take pains to detect and take disciplinary action against simulated or fraudulent conscientious objection.

## 9. Conclusions

The Spanish Bioethics Committee, in the use of its competences, has analysed the Draft Organic Law on Sexual and Reproductive Health and the Voluntary Interruption of Pregnancy, paying special attention to the modification of the decriminalisation of abortion with respect to the introduction of a new legal regime bringing together the system time limits and a limited system of indications. This modification would replace the law currently in force. The omission of other aspects not included in this report is due to the limitations to the analytical area agreed by the Plenary Committee Meeting and does not presuppose any concrete position, in favour or against, on the part of the members of the Committee concerning the matters not analysed.

**First.** The Law cannot ignore the conflict concerning the voluntary interruption of pregnancy, as it is undeniably an important social question. Thus, the State has the obligation to establish the conditions to resolve it with due respect to ethical principles and the fundamental rights of the unborn child as a constitutionally protected legal good and with the utmost safety for persons.

**Second.** The decriminalisation of abortion, introduced in the article 417 bis of the Penal Code, has had neither a satisfactory interpretation nor application. An abusive use has been made of the question of the serious risk to the psychological health of the mother. The reform assumes that the said regulation limits a woman's right to decide in the question of abortion. The most reasonable way to correct both situations is to approach the deficiencies derived from the current regulations through legal means and to guarantee its correct application within the constitutional framework.

**Third.** Scientific data concerning the embryo's development must be taken into account as a necessary, though insufficient, argument for establishing ethical prescriptions and legal regulations concerning the voluntary interruption of pregnancy. It is vital to clearly distinguish between embryonic age and state of gestation. Embryonic age begins with the first day of fertilization. However, the state of gestation is counted from the start of the last menstruation. The state of gestation, therefore, begins approximately two weeks before the embryonic age. It is recommended that future legislation should use the expression "state of gestation" instead of "gestation", thus explicitly making clear the period being referred to.

**Fourth.** It is true that there is no unanimous agreement concerning the relevance of the scientific data in the process of embryonic development as opposed to other data regarding the value that should be attributed to the embryo or foetus. However, in this Committee's opinion, the twelfth week of embryonic development (the fourteenth week of the state of gestation) constitutes a relevant milestone in the process of organogenesis. It would allow the establishment of a qualitative difference in the ethical and legal evaluation of the foetus before and after this date. Such a qualitative difference justifies situating the limit for the voluntary interruption of pregnancy at twelve weeks of embryonic development, the equivalent of fourteen weeks of the state of gestation.

**Fifth.** According to the jurisprudence of the Constitutional Court, the State has the double obligation to protect the unborn child as a constitutional, legal asset and to protect a woman's dignity and right to decide, alongside her fundamental rights. Neither of these

obligations is of an absolute nature, so the regulations should establish the conditions and reasons by which one of the two obligations can prevail over and above the other.

**Sixth.** The establishment of a limit to the voluntary interruption of a pregnancy means that the State does not require a woman to give explicit reasons, in this way respecting her intimate and private right to decide, in accordance with what has been established by the constitutional regulations. In the opinion of this Committee, the said solution would not mean a complete lack of protection for the unborn life, since abortion is limited to a particular time period and the fact that there is a requirement to adequately inform the pregnant woman.

**Seventh.** In a plural society, the existence of different judgements and opinions concerning the final ethical basis to justify both the regulation of the voluntary interruption of pregnancy and its total prohibition is logical. A regulation which decriminalises abortion in certain conditions or time limits only exonerates those who adhere to it. It should be pointed out that a regulation of this kind does not impose any particular behaviour on those who do not share its opinion.

**Eighth.** Regulating the voluntary interruption of a pregnancy is not an end in itself. It is a way to approach a real, conflictive social question. Thus, such a regulation must not be separated from the State's obligation to improve the practices of sexual and reproductive education and the protection policies for pregnant women with the aim of avoiding as many cases of abortion as possible. To this end, it is essential that the Draft Organic Law should include specific provisions to guarantee the necessary funds for the development of the Law.

**Ninth.** To recognise a minor's right to decide, while at the same time denying her right to privacy, would be incongruent. In this context, the Committee considers the age of sixteen to be a reasonable one for a woman to freely make the decision to voluntarily interrupt her pregnancy. Without contradicting our opinion that a minor should be free to decide, the Spanish bioethics Committee considers that the Project of the Law should

foresee the provision of specific information adapted to the minor's needs, and which would also include the recommendation, as a general rule, to inform the parents or tutors of her decision.

**Tenth.** Any woman who requests the interruption of her pregnancy should be attended in such a way as to be compatible with the right of the professionals to act according to their convictions in such terms as contemplated in the legal regulations. Conscientious objection to the interruption of a pregnancy has a constitutional basis, so it is urgent to expressly regulate the exercising of such a right, as stated in article 10.2 of the Charter of Fundamental Rights of the European Union.

In Madrid, 7th October 2009

## **APPENDIX I.-**

César Nombela Cano, Member of the Spanish Bioethics Committee, desires to express his vote against the document entitled “Opinión del comité de bioética de España a propósito de la interrupción voluntaria del embarazo en el proyecto de ley”. Thus, in accordance with the working regulations of this Committee, the following individual vote is formulated for its inclusion in the text of the said document.

### **INDIVIDUAL VOTE**

The disagreement of this member with the Committee’s opinion is based on the radical contradiction expressed in the said opinion, on recognising that, from the moment of conception, there is a new human life, different from that of the pregnant mother, while at the same time admitting that this life can be voluntarily terminated during the first fourteen weeks of its development.

In fact, in the opinion of the Committee, which this member agrees with, the fertilization of the gametes gives rise to a new biological entity with the characteristic genetic makeup of the human species. The said opinion also admits that the embryonic and foetal development can be considered as a continuous process, from the fusion of the pro-nuclei of the sperm and the ovule until the birth. It is also stated that the biological entity that develops during the said process, without a doubt, belongs to the human species.

On expressing this opinion, the Committee abides by the scientifically demonstrated facts that there is no reasonable doubt about the commencement and development of the life of any mammal, including the individuals of the human species. The allusion to a “new biological entity” that begins life with a capacity to develop, dependent on its environment, but with its own autonomy, cannot mean anything other than the beginning and structure of the life of each individual of the human species. This is how the biological reality of all of us occurred; all the people who make up the species and who enjoy the rights that correspond to us as human beings.

In this continuous process which is human life, there occurs, at particular moments, the emergence of properties which allow us to speak of the foetal and embryonic stages, just like, after the birth, we can also find stages differentiated by their emergent characteristics. Nevertheless, the process that has a continuous development is that of the life of each human being from conception. The life of each individual of the species is worthy of a dignity that should be respected and protected. Human dignity cannot be parcelled off; it cannot be subjected to grading or temporal conditions. For a long time, the knowledge of how the life of every human being began was not as evident as it is today, thanks to the answers that biological science has offered us to the questions that, before, could not be answered except through intuition.

In the opinion of this member, the acknowledgement of the right to life of all, including unborn humans, is an ethical imperative, over and above the prescriptions that positive Law may establish. Thus, what the legal regulations should do, in any case, is to put such an acknowledgement into practice. That is what happens with our fundamental laws in which prescriptions can be found to protect human life. Firstly, in the Spanish Constitution, which proclaims the right to life of everyone, and secondly, in the Sentence 53/1985 of the Constitutional Court, which interpreted this precept as a guarantee of the right of the unborn child, whose life is considered to be a legal asset protected by the Constitution and entitled to protection which is not subject to any deadline whatsoever. It is true that the said sentence admitted that the crime of deliberately suppressing a life in gestation could be decriminalised in certain circumstances, but that does not diminish the general requirement to protect it.

### **An ethically inadmissible and unjust weighting**

The discrepancy of this member with the opinion approved by the Committee is essentially based on the Committee's acceptance that a conflict between two very different assets, which are nevertheless ranked equally, can be given different weightings, to try to solve such

a conflict in a Solomonic way. The project of the law supposes the acknowledgement of abortion as a right, as well as claiming it to be a healthcare service of a general nature. The project of the law thus weighs two values in an unjust and disproportionate manner.

The project of the law establishes that the unborn child must be subservient to the woman's right to decide over an extensive period of the gestation. The opinion of the Committee agrees with this in a certain manner of understanding tolerance, despite the fact that two assets of a very different nature are in conflict. On the one hand, we have the protection of the life of the unborn child, whose destruction is irreversible and, on the other, a woman's right to decide. In this particular, this member disagrees with the statement contained in the Committee's document that respecting the life of the foetus may "jeopardise a woman's dignity", as if carrying a human being that she has conceived in her womb could be an undignified act for a woman.

The weighting is unjust, because it leaves out the fact that the death of the foetus is deliberately brought about –which is what voluntary interruption of a pregnancy really means– and involves an act with irreversible, and thus irreparable, consequences. The weighting is also arbitrary, as it puts a deadline of fourteen weeks in which to carry out this right to destroy the unborn life, when the embryonic and foetal development is admitted to be a continuous process. The said weighting is not justified either because it is proposed in the name of a desirable "tolerance", as if conceding the right to terminate the life of the unborn child were the faculty of each individual who wishes to respect the behaviour of others. This completely ignores the fact that what is at stake is an existentially different life from that of the mother, whose rights cannot be subjected to the wishes of any third party. In short, the question of a woman's right to decide is weighted to such a point that it can only be justified if the organism she has in her womb were simply another part of her own body.

In this respect the scientific evidence should once more be looked at. Starting from conception itself –which marks the before and after– the human zygote, having the

biological autonomy given by its genetic material, evolves and develops dependent on the environment which sustains and supports it, the body of the mother. There is communication with the gestating mother from the very first day through hormonal signals. The mother's body responds to these signals by supplying the appropriate conditions for the development of the foetus.

The known details of this development are many and highly suggestive for the biological basis of the value that this stage of human life deserves. In the fourth week it is recognised as a mammal embryo and the transition from embryo to foetus occurs from the sixth to the eighth week; a foetus in which the incipient formation of the fingers and toes, the eyes and genital organs can be seen, despite the fact that it measures no more than 2cm. In the thirteenth week, all the foetus' organs have been formed, in addition to hands and legs, the nails can also be seen, the skin possesses the sense of touch and the ultrasound scan images usually allow the sex to be determined.

Despite the incontrovertible evidence on the degree of development of a human foetus before the fourteenth week, this foetus does not have any consolidated right to life under the draft of law sent to the Spanish Parliament. Its life can be ended simply because of the wish of the mother. From a scientific point of view, one may legitimately ask why the right to life should be subject to having successfully completed fourteen weeks of foetal development, why not eight or sixteen?

If the Science of Biology supplies such details, it is just as important to consider what an abortion means from the point of view of Medical Science and Surgical Techniques. An abortion usually consists of causing the death of the foetus by means of the administration of a lethal drug in order to facilitate its expulsion through the mother's uterus which is completed using mechanical procedures. However dramatic such a description may seem, the fact that it describes what an abortion really represents cannot be ignored. It is, without a doubt, the basis of conscientious objection exercised by those who consider them to be acts against the Hippocratic Oath and the doctor's professional ethics.

## **Biased Pragmatism**

There are other questions which, in my opinion, should be addressed by an ethics committee when dealing with the question of abortion and passing judgement on a draft law, the approval of which will result in the termination of the unborn child's life no longer being a crime, decriminalised in certain circumstances, and instead becoming a right.

A social situation is described (the reality of abortion, the assurance that everything will be better if the government proposed legislation is approved), the premises of which are gratuitous and already anticipate the result: abortion should be recognised as a right of one of the two parties involved, even though it supposes the death of the other, the embryo or foetus. However, when abortion is invoked as part of the sexual and reproductive health of a woman, or when it is pointed out that abortion may be a “necessity” for some women, it is also necessary to consider the situation of many women who feel they must have an abortion due to abandonment, lack of economic resources or through pressure due to a real situation of violence, as has been denounced by many who have passed through these traumatic experiences. It is no surprise that there are many analyses which show how many women, thinking about an abortion, decide against it when they are well informed about the reality and they perceive help and support on the horizon. Similarly, it is necessary to consider all the consequences of an abortion, especially the traumas that can accompany the post-abortion syndrome, ever better documented. To accept that the voluntary interruption of a pregnancy as a right and, therefore, that the destruction of a well advanced human foetus can be carried out, because it is something that happens in our society today, supposes an argument which could lead by extension to unpredictable situations.

In the opinion of this member of the Committee such a fundamental principle as the protection of the embryonic or foetal human life cannot be renounced simply to resolve any supposed conflict in a pragmatic way. We should rather talk about other ways, such as social support for pregnant women.

As for a minor's freedom to decide, the Committee's reasoning, in this member's opinion, is also highly debatable. The whole section is impregnated with a negative consideration of parental power, as if the exercising of such power would always lead, in these cases, to the worst solution for the person affected. Thus, the opinion will always be in opposition to the exercising of parental power, even in situations in which it may be more necessary and of greater importance than ever.

For all the above reasons, this member makes known his disagreement with the document approved by the Spanish Bioethics Committee concerning the voluntary interruption of pregnancy in the Project of Law on Sexual and Reproductive Health.

In Madrid, 7th October 2009  
César Nombela Cano