

monograph

ON THE PROTECTION OF HUMAN LIFE BEFORE BIRTH

Martin Turčan



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Comenius University
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*In memory of doc. JUDr. Ján Cuper, CSc. (1946 – 2025),
our colleague at the Department of Theory of Law and Social Sciences.*

PREFACE

This is an English version of the Slovak monograph *K ochrane ľudského života pred narodením*, published simultaneously as part of a research project on religious and secular values in Slovak law. I believe that the Slovak constitutional context may be of interest to foreign readers, particularly in relation to the controversial issue of the protection of human life before birth. Most of the sources cited in this book are, quite understandably, Slovak. I therefore provide English translations (not always literal) of these sources—whether academic writings, records of parliamentary debates, or judicial decisions. I hope this monograph brings something new to the table and offers thought-provoking insights to readers who are not well acquainted with the Slovak constitutional context, as well as to those already familiar with it.

Author

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"I appreciate Pascal's statement that he agrees neither with those who exalt man nor with those who humiliate him, but with those who in solicitude—and I would say responsibly—seek. [...] I therefore recommend that this amendment, Article 7, paragraph 1, read as follows: 'Everyone has the right to life. Human life is worthy of protection even before birth.'"

Ivan Fišera, member of the Federal Assembly of Czechoslovakia, January 9, 1991.

Article 15 of the Constitution of the Slovak Republic

/

Article 6 [draft Article 7] of the Charter of Fundamental Rights and Freedoms:

(1)

Everyone has the right to life. Human life is worthy of protection even before birth.

(2)

No one shall be deprived of life.

(3)

Capital punishment is inadmissible.

(4)

Under this Article, it shall not constitute a violation of rights if a person has been deprived of life in connection with conduct that is not criminal under the law.

INTRODUCTION

This year marks a quarter of a century since 31 members of the National Council of the Slovak Republic (i.e. the Slovak Parliament) submitted a proposal to review whether Slovak abortion regulations comply with the Constitution of the Slovak Republic. At the end of last year, the decision of the Constitutional Court of the Slovak Republic—issued after approximately six and a half years—reached its figurative "maturity" (i.e. eighteen years of age). In this brief monograph, I return to that decision, venturing even further into the past than 2007 or 2001. After all, the decision remains controversial even nearly two decades after its adoption.¹ This is hardly surprising, as abortion is an ethical and legal "evergreen,"² and even the world's most famous decision on the matter—*Roe v. Wade* (which is also referenced in the decision of the Slovak Constitutional Court)—was ultimately overturned after nearly fifty years. There is therefore undoubtedly always something more to be said on this subject.

¹ An example of this is last year's *Conservative Legal Conference* at the Faculty of Law of Comenius University in Bratislava, devoted to the protection of human life before birth, during which significant criticism of the decision was expressed by academics, activists, and participating students.

² For the historical aspects of the legal regulation of abortion in general, see, for example, NAGYOVÁ, K. The Historical Development of Abortion – A Crime or a Human Right? In *Acta Facultatis Iuridicae Universitatis Comenianae*, 2024, No. 1, pp. 94–121, online: <https://afi.flaw.uniba.sk/index.php/AFI/article/view/841/585> [01-10-2025]. With regard to the Slovak context, see LANCZOVÁ, I. – LACLAVÍKOVÁ, M. Abortion as the Partial Issue of the Right to Life and the Development of the Related Slovak Legal Regulation. In *TEKA Komisji Prawniczej Oddział PAN w Lublinie*, 2018, Vol. 11, No. 2, pp. 205–228, online: <https://doi.org/10.32084/tekapr.2018.11.2-13> [03-01-2026].

The aim of this monograph is relatively specific and twofold.

(I) As part of my autonomous critique of the above-mentioned decision of the Constitutional Court of the Slovak Republic,³ I examine the possibility of employing legal argumentation grounded in Christian morality when interpreting the constitutional provision on the protection of human life before birth.⁴ In this respect, I engage with the thesis that, if two premises are accepted—namely (1) that the human fetus is protected under the Constitution of the Slovak Republic at least as an object of law (a constitutional value), and (2) that the Preamble of the Constitution has interpretive relevance—then sub-constitutional protection of human life before birth ought to be more robust than it was at the time the decision was issued and also than it remains today. The Preamble of the Constitution refers to a value tradition that may reasonably be described as "conservative" or "Christian" (the Cyrilo-Methodian spiritual heritage).⁵ In this light, the question arises whether, in accordance with the Constitution of the Slovak Republic (specifically the second sentence of Article 15(1), which will be addressed repeatedly in this book), there should also exist material conditions for the admissibility of abortion in the first trimester—namely, circumstances justifying abortion, such as a threat to the woman's life or health—rather than merely formal conditions, such as a written request and an obligatory consultation with a physician. This was, in essence, the claim presented to the Constitutional Court a quarter of a century ago by the petitioners, albeit argued on partially different grounds. It is not my intention to necessarily *defend* this "Christian morality argument". My aim is rather to *identify, consider, and*

³ On the existing criticism of the decision, whether positive or negative, see, for example, LUTERÁN, M. et al. *How to Protect Life?* Rovinka: Institute for Human Rights and Family Policy, 2014; NEDZBALOVÁ, L. The Right to Life in the Context of Abortion. In DÁVID, R. – SEHNÁLEK, D. – VALDHANS, J. (eds.). *Days of Law 2010*. Brno: Masaryk University, 2010, pp. 2908-2919; ĽALÍK, T. The Right to Life as a Basic Human Right. In *Bulletin of Slovak Advocacy*, 2008, Vol. 14, No. 7-8, pp. 19-27.

⁴ I am interested in this topic because of my long-term academic focus on the relationship between law and religion and because I am currently working on a research project concerning the place of religious and secular values in Slovak law. The protection of unborn human life represents one of the most typical problems in this respect. The monograph also builds upon my recent article published in the journal *Právny obzor*.

⁵ See TURČAN, M. Cyrilo-Methodian Spiritual Heritage as a Legal Argument? In *Právny obzor*, 2026, Vol. 109, No. 1, pp. 42-66.

analyze a theoretically plausible version of it (regardless of its potentially controversial or unsettling implications for more liberal perspectives).

The proportionality test is not the focus of this work. In particular, I do not assess whether the introduction of material conditions for the permissibility of abortion in the first twelve weeks would satisfy the necessity sub-test. It may be argued that protection of the fetus as a constitutional value could also be achieved through alternative means—mainly through appropriate social policies aimed at reducing the number of abortions by influencing women’s choices positively rather than through legal restrictions on their right to privacy.⁶ An opposing view holds, however, that argumentation grounded in Christian morality could also be reflected within the necessity sub-test itself. These questions are bracketed and left primarily to constitutional lawyers. As a legal theorist, I focus instead on classical interpretive methods—linguistic, teleological, systematic, historical, and comparative—in the interpretation of the constitutional clause in question (Article 15(1) of the Constitution). This means that my subsequent analysis is based on *assumption* that the proportionality test does not point decisively in another direction. I am thus fully aware of the limits of the conclusions drawn with regard to the first objective of this monograph. Nevertheless, the relevance of Christian morality argument is not entirely negated even if proportionality analysis showed different results, because such hypothetical argument at least underscores the importance of *policies* supporting the protection of unborn human life.

⁶ On the one hand, it may be pointed out that at the time of the submission of the petition in 2001, baby boxes did not exist in Slovakia at all, as this non-state initiative was only gradually introduced from 2004 onwards. Moreover, although baby boxes already existed at the time of the decision in 2007, they were not used on a large scale in practice. At the same time, there was no systematic state program aimed at the protection of human life before birth, and in fact such a program does not exist even today. On the other hand, however, it must be emphasized that the necessity test does not focus solely on already existing alternatives to the proposed solution (in this case, interference with a woman’s right to privacy through restrictions on access to abortion), but also on reasonable potential alternatives that could be chosen (see L’ALÍK, T. *Restriction of Human Rights and the Proportionality Test: Theory and Practice*. Bratislava: Wolters Kluwer, 2023, p. 149 ff.). One such potential alternative could be, for example, the obligation for the woman to listen to the heartbeat of the fetus before making a final decision on abortion. Some evidence suggests that following such an experience, many women change their mind. It remains, of course, open to debate whether and in what sense such a measure could be regarded as an optimal alternative.

(II) A further contribution of this work lies in the analysis of the intentionalist argument—interpretation based on the intent of the original constitution-maker—through an examination of the debates of the Czecho-Slovak Federal Assembly session that, more than three decades ago, adopted the key provision of the Charter of Fundamental Rights and Freedoms concerning the protection of human life before birth, which was subsequently incorporated into the Constitution of the Slovak Republic (see the first and third chapters of this monograph). Finally, this argument also appeared in the dispute before the Constitutional Court in question and has its relevance (albeit only supportive; as well as the already mentioned argument based on the Preamble and its potential reference to Christian morality, which is the subject of the third and fourth chapters of this monograph).⁷

In relation to the constitutional dispute from the years 2001 – 2007, the central issue may be summarized as whether legislation permitting abortion within the first twelve weeks of pregnancy without the need to state reasons for such a step is compatible with the second sentence of Article 15(1) of the Constitution of the Slovak Republic and the identically worded second sentence of Article 6(1) of the Charter of Fundamental Rights and Freedoms.⁸ According to these provisions, human life is worthy of protection even before birth. The petitioners did not seek to abolish abortion as an institution but to restrict the conditions under which it could be performed. Under the law as it stood—and still stands—abortion during this period is permitted without any need for justification. The petitioners argued that the interests of the fetus are therefore effectively disregarded, whereas the interests of the woman, grounded in her right to privacy, are treated as decisive. In their view, this imbalance contravenes the constitutional requirement to protect human life before birth. They thus called for at least minimal material legal protection of unborn human life during the first twelve weeks, through substantive criteria limiting abortion to legitimate cases. Their argumentation evolved over time,

⁷ It follows that this monograph addresses two research questions: (1) *What is the theoretically possible (meaningful) form of an argument based on Christian morality in relation to the legal protection of human life before birth within the meaning of Article 15(1) of the Constitution?* (2) *What was the intention of the constitution-maker when adopting Article 6(1) of the Charter of Fundamental Rights and Freedoms, corresponding to Article 15(1) of the Constitution?*

⁸ In the original draft of the Charter, it was Article 7(1).

moving from an emphasis on the fetus as a subject of a right to life to an understanding of the fetus as an object of constitutional protection—a constitutional value—as ultimately characterized by the Constitutional Court.⁹ I also address this question by examining legal arguments both supporting and opposing the attribution of legal personhood to the fetus.¹⁰

The analysis begins with the historical background, focusing on the parliamentary debate through which the relevant clause of the Charter of Fundamental Rights and Freedoms was adopted. This debate is not only interesting but also significant for assessing historical interpretation as an auxiliary interpretive method. As will be shown, such interpretation has a legitimate role in debates on constitutional protection of fetuses, since the meaning of Article 15 of the Constitution is somewhat less straightforward than suggested by the 2007 decision of the Constitutional Court.¹¹ This is followed by a brief chapter addressing the international and comparative context, which is necessary for completeness but ultimately

⁹ The petitioners stated in their petition: *"In the legal regulation of abortion, there is a clash of two constitutional rights—the right to life under Article 15(1) of the Constitution and the right of a woman to freely decide on the continuation of her pregnancy, as an intangible value of a private nature protected by Article 19(2) of the Constitution. [...] The provision of Article 15(4) of the Constitution undoubtedly allows the legislature—in the event of a clash of two constitutional rights—to determine the exceptional cases in which abortion may not be prohibited, but it must take into account the importance of the constitutional rights in question, both separately and in relation to each other. Therefore, the legal regulation of abortion should express due respect for the right to life and allow its restriction only in those exceptional cases in which the interest in the protection of a woman's constitutional right to private life does not stipulate an obligation for the legislator to prohibit abortion (e.g. if the pregnancy is the result of a criminal offence or the fetus is severely damaged)."* (Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/ 01 of 4 December 2007, I., p. 9). Subsequently, the petitioners' representative stated at the oral hearing, referring to the Spanish Constitutional Court (decision of 11 April 1985), that that court *"concluded that the nasciturus is an object rather than a subject of constitutional protection, it is an objective social value rather than a private claim of the fetus or the mother,"* and that *"the principled interpretation of Article 15(1) of our Constitution is similar. While the first sentence enshrines a subjective right, the second sentence enshrines an objective value worthy of protection."* (Ibid., p. 23).

¹⁰ Finally, the question of the legal personhood of the fetus is one of the most debated issues within this field, as legal personhood is, in principle, grounded in the concept of moral personhood. And from the perspective of the pro-life position, the fetus is regarded as a moral subject (a human being).

¹¹ In any case, it should be noted that the Constitutional Court does attempt to address this argument, at least to some extent, in its decision.

sheds limited interpretive light on the Slovak constitutional provision. The subsequent chapters analyze Article 15(1) of the Constitution in light of primary arguments—linguistic, teleological, and systematic—as well as auxiliary arguments, including historical interpretation and interpretation based on the Preamble and its mention of the Cyrilo-Methodian tradition. The final chapter addresses the role of moral argumentation in constitutional adjudication, responding to potential objections. Through this structure, the monograph seeks to fulfil its dual research objective.¹²

¹² In this monograph, I will repeatedly refer to the already mentioned decision of the Constitutional Court of the Slovak Republic (PL. ÚS 12/01). Regarding the jurisprudence of Slovak top courts, apart from this decision, the issue of abortion has been addressed only in a relatively small number of other cases, mostly indirectly or only marginally. At the same time, it may be noted that, according to the database available at *judikaty.info*, the decision PL. ÚS 12/01 is cited in 43 other decisions of Slovak courts. These include primarily decisions of the Constitutional Court of the Slovak Republic and the Supreme Court of the Slovak Republic, but also several decisions of the Supreme Administrative Court of the Slovak Republic as well as regional courts. From the constitutional jurisprudence, we may point out, for example, the decision II. ÚS 589/2012 of 13 December 2012, which was preceded by the decision of the Supreme Court of the Slovak Republic 3 SŽi 7/2009 of 8 October 2009. This case did not concern abortion as such, but rather the right of free access to information. The complainant argued that he had requested information directly related to the impartiality and independence of the decision-making of the Constitutional Court, namely a decision by which the plenary had not excluded Judge Peter Brňák from the proceedings of PL. ÚS 12/01. Judge Brňák was not excluded from deciding on the case despite the fact that, at the time the petition was submitted, he was not a judge of the Constitutional Court but a member of the National Council of the Slovak Republic and one of the petitioners of the petition under review. In other words, he was allegedly deciding, as a judge, a case in which he had acted as a petitioner. The complainant further emphasized that the review of the Abortion Act (and the relevant decree of the Ministry of Health of the Slovak Republic) concerned an issue that was subject to intense public debate and was a matter of public interest. The Constitutional Court ultimately rejected the complaint as unfounded. Abortion legislation appeared, albeit only indirectly, in decision I. ÚS 243/2023 of 26 April 2023. That case concerned an alleged violation of the right to participate in the administration of public affairs and the right of access to elected and other public offices, with the complainant challenging the procedural conduct of the National Council of the Slovak Republic in connection with a proposed amendment to the Abortion Act. The Constitutional Court also rejected this complaint. A further relevant decision is III. ÚS 42/09 of 2 June 2009, which concerned a complaint alleging a violation of the right to freedom of expression as a result of police intervention during a protest rally organized by the complainant. At the rally, photographs depicting a human fetus after abortion were displayed alongside images of genocide. The police assessed this as an act against public order and, under the threat of seizing the photographs, compelled the complainant to remove them. The complainant argued that the photographs were intended to highlight the human nature of the conceived child and the violent nature of abortion, drawing parallels with genocide, slavery, racial discrimination, and other inhumane

forms of treatment of vulnerable groups that were historically accompanied by the denial of their legal personhood. In this case, the Constitutional Court concluded that the police intervention violated the complainant's right to freedom of expression. A similar issue arose in the jurisprudence of the Constitutional Court of the Czech Republic. In decision II. ÚS 164/15 of 5 May 2015, the Czech Constitutional Court stated that, although the form of expression used by the complainant was undoubtedly shocking, it was primarily for the complainant to decide whether such a method of presentation was appropriate. State authorities and other adults were generally required to tolerate confrontation with such expressions, as they could be expected to decide for themselves whether they wished to engage with the material. However, in an earlier decision (IV. ÚS 310/13), the Czech Constitutional Court reached a different conclusion where the presentation of similar photographs took place near a grammar school and inevitably exposed children and adolescents to the material. In that case, the Court emphasized that while everyone has the right to express their opinions, no one is obliged to perceive such expression. It was not the content of the materials themselves, but the manner of their presentation—forcing minors to view them—that was considered grossly indecent. Returning to the case law of the Constitutional Court of the Slovak Republic, a reference to abortion also appears in decision PL. ÚS 38/03 of 17 May 2004 concerning the issue of free health care. The defendant (the National Council of the Slovak Republic) argued that Article 40 of the Constitution does not require that free health care include services such as medical cosmetics, abortion, treatment of intoxicated, or treatment after the use of narcotics. Although the Constitutional Court did not directly address the issue of abortion in its reasoning, the outcome of the proceedings may be interpreted as implicitly accepting this position. Finally, abortion is mentioned in several other decisions of the Constitutional Court of the Slovak Republic, largely in connection with factual circumstances or references to related legal issues, such as the criminal offence of unlawful abortion under the Criminal Code. The same applies to the case law of the Supreme Court of the Slovak Republic. For an overview of decisions of the top courts referring to the second sentence of Article 15(1) of the Constitution, see Appendix 2 of this monograph.

1.

A LOOK AT AN OLD PARLIAMENTARY DEBATE

After the *Velvet Revolution*, various political initiatives were given the opportunity to legislatively promote their values and political interests. Among the MPs of the Federal Assembly, which adopts the Charter of Fundamental Rights and Freedoms in January 1991, there is also a conservative (Christian) group that does not agree with the previous (socialist) abortion practice and wants a change. During the session of the Federal Assembly at which the Charter of Fundamental Rights and Freedoms is discussed, this group comes forward with proposals for the constitutional regulation of the protection of human life before birth. In the following pages, I will offer the reader the statements that were made in that discussion and I will do so in chronological order.¹³ Relatively extensive statements will be quoted, but that is one of the purposes of this chapter—to offer the reader a processed¹⁴ "undiluted" parliamentary debate on the issue. A debate that took place more than three decades ago and, as far as I know, has not yet been published in this form.

Let me begin by pointing out that even before the Christian MPs take the floor, the problem of abortion is addressed by the joint rapporteur of the committees of the House of Nations, Vlastimil Ševčík, who presents the prepared draft of the Charter at the beginning of the session. In his report in connection with the proposal of Article 6, originally Article 7, which mentions the prohibition of killing, he states: *"However, this does not solve the potential problem of abortion, because the beginning of human life, taking into account the current knowledge of medical science, is related to its definition in the legal sense. Several amendments to these provisions were submitted by the other committees, such as the Foreign Committees, the Budget and the Defense Committees, to change the decisive sentence, such as: 'Everyone has the right to life and healthy living conditions' or*

¹³ If any statement is presented out of chronological order, this will be explicitly indicated.

¹⁴ Regarding the method of selection, within the relatively extensive and multi-component records of these two days, I conducted a keyword-based search of the digital parliamentary archive in order to identify statements by individual members of Parliament relevant to this topic. These statements are often dispersed throughout the records, as the debate was not conducted in a fully systematic manner and individual speakers frequently moved between different topics. Nevertheless, it may be reasonably assumed that this method of selection did not omit any statements of substantive relevance to the discussion.

'Everyone has the right to life and a healthy environment,' or 'Everyone has the right to be born'. The Constitutional and Legal Committees did not agree with these proposals, on the one hand, for reasons arising from what has already been said, and on the other hand, because, for example, the 'right to healthy living conditions' or the 'right to a healthy environment' under the current ecological conditions and situations cannot be constitutionally guaranteed, so that the adoption of such a proposal would violate the otherwise respected principle of enforceability of the constituted law, which would introduce the Charter into the realm of proclamations. Similarly, the proposal proclaiming the 'right of everyone to be born' was rejected. Apart from the difficulties that an interpretation of such a norm would inevitably bring and what situations would arise during its application, it is difficult to attribute a normative binding force to a norm like that. For these reasons, the minority proposal of the Social and Cultural and Environment Committees was also rejected as follows: 'Human life is worthy of protection from conception'.¹⁵ According to Ševčík, the reason for rejecting the protection of the unborn lies in the impracticality of such a step and in a different constitutional doctrine.

The first to respond to this problem during the discussion is František Michálek: "Allow me to express my thoughts and opinions on this issue and at the same time submit a proposal to extend and clarify Article 7, Section 1, Title II. 'Everyone has the right to life from conception'. Due to the deformation of social life in the past, public opinion on the basic question of human life was also deformed. The life conceived in the mother's womb can be nothing but a new life of a human being. This is its inner truth, even if outer forms are gained later. Each of us is and should be a thinking person that can see inside. It is a sign of a low level of thinking when someone speculates whether the expected child is already a human being or not. And is the newborn child already a finished person? When is a person actually 'finished'? What is the essential difference between a child in the mother's life and a child who has already been born? One is protected by the law, the other is condemned to liquidation. In Roman law, the principle was that the one who is to be born is already considered born. (He could have become an heir.) This life has its metaphysical value. Its liquidation cannot be called anything other

¹⁵ Stenoprotocol No. 11 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 8 January 1991, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=83161> [09-09-2025].

*than what we call every destruction of innocent human life. It's murder. And, moreover, done in a very drastic way. Supporters of abortion hide behind the law. Laws do not change the essence of the matter. It is a defect of laws, the thing remains the same. Parents do not have the ability to transmit life on their own. Life has been passed on them as well, they are not absolute masters of life. A woman cannot say to herself: I can do whatever I want with my child (fetus). She could say the same after birth. A child has the same right to life as his mother."*¹⁶

After this principled argument, Michálek adds a pragmatic argument: *"In terms of the percentage of abortions per capita, our federal republic ranks second in the world after the Soviet Union. Our nations will die out! Abortion destroys not only average-creative people, but also brilliant people. However, it is necessary to lend a helping hand and do everything that could help future mothers in their difficulties that they have found themselves in during pregnancy, so that they can willingly accept their child and be able to raise it. Here, the funds that society spends on abortion should be used. During 1990, fewer children were born in the Czech Republic than in 1989, when 128,356 children were born. Therefore, a further decrease in the birth rate by 0.2 per mille to 12.2 is expected. This is stated in the preliminary statistical report on health care in the Czech Republic for 1990 by the Institute of Health Information and Statistics in Prague. According to their findings, the birth rate in the Czech Republic has been still below 13 per mille since 1986 and now it will be a decrease of one whole per mille compared to 1985. The institute also states that in 1990 there was a decrease in the abortion rate, which, however, is 21% higher compared to 1986, when 990,452 abortions were recorded (i.e. 74.2 abortions per 100 live births). In 1986, the Abortion Act was amended, and the Members who stood for the Christian side against the will and opinions of the Party's rank-and-file Members also approved it. A slight increase in mortality compared to last year is also expected, and thus the natural increase in population in 1990 will be negative for the first time in the whole Czech Republic, 0.2 per mille."*¹⁷

Michálek thus claims (among other things) that abortion decimates the population, and this is an unreasonable (non-pragmatic) step for the

¹⁶ Stenoprotocol No. 11 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 8 January 1991, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=83164> [09-09-2025].

¹⁷ Ibid.

nation. Finally, he concludes by stating: *"It has been a long time since theologians and moralists spoke on this legislative ground, who, from the point of view of their profession, commented on draft laws in the field of morality and morals. Today, this function can again be fulfilled by theologians and laymen who have been elected to this parliament by the decision of the citizens. We have heard from many Members that we are making imperfect laws, others have pointed out that they had to listen to a sermon. There is nothing left to do but think about our activities and ourselves. If we want to solve political, economic and moral problems, we must solve and eliminate the causes and not the consequences, i.e. submit to the laws of causality. We want to join the European community, we have to demonstrate an adequate level of economy, pluralistic democracy, respect for human rights. The last area is particularly important. Nothing will change with the adoption of the Charter of Fundamental Rights and Freedoms if the return to basic moral principles is delayed. Even the best laws will be useless if our youth do not grow up in a society that strives for better human relations, based on the principles of humanity and Christianity. Our society is sick not only politically, nationally, economically, partially, but also morally. 900,000 children in single-parent families, the absence of paternal upbringing in children, a reckless view of the erotic and sexual sphere, the breakdown of families, a high number of divorces, free love, increasing prostitution, venereal diseases, these are warning signs for us and the whole society."*¹⁸

It can be observed that Michálek openly talks about the adequacy of Christian argumentation and calls for the return of Christian values to public life. Unlike the proponents of the draft Charter, he obviously does not think that the enshrinement of the legal protection of human life from conception would be unfeasible or functionless.

Later, after a discussion on other things, Josef Lux addresses the issue in a similar way as Michálek and adds: *"[...] I have an amendment to Article 32, which mentions 'parenthood and family'—I would like to ask to insert 'and the human fetus from conception'. The sentence continues: 'are under the protection of the law'. There is no doubt that it is not only the economy that needs a radical transformation. The area extremely devastated by the previous system is the moral area. Social transformation*

¹⁸ Ibid.

and our revolution cannot be complete unless they also affect the realm of morality and the sphere of human relations, unless they penetrate people's hearts. Nothing can be dictated to the human heart by law or decrees. It must decide for itself. However, for this it is necessary to create appropriate conditions, to give a certain framework and space for development and cultivation. Laws, principles and human rights are identified with moral values by many. They should be a guarantee of the necessary minimum of morality, and when it comes to the sum of human rights, then we know that this sum is, among other things, the determination of what should be the ideal of society. There are so-called ideal norms, norms that every citizen and society as a whole must strive for if they want to increase the potential of the common good. The first and highest value is man himself. Human life is the primary high value without any connection to any other conditions and characteristics. As such, it deserves and also requires the highest protection. Its protection is in the interest of society, the interest of the state. After all, our civilization wants to be a civilization of life. Instead, it bears some very serious signs that indicate it does not value life as the highest gift that man receives. We are in danger of being oriented towards destruction rather than life. We know that last year the number of deaths after a long time outweighed the number of births. Since 1957, over 3 million abortions have been performed in Czechoslovakia. Last year, there were 80 abortions per 100 births on average, compared to 136 in Prague. It is necessary to ask ourselves for whom we have actually plunged into a fundamental transformation of society, if the orientation of society in a positive attitude towards life does not change. It is good to know for comparison that last year there were 17 abortions per 100 births in the USA and thirty in Germany. Only the Soviet Union (still our role model in this matter) surpasses us in this respect, with almost 6 million abortions last year. The Charter of Human Rights must state that human life should and must be protected throughout its duration, i.e. from conception to natural death, in all circumstances—in health and in sickness. Special protection must be provided to the life of the weak, the endangered and the disabled. The moral strength and cultural maturity of a society can be recognized primarily by how this society is able to take care of its weakest. Their presence is a prospect for our growth, mutual solidarity and responsibility. This moral requirement should be explicitly stated in the sum of human rights as an ideal to which society should gradually approach. Moreover, this problem has not only moral aspects, but also the side of the need to preserve the legal status as such. If

the law recognizes the fact of inheritance in relation to the fetus, it is impossible for it to be otherwise in the basic norm of law, in the constitutional law establishing human rights as such. With this in mind, I support this proposal. Thank you."¹⁹ There is applause (which will become typical in the debate).

Lux's argumentation is largely in harmony with that of Michálek, as it primarily invokes the principle of the sanctity of human life (implicitly, the idea of human dignity). The difference lies in the fact that the empirical data cited by Lux are not intended to function as an additional pragmatic argument, but rather as evidence of a violation of this principle. A further distinction is that Lux's proposal does not necessarily entail the legal personhood of the fetus.

He is followed by the Deputy Prime Minister of the Federal Government, Jozef Mikloško, who states: *"On November 17, the Federal Assembly ratified the treaty on the rights of the child. For adults, it should approve this Charter today. Do not blame me, honorable Members, for reminding you that we still lack a law—and this has already been mentioned—that would be more in favor of unborn children. I would therefore like to underline the sentence that two committees of the Federal Assembly have proposed to include in this Charter: human life is truly worthy of protection from conception. I am very glad that both national ministries of health are aware of this—I have the appropriate documents about it, although I would like to remind you that the main word in this regard will be up to you, honorable Members. Thank you for your attention."*²⁰ Applause.

Eleonóra Sándorová approaches this theme in a different way than the Catholic speakers before her and after a series of remarks on other problems she states: *"Finally, I would like to comment on the speeches of some Members of Christian parties, although I think that they did not bring amendments. I also have the opinion that the laws regarding abortion in our country are too liberal. The current situation is certainly not sustainable, when this procedure is understood as a kind of free service. On the other hand, before we start thinking about an absolute ban, we should start thinking in terms of adequate sex and parenthood education, or at least the*

¹⁹ Ibid.

²⁰ Ibid.

availability of contraceptives that will finally no longer endanger women's health."²¹

Then another MP, Pavel Čičmanec, contributes to the discussion: *"Dear colleagues, I submitted a proposal in the social and cultural committees, which did not win a majority, but the minority was not so small that there was no hope for its approval. Therefore, I propose again an amendment of Article 7, after paragraph 1 to include the paragraph: 'Human life is worthy of protection from conception.' This formulation is not out of my head. I've known it for at least 10 years. The other paragraphs would then be renumbered to 3 and 4. This proposal was not recommended by the constitutional law committees, mainly for reasons of difficult enforcement. I think that the problem is not in the impossibility or difficulty in enforcing this right, but in the fact that the state under the old regime allowed the abortion law to wage war against the unborn. For more than 40 years, our society has been morally devastated by materialistic ideology. There is an abysmal difference between the rights of the born and the unborn. The unborn do not even have a declarative right to life in the first three months. Our society should approach this problem in a completely different way, profile it in a new way. The basis is to include the appropriate sentence in the Charter of Human Rights. I am convinced that it belongs there. My proposal is softer than that of colleagues Michálek and Lux and is more declarative. I ask that it be voted on only if their proposals do not pass.*"²²

So, while Michálek proposed the formulation *"everyone has the right to life from conception"* and Lux the formulation *"parenthood and family and the human fetus from conception are under the protection of the law,"* Čičmanec proposes the formulation *"human life is worthy of protection from conception,"* which he himself describes as "softer", declarative. He understands this either as a kind of unenforceable constitutional norm (moral appeal), or as a value that should encourage the legislator to create legislation protecting the unborn in some way, or as a requirement that is enforceable at the level of the constitutional judiciary, with the proviso

²¹ Stenoprotocol No. 11 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 8 January 1991, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=83167> [09-09-2025].

²² Stenoprotocol No. 11 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 8 January 1991, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=83168> [09-09-2025].

that (as in the case of the arguments of the 31 petitioners who later submitted the aforementioned proposal to the Constitutional Court of the Slovak Republic) the legislator must create some form of protection of human life before birth (e.g. to ban abortions on request). However, Čičmanec's solution is, as he says, only secondary and should be chosen only if the "harder" proposals of his colleagues do not pass (so it is supposed to be a kind of compromise).

Subsequently, Ladislav Kvasnička also contributes his proposal: "[...] *I would like to return again to Article 7, paragraph 1, despite the fact that it has already been mentioned several times, and I would like to change this wording as follows: 'The right to protection of human life and the essential conditions for its physical and mental development shall be guaranteed'. That would be my proposal. Allow me to explain. The original diction—everyone has the right to life—guarantees this right to an individual only from the moment they acquire legal personhood from the point of view of our law—that is, only from birth. I assume that it is necessary for legal norms to be harmonized with the current state of scientific knowledge. According to the latest scientific knowledge, especially thanks to the technique of fiber optics, sonography and other scientific methods, we know for sure that human life begins earlier than we originally assumed. Currently, embryonic pathology is being developed, and in connection with it, embryonic therapy. Not only surgical, but also other therapeutic interventions take place in the fetus. If an unborn child already has the right to medical treatment at the embryonic stage of development, it should also have the right to life. This right would quite naturally be enshrined in the Charter of Human Rights. If the original wording of Article 7 para. 1 was adopted, life before the birth of a child would be left without legal protection, which would be contrary to the Charter of the Rights of the Child, which we recently voted for. The absence of legal personhood as the bearer of the protection of life does not mean life before birth could not or should not become legally protected. Quite the opposite. Legal protection does not include only the subject, it can also be an object that requires legal protection, e.g. from a social, moral or other point of view. Nor must we forget that the transcendental dimension of man does not begin after his birth. For the above reasons, I ask the Members to vote in favor of my proposal. I ask for this mainly because unborn children cannot ask for it. Of course, if the proposals that were previously presented, whether it is the proposal of Mr. Michalek, Mr. Lux or Mr. Čičmanec, which have a*

*similar meaning to my proposal, were to pass, in that case I would withdraw my proposal. Thank you for your attention."*²³ Applause.

The proposal of the Christian Democrat Kvasnička is to guarantee the protection of human life as such (i.e. from conception), which is why Kvasnička avoids the problematic term "everyone", which is traditionally ascribed only to born people. As we have noticed, Kvasnička also claims that a different understanding is contrary to the newly approved Convention on the Rights of the Child (which, of course, is a controversial interpretation). We have already seen an allusion to this convention in the statement of Jozef Mikloško.

After further speeches on other topics and towards the end of this part of the session (i.e. before the break), the chairman Zdeněk Jičínský addresses an appeal to the proponents of the amendments: *"I do not want to restrict the Members who have submitted amendments in any way, I just call on those of them who have submitted proposals that are very close to each other, in some cases almost identical and some differ perhaps only in word order, to meet and reduce the number of amendments that I expect we will vote on tomorrow morning. This is my warning, I cannot force anyone to do so, but I think that the differences of opinion that have been in terms of the right to life from conception are so minimal that it would be appropriate if these groups of proposals were somehow united. This applies to some other proposals as well. I do not intend to interfere with any Member's right to submit an amendment, but in the interest of the factuality and clarity of the vote tomorrow, I would consider it possible."*²⁴

After the break, in the evening session, the first of the debaters is Eva Nováková who states: *"For the sake of a sense of responsibility, based on the life experience of a doctor and at the same time as a mother, I ask you, dear colleagues, to take under the protection of law even the most defenseless human beings, who are children developing in the mother's womb. I am doing so despite the arguments of the rapporteur, Mr. Ševčík, which I do not find convincing. What would be the point of proclaiming human rights if we did not respect and protect human life from its beginning?"*

²³ Ibid.

²⁴ Stenoprotocol No. 11 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 8 January 1991, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=83169> [09-09-2025].

I consider it useless to bring more and more evidence for the fact that human life begins at conception. From the first moment a mother realizes her pregnancy, expects a child, a unique person develops. From ancient times, conceived life has been under the protection of the law and the general moral consciousness. But what is the reality in our contemporary world? The first country to deny legal protection to unborn children was the Soviet Union in 1920 with its monstrous ideology. Today's consumer man has ceased to appreciate life in its fragile evolving form. It is then a logical consequence that he ceases to value a life that is worn out, ending. There is a direct relationship between the rise in abortions and calls for euthanasia, as well as the placement of children in creches and elderly parents in retirement homes. How many children are not allowed to be born because their mothers, often immature, see the meaning of life and happiness in the increasing consumption of things and pleasures. According to our legislation, the fathers of these children are excluded from deciding on the birth of their children. Current progress in medical science makes it possible to detect some congenital diseases of the child before birth, and so the so-called selective abortions are performed. Do you not find it terrible when health is considered a fundamental criterion for the value of life and the right to be born? Do we not have countless cases of activity and great moral standards of many who are physically handicapped? In our time, Beethoven's greatest musical genius would certainly not have the right to be born, as his mother was tuberculous and his father was syphilitic. Today's doctors would force such parents to have abortions for medical reasons. Contemporary science, and especially technical possibilities, allow for fantastic ways of manipulating the evolving human life. Unfortunately, this is not always a purely scientific interest, but also a commercial abuse of tissues and organs beginning in human lives. Equally important is the protection of children before birth from the point of view of the negative effects of a bad environment, because the developing organism is most sensitive to these influences. Equally negative consequences for children arise due to irresponsible actions and lifestyle of mothers during pregnancy. It is a shocking fact that a large part of the citizens are not aware of these serious and, dare I say, basic moral problems. I am convinced that there are values that must be inviolable and sovereign. Such includes the protection and inviolability of human life from its conception to its natural end. That is why I make an additional proposal to Article 33(1), second sentence, print 392; I recommend the following wording: 'Special protection for children before and after birth and for adolescents is

guaranteed. 'This wording is also in line with the Convention on the Rights of the Child, which we recently adopted. You know that moral ideals cannot be enforced by legislation, because the law is narrower than morality. But laws should lead to morality. At the same time, I would like to point out to my colleagues that to consider my amendment only as anti-abortion and to link it to family planning is a misunderstanding of the scope of the whole issue. I hope that, being aware of the importance of this document for the future of humanity of our nations, you will not refuse to protect children before their birth.' After the speech of MP Nováková, applause is heard again.

It is not entirely clear how her statement was meant that her proposal should not be perceived *"only as anti-abortion and associated with family planning."* Perhaps this is a reaction to the already quoted Eleonora Sándorová, who spoke earlier and who did not want to ban abortion, but only to reduce it and improve the possibilities of contraception to prevent unwanted pregnancies that could end in abortions. In any case, it can be noted that Nováková's statement seems to be in harmony with the already mentioned conservative positions of MPs Michálek, Lux, Mikloško, Čičmanec and Kvasnička.

Later in the discussion, Jiří Černý, returns to the proposals of the first two MPs: *"[...] I am only coming here to support the proposal of MP Michálek and MP Lux. Perhaps a number of Members will be grumpy that I am returning to Article 7 and that someone is talking about the rights of the unborn child again. However, I believe—whether one likes it or dislikes it—that this is such a serious matter that it should be reminded of all of us on a daily basis. Allow me to make just a few brief comments on this issue in support of the amendments proposed by MPs Michálek and Lux. I would like to recall one of the important features that characterizes the position of a child or a person from conception to birth. This serious feature is complete absolute defenselessness, factual defenselessness and legal defenselessness. Factual defenselessness is increased by the fact that this being, this child, this person, is not capable of any communication in their interest with their surroundings. Legal defenselessness is interesting in that whoever kills a hedgehog, snake, or other animal will at least get a fine. If someone kills an unborn child, they are fully covered by the law, and nothing happens to them at all. Thus, the unborn child is completely ignored by the legal system, with two exceptions: The first exception is actually already accepted from Roman law—the nasciturus has a guaranteed right to inherit.*

A conceived child is entitled to inherit if his or her father has died. Secondly, the legal system will actually remember him indirectly, because it does not 'concern' him when regulating abortions. The abortion law regulates the right of the mother, not the unborn child. If we sum up this certain disregard of the legal system towards the unborn child, it can be said that the status of the unborn child is characterized, from the point of view of the legal system, by the fact that the unborn child has the right to inherit, but does not have the right to life, or has the 'right' to have his life taken away by the mere decision of the mother. It is an extremely strange position. I think that if all of us who are here (and women in particular) realize that this is how each of us began, that is, by being conceived and that at that time we actually slipped through this great legal regulation of our protection by chance, then we should be very happy to be here. I would also like to remind you of one interesting thing, in my opinion. Human existence at the time of conception until birth, or at least from a medical point of view up to three months of gestation, is actually constantly the subject of dispute as to what it actually is. Is it already human or not? There is a kind of doubt that is not resolved. I think that when life is at stake, I can apply here per analogiam the principle of criminal law, that is, the principle of 'in doubt in favor of the accused'. Here I would apply the principle of 'in doubt in favor of the unborn child'. If we cannot agree and if it is not determined whether a person is a human being at the moment of conception, then we should be humane enough not to commit crimes today and every day because of our ignorance (because unfortunately we are not yet able to recognize), so that everyone who votes for abortion and does not vote for this life to be protected, does not have his hand, his conscience burdened with crimes, which are repeated today and every day, so we should grant this child, this creature, this existence, this human all the rights that are granted to humans, and if not, then at least the fundamental right, that is, the right to life. I thank you very much and I would very much like this demand to be supported not only by law and justice alone, but by people whose consciences have not been able to crust."²⁵ According to the record, there is applause again.

Then Anton Anderko gives his speech: *"The center of this Charter is man. I thought about this fact when I came to the treatise on life. I realized*

²⁵ Stenoprotocol No. 11 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 8 January 1991, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=83170> [09-09-2025].

*that the reality in our society is different, because life before birth has no legal protection, the most defenseless life, which also in a way defends itself against brutal intervention. There are excuses at hand—we don't know when the life begun is already life. We do not know when death in dying occurred. We rely on scientific opinions, scientific papers, and there has been a scientific discussion on this topic for a long time. We just don't want to admit that life is life from the moment it naturally began and death is death when it naturally occurred. Why don't we want to know? Because it is not a question of science, but a question of morality. It is a moral and ethical problem. The nature of man is drawn to comfort, to pleasantness. Renouncing the pleasant in favor of the reasonable is an insurmountable problem for many people. Adopting a child means certain restrictions on the parent. Proponents of abortion have plenty of rational reasons for their own complacency, an excuse so that they can remove the problem from their own responsibility. Honorable Members, any respect for rights and freedoms is against the will of many citizens. If this were not the case, there would be no need for laws. This right of the defenseless is also against the will of many. But that is no reason why we should not take this right into account. And this is our responsibility to life as such. We are at the essence. Either we admit that we protect life from the beginning, from conception (even the word conception is derived from the word beginning), or we build the Charter of Fundamental Human Rights and Freedoms as a building without foundations. Our mission in parliament is that we should direct not only the economy, but also morality into the natural flow of laws, because their violation will take revenge on us in the future with further devastation. With this brief look at this problem, I have justified my position, by which I support the amendment proposed by MP Lux, Michálek, MP Nováková and all the proposals that are in favor of the protection of marriage, family and parenthood. If this Charter does not protect life as a whole, my conscience will not allow me to vote for it, although all its other content corresponds to my ideas. With this speech and other additional arguments, I would like to influence you, the Members, and ask you to vote in favor of life. Thank you for your attention."*²⁶ Applause is heard again.

Anderko is the first to indicate in the debate that unless the right to life from conception or the protection of life from conception is included in the Charter in some formulation, he will not vote for the Charter at all.

²⁶ Ibid.

This is something that will play its role in the discussion and on which, as will be seen in the statement of the 31 petitioners from 2001, the argumentation about the intention of the voting members of the Federal Assembly will be based later.

After Anderko, Klára Samková, joins the discussion and perceives the matter differently: "[...] I feel it is my moral task to take up an issue that has been discussed here for a long time and to draw your attention to some points of view that are completely contrary to what the previous speaker has said and what everyone else has said, especially Mr. Lux. We are talking about the rights of the unborn child. We are talking about a matter that is extremely difficult from a moral point of view. Although my heart is inclined towards the moral side, I do not consider it possible for the Charter of Human Rights to be incorporated into this declaration in the direction that the previous speakers have suggested. Please do not consider me a legal pragmatist who manipulates the law in the way in which she considers it beneficial to her own person or appropriate or, as the previous speaker has already said, simply convenient. But I'm asking you. We are talking about the rights of the unborn child, but who stood up for the right of the mother? Who stood up for her right to life if her life was endangered by pregnancy. Who will stand up for the girls and women who are raped and who become pregnant by this brutal act? I believe that this issue is very complicated, complex. This is a question that we are facing, but also all the other parliaments in the world. I am convinced that at this moment there is no place for us to make such a fundamental change in the whole concept of our legal system. Apart from the fact that I think that this system deserves more attention and a more comprehensive view, I would also like to draw your attention to the legal consequences that the adoption of this would contribute. The number of abortions was quantified here, the number of unborn children was quantified. The Abortion Act, which is very benevolent, and the statistics that result from it show that even this very benevolent law does not lead to a statistically significant increase in the number of abortions. We can therefore assume that, in retrospect of civilization, this is a certain constant phenomenon that we simply cannot eradicate by banning it. The moment we adopt this law, or this amendment, we must immediately change the Abortion Act, which would ban all abortions. The result of this ban would be the immediate action of illicit, I'm ashamed to call them doctors, but interventionists, who would certainly take the lives of many women with their unprofessional intervention. I hope that you do not want me, as a

lawyer, to support the *de facto* enactment of an illegal situation that would immediately arise here by adopting this proposal. I therefore ask you not to vote in favor of this amendment. I know that it will be very difficult for you, who are prevented from doing so by your faith. I believe that you can express your position by abstaining on this counter-proposal. At the same time, I propose that further discussion be developed on this topic, beyond the adoption of the Charter of Fundamental Rights."²⁷ She then adds something about gay rights²⁸ and after her performance there is applause again.

František Magyar later joins the debate by recalling the amendment proposed by Pavol Čičmanec: "[...] I support the amendment proposed by Associate Professor Čičmanec to include and extend the original Article 7, now Article 6, with the sentence: 'Human life is worthy of protection from the moment of conception until natural death.' The mass murder that is taking place today in our gynecology departments must astonish every conscientious person, regardless of their worldview. After all, it causes our republic perhaps greater losses of innocent lives in a single year than the Second World War has caused. A woman does not have the right to decide whether to kill a fetus. In the end, it is not her life, but the life of another human being, for whom she is just a shell during her pregnancy. I am not called to explain the consequences and impact of abortion on the female body and on the psyche in sex education. However, the most urgent task is to stop the massacre and to define the most medically necessary scope for abortion. At the same time, I would like to illustrate with just one example that if that Greek mother had not saved her crippled son from the abyss of Mount Taygetos, today we would be poorer for Homer. For me, as a believer, the idea of abortion is inadmissible under any circumstances. However, I don't want to impose my views on others. It would be a dictatorship again, not a democracy. Therefore, in order to reassure those who are afraid of this

²⁷ Ibid.

²⁸ "However, in order not to make my contribution purely negative, I would like to propose one amendment. It will concern Article 3(1) for which I propose the following wording: Fundamental rights and freedoms are guaranteed to everyone—without distinction of sex, sexual orientation, race, color, language, belief, religion, etc." Noise in the hall. Samková continues: "You may find the proposal ridiculous; It directly affects the 4% of our population who are unjustly affected, but who are neither sick, nor abnormal, nor deviant, they are simply different. If this is to be a Charter of the Rights of all citizens and all people living in this state, let it really be everyone, let the possibility of this otherness be enshrined there. I can assure you that other countries have also resorted to this legislation, such as France and Denmark. Thank you." (Ibid.).

Christian dictatorship, I refer to the fourth paragraph of the amended Article 7, now 6, which I quote: 'It is not a violation of rights under this article when someone is deprived of his life in connection with an act that is not punishable by law.' Here is the back door for medical science to allow abortion in those cases where medical science sees it justified. Therefore, I call on every conscientious MP who cares about the future of our republic, regardless of worldview, to vote for the amendment proposed by Associate Professor Čičmanec, or for the final proposal that will be based on his proposal, the proposal of MP Lux and others. I thank you in advance for listening to the voice of your conscience."²⁹ Applause again.

To this, MP Viliam Soboňa responds with the words: *"If you will allow me, I am very reluctant, but I must remind you that the considerations about conception and the life of an individual are conducted, from a scientific and philosophical point of view, very superficially here. Therefore, I ask that we avoid the term 'mass murder'."*³⁰ Magyar's interpretation of Čičmanec's proposal (which, by the way, adds the words "until natural death," which was not heard in Čičmanec's statement) sounds like a ban on abortion where there are no medical reasons (i.e., even in the case of rape).

A different attitude to the matter is expressed by Miloš Krejcar: *"At the International Conference of the United Nations on Human Rights, held on April 22, 1968 in Tehran, a proclamation on human rights was adopted, which reads as follows in Article 16—and I quote: 'Parents have a basic human right to freely and responsibly determine the number of their children and the time interval between them.' This basic human right was then supplemented at the First World Population Conference of the United Nations in Bucharest in 1974 as follows: '§ 4 f—all couples and individuals have the basic right to freely and responsibly decide on the number of their children and the time interval between them, and they should be given information and means to do so. The responsibility of couples and individuals in the exercise of this right shall take into account the needs of their living and future children and their responsibilities to society.' This paragraph was reaffirmed at the Second World Population Conference of the United Nations in Mexico City. The opinion is in accordance with the requirement that every*

²⁹ Stenoprotocol No. 11 of the joint sitting of the House of the People and the House of Nations of the Federal Assembly of 8 January 1991, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=83172> [09-09-2025].

³⁰ Ibid.

child be born into a family as a wanted child, whose arrival into the world is planned and desired by the parents, which guarantees the child not only a successful physical, mental and social development, but optimal conditions are also prepared for them as far as possible, and thus a healthy and mentally good future of the nation is guaranteed. If we were to question these circumstances and refuse to acknowledge them, then we would have to agree with the chairwoman of the York Reproductive Rights Movement: 'All the legislation is not well managed. Any law aimed only at the embryo cannot support the position of women before the law.' That is why I propose that the article voted on at the First World Population Conference in Bucharest in 1974, in section 32/2, be incorporated into human rights. If we did not agree with these conditions of family planning as a basic human right, we would not only be negating the legal right of women to decide freely about their motherhood, but we would also not be recognizing some medical principles. As a doctor who worked in the maternity ward or in gynecological operating rooms for thirty-eight years, I experienced an era when abortion was strictly prohibited in our country. During this period, the saddest thing about the whole thing was that women suffered serious harm to their health as a result of criminal abortions. Finally, I would like to point out that 200 women died unnecessarily every year in our country, because these procedures were carried out under absolutely unacceptable controls and unprofessionally—by laymen. On 1 January 1958, Act No. 68/1957 Coll., on Abortion, came into force. All these so-called spontaneous abortions, which we always liquidated at night, have ceased, and tragic events of this kind have become a thing of the past. Ladies and gentlemen, I responsibly declare that I am against abortion and I view it as a violent intervention. On the other hand, however, as a doctor, I consider this law necessary for a woman to be able to properly deal with her emergency situation. We do not have to ask or philosophize today about the consequences of rejecting this law. A tragic example for us is Romania, where in 1965 Ceausescu declared a fertilized egg the property of the socialist state and banned abortion under a heavy penalty. As a result, the population curve remained the same, but the number of deaths of pregnant women rose to unusually high levels. Please consider that in Europe only in Ireland and for a short time in Poland abortion is banned, in all other countries it is not only legalized, but even more liberalized than in our country. Any negation of this law plays into the hands of criminal abortionists at home and leads, as we say, to abortion tourism, that is, to travel to other countries for abortion for those women who can

afford it. I am convinced that we can only fight against the number of abortions by raising awareness, both in schools and in the family, and, last but not least, we must also count on health professionals. I believe that decision-making on such a serious circumstance should not rest solely on the shoulders of politicians but should be guided by the experience of our medical societies."³¹ Applause. Krejcar's argument is obviously pragmatic. Krejcar claims that he is against abortion, but for the greater good (or lesser evil) he considers it necessary to accept the legality of abortion, so that illegal abortions do not occur, which could lead to unnecessary deaths of women.

Subsequently, other critics of the abortion join the discussion. First, Gabriela Rothmayerová just laconically states: *"MP Krejcar actually said what I wanted to say, so I give up the floor."*³² And then, at the end of this sitting day, A. Ondrejkoš speaks: *"[...] I do not give up the floor, although I will also only support the previous speaker. Given that some Members have spoken very broadly about this problem, I want to speak on behalf of the group of Members who have a different opinion on the issue. In this debate, many Members recommended an amendment to the Charter of Human Rights and Freedoms under discussion in the sense that human life should be protected by law, from the moment of conception. I also do not consider a high number of abortions per number of children born to be normal. On the contrary, I consider it a gross defect of our society, a serious threat to the health of our women-mothers. Unfortunately, in many cases, abortion actually replaces contraception. The education of young people to responsibility, modesty, love, but also to a happy and responsible sex life and parenthood was grossly neglected. When we add to this very inappropriate and inadequate contraceptives, we expose the roots of mass abortion. This unfavorable phenomenon cannot be changed by installing a paragraph in the law, but only by a completely new approach to these problems. The proposals put forward for the protection of the human fetus are indeed very humane, but they do not at all ensure the humanity of future human life. Our society is not yet so rich and so humane as to provide every child with a happy life, which can only be in an orderly family. I mean a family with a mother and father in normal material conditions in a good moral family atmosphere.*

³¹ Stenoprotocol No. 11 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 8 January 1991, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=83173> [09-09-2025].

³² Ibid.

I am of the opinion that every child has the right to a carefree, happy, harmonious childhood, filled with parental love. A crime is committed against every child who is denied this. It was committed by parents who fathered it unintentionally, often under the influence of alcohol, under the influence of drugs or as a means of coercion against one of the parents. An unwanted child often causes tragedy to a teenage mother who, under the weight of a corrupt life, turns maternal love into hatred for the child. We all know cases of child abuse, leading to death. But even in other conditions, a child can be unwelcome. Not because of the lack of parental love, but because of the great responsibility towards the future child, his upbringing and material security. Let us realize that we are still only on the threshold of the process of moral, social and economic revival of our society. The adoption of the proposed ban on abortion would mean a huge intervention in the lives of the young generation, which is not morally, mentally or economically ready for it. The number of abandoned children in children's homes would increase significantly. The number of mentally retarded children born will continue to increase. We will start the era of illicit abortions for bribes, which will be done on the periphery of medical facilities, or outside them—by unqualified people. The adoption of such a serious decision should be preceded by a thorough dialogue with the young generation. We should not decide without them. I agree with all the facts that many Members have put forward here for the protection of the human fetus. Nevertheless, I think that until we have mastered the process of family planning, it is not the right time to adopt this amendment. I consider it hasty and unserious to make the vote for this proposal conditional on a vote for the entire content of the Charter of Human Rights and Freedoms." Applause.

Ondrejkoč's statement (which again represents an attempt for a pragmatic argumentation and, with its emphasis on the availability of contraception, is in harmony with his predecessors—namely Sándorová, Krejcar and, implicitly, also Rothmayerová) responds to the problem raised earlier by Anderko, that the refusal to take into account the rights or protection of the fetus may lead to a refusal on the part of some conservative MPs to vote for the Charter as a whole.

The next morning, Jan Sokol is the first to speak on the issue by stating that the protection of life before birth *"is an extremely serious topic and I understand the motives that led to the amendments that were proposed here yesterday. We all know that the current treatment of unborn*

*children is not satisfactory. It will take a long way to get to where civilized countries are today. On the other hand, this area [...] will not be directly changed by the wording of this Act. The point is to change it gradually, indirectly and towards the goal we are aiming for. I therefore ask you to be able to overcome any disappointment and not to jeopardize this very important project as a whole, whatever the outcome of the vote on the amendments."*³³ Applause. Sokol therefore calls for willingness to some form of compromise.

Subsequently, Ivan Fišera presents his groundbreaking (and ultimately successful) amendment: *"Mr. Chairman, ladies and gentlemen, Mr. Sokol has made the situation much easier for me personally, because I don't have to justify my amendment. I would just like to say very briefly that nothing in this world is perfect. What is worthy of respect is the honest effort of people to cope with the most difficult, most complex, and at the same time morally most serious problems. I appreciate Pascal's statement that he agrees neither with those who exalt man nor with those who humiliate him, but with those who in solicitude—and I would say responsibly—seek. We should really open up space in the basic preamble for searching, without immediately getting into conflict with the current legal order, because we will have to deal with very complex, social, moral, but also scientific problems that have recently changed our view of human life for many of us. I therefore recommend that this amendment, Article 7, paragraph 1, read as follows: 'Everyone has the right to life. Human life is worthy of protection even before birth.' Thank you for your attention."*³⁴ Applause.

Immediately, support for this proposal is heard from other members and proponents of other amendments. J. Ambros states: *"On behalf of the Club of Members of the Christian Democratic Movement, I would like to express that we fully support the proposal of MP Fišera."* Applause again. J. Lux joins: *"Dear colleagues, I believe that this problem has been a bit dramatized here, that we have not discussed the Abortion Act here. We have submitted amendments—and my proposal has also been suggested that human life before birth deserves the protection of the state or the law. This means that I give up my proposal and unequivocally support the proposal of*

³³ Stenoprotocol No. 11 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 9 January 1991, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=83174> [09-09-2025].

³⁴ Ibid.

my colleague Fišera." Applause. D. Vincze: "I would like to convey the opinion of the Hungarian Christian Democratic Movement and the Coexistence Club Egyteles. Our movement supports Mr. Fišera's amendment." Applause. Krejcar concurs: "I fully agree with MP Fišera and I give up my proposal from yesterday." Applause. Likewise Nováková: "I also support the supplementary proposal of MP Fišera and if it passes, I give up my supplementary proposal." Čičmanec: "I am giving up my proposal due to the fact that the proposal of MP Fišera is all the more acceptable to more people. I hope it will be approved." Applause. Kvasnička: "I also give up my proposal, provided that the proposal of Mr. Fišera is accepted." Applause again.³⁵

A different position is taken by MP Michálek, who decides to stick to his proposal (speaking before Čičmanec and Kvasnička): "Colleagues, may the Federal Assembly forgive me, I have always followed the principles in my life, even though I have paid for them. I fought for the existence of this state, I fought for the human rights of political prisoners, and in this formulation, I stick to my proposal and ask for it to be put to the vote. Thank you."³⁶

After Čičmanec and Kvasnička, Ján Horník also express his support for Fišera's proposal: "Several Members have presented abortion statistics in their speeches, and I will not deal with them either. I will not even repeat it, I will give only one figure, and that is the one that has been stated since 1958, that there were more than 3 million abortions in our republic. When we think about this number and start thinking about how many excellent people we have actually lost, such as Hayrovský, Seifert, Hviezdoslav or Aurel Stodola. That is why this must be taken into account and life must be defended from the beginning, and that is why I am joining this proposal made by Mr. Fišera and I will be voting in favor of it. This proposal is another step in the moral renewal of our state and all our people. We could read about these questions in the Pastoral Letter. All bishops, Czech, Moravian and Slovak, drew attention to this very serious issue. I believe that we, as Members, are also thinking about these things and we will squeeze this proposal of MP Fišera into the Charter of Rights and Freedoms."³⁷

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

Subsequently, after a discussion on some other topics, Vlastislav Valtr expresses the same support for Fišera's proposal: *"Mr. Chairman, I agree with MP Fišera on the matter of the protection of life before birth and I give up on my contribution."*³⁸ S. Hanák (speaking before Valtr) is a little more hesitant, but also supportive: *"Mr. Chairman, after the speech of my colleague Fišera, I am giving up my speech, although I admit that the formulation of MP Michálek is much closer to me."*³⁹

Ultimately, after Michálek's proposal was rejected, MP Fišera's proposal was adopted almost unanimously. The protocol states (in the words of the chairman): *"The Members of the House of the People will vote. Who is in favor of this amendment? (One hundred and eleven.) One hundred and eleven. Thank you. Who is against? (Two.) Two. Thank you. Did anyone abstain? (Seven.) Seven. Thank you. The House of Nations will now vote. First, the Members elected in the Czech Republic. Whoever is in favor of this proposal, let him raise his hand! (Fifty-two.) Fifty-two. Who is against? (Three.) Three. Who abstained? (Six.) Six. Thank you. Members elected in the Slovak Republic. Whoever is in favor of this proposal, let him raise his hand! (Fifty-three.) Fifty-three. Thank you. Who is against? (No one.) No one. Did anyone abstain? (Four.) Four. Thank you. (Applause.) The amendment was adopted."*⁴⁰ At the end of the meeting, the Charter as a whole is approved and this issue—as far as its textual form is concerned—is over. However, the adopted formulation on the protection of human life before birth will yet arouse controversy (which will eventually happen in the Slovak context about ten years later, when the aforementioned dispute before the Constitutional Court occurs over the meaning of this provision).

Shortly afterwards (at the turn of August and September 1992), the wording of the paragraph guaranteeing everyone the right to life and simultaneously stating that human life is worthy of protection even before birth, is adopted into the Constitution of the Slovak Republic by the

³⁸ Stenoprotocol No. 11 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 9 January 1991, online:

<https://www.nrsr.sk/dl/Browser/Document?documentId=83177> [09-09-2025].

³⁹ Stenoprotocol No. 11 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 9 January 1991, online:

<https://www.nrsr.sk/dl/Browser/Document?documentId=83176> [09-09-2025].

⁴⁰ Stenoprotocol No. 11 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 9 January 1991, online:

<https://www.nrsr.sk/dl/Browser/Document?documentId=83181> [09-09-2025].

members of the Slovak National Council, without any further discussion about its wording and meaning.⁴¹ Article 6(1) of the Charter thus becomes

⁴¹ The only participant in the debate within the Slovak National Council who expressly referred to this sentence during the adoption of the Constitution of the Slovak Republic—and did so in connection with the concept of the spiritual heritage of Cyril and Methodius, later discussed in this monograph—was Anton Neuwirth. He stated: *"In this context, I propose and dare to draw attention to paragraph 4 of Article 15. For the sake of context, I will read the remaining paragraphs of Article 15. The first paragraph states: 'Everyone has the right to life. Human life is worthy of protection even before birth.' The second paragraph states: 'No one shall be deprived of life.' However, paragraph 4 reads: 'It is not an infringement of the rights under this article if a person has been deprived of life in connection with conduct which is not punishable under the law.' It follows that a law of a lower rank—what is referred to as an ordinary law—may deny a constitutional right, and moreover a natural right from which the protection of life derives. I therefore propose that paragraph 4 of the above-mentioned article be deleted from the Constitution. Furthermore, as long as this paragraph remains, there is also a contradiction with the preamble of the proposed Constitution. The Preamble says: 'with regard to the Cyrilo-Methodian spiritual heritage'. It is apparent that this heritage cannot be understood otherwise than as Christian principles—not Christianity itself, but Christian principles—which are clearly in favor of the protection of life. It is incompatible for one constitution to invoke Christian principles in one place and be in gross contradiction with them in another. To admit such inconsistency would reduce Saints Cyril and Methodius to nothing more than a decorative label attached to a product whose substance contradicts what the label proclaims. I highly value this assembly and therefore trust that it will understand both my intention and the contradiction I have described and will vote in accordance with my proposal."* (Stenographic Record of the 5th Meeting of the Slovak National Council held on 31 August and 1 September 1992, pp. 72–73, online: <https://www.nrsr.sk/dl/Browser/DsDocumentVariant?documentVariantId=12491&fileName=zazn.pdf&ext=pdf> [21-12-2025]). Neuwirth's proposal, however, was not accepted, and he ultimately voted against the draft Constitution (ibid., p. 285). It may also be noted that, in the first chapter of the Constitution, he proposed the inclusion of an article on natural law, formulated as follows: *"1. Rights and duties, regardless of time and place, are natural rights and duties. 2. These rights and duties constitute the substantive content of natural laws. 3. In the event of a conflict between natural law and positive law, natural law prevails over positive law. 4. In cases of doubt concerning the wording of natural law, the Constitutional Court of the Slovak Republic shall decide. 5. Everyone may act in any manner not contrary to natural law and not prohibited by any other law. No one may be compelled to act contrary to natural law or beyond what the law prescribes."* This proposal likewise failed (ibid., p. 237). Speaking on behalf of the Christian Democratic Movement, Neuwirth also stated in the debate that, after presenting a number of objections to the wording of the draft Constitution, *"most importantly, the proposed draft Constitution contains passages incompatible with Christian beliefs. For these serious reasons, the submitted text of the Constitution is unacceptable to the Members of the Christian Democratic Movement."* (ibid., p. 270). It is therefore evident that Neuwirth considered the existing constitutional formulation of the protection of human life before birth to be insufficient. On the circumstances surrounding the adoption of the Constitution of the Slovak Republic, see, for example, RUŽIČKA, O. *The Legitimacy of the Adoption of the Constitution of the Slovak Republic (the Original Constituent Power in 1992)*. Dissertation. Bratislava: Faculty of Law, Comenius University, 2020.

Article 15(1) of the Constitution. It can therefore be said that a review of the 1991 parliamentary debate shows how this constitutional norm, not merely federal but also Slovak, was born. As I said at the beginning, I will return to this discussion in the third chapter.

2.

BRIEFLY ABOUT THE INTERNATIONAL AND FOREIGN CONTEXT

In the federal discussion presented in the previous chapter, references were made to the 1989 Convention on the Rights of the Child and to the foreign context. At the level of political and legal argumentation, these are legitimate considerations, although not of equal weight. International obligations are clearly more important than attempts to take into account foreign legal systems or the practice of foreign courts, not to mention mere social or cultural conditions in other countries, which are even less relevant as normative arguments. Consideration of international legal contexts and a comparative perspective also appeared in the decision of the Constitutional Court of the Slovak Republic discussed above. After examining the historical aspects of the constitutional protection of human life before birth, it is appropriate to briefly address the international and comparative dimensions of the issue as well.

Interpretation in conformity with international treaties is an obligatory method, especially in the field of human rights. Human rights transcend the borders of individual states and are enshrined in several important international documents. In accordance with Article 7(5) and Article 154c(1) of the Constitution, international human rights treaties take precedence over the statutory laws of the Slovak Republic. From the perspective of international law applicable to Slovakia, it can be stated that there is no relevant document that prohibits abortion as practiced domestically, nor any that explicitly establishes a right to abortion. In other words, international law neither clearly supports nor rejects the existence of a fetal right to life in this context.

The Convention on the Rights of the Child contains a reference in its preamble to the 1959 Declaration of the Rights of the Child, which states that *"the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth."*⁴² However, as noted by the Constitutional Court: *"The*

⁴² Already during the adoption of the 1989 Convention on the Rights of the Child, the issue of the protection of human life before birth appeared in the federal parliamentary debate. The joint rapporteur of the committees of the House of Nations, Marie Kaplanová, stated: *"The Czechoslovak legal system has not yet provided sufficient guarantees of children's rights. [...] In this context, I would like to mention certain rights that are not fully respected in our country. The first is the most fundamental right of the child, the right to life. The Declaration of the Rights of*

group of proponents of this text of the Convention on the Rights of the Child underlined in a special statement that the term 'human being' refers only to born persons, which is in line with the long-standing understanding enshrined in the Universal Declaration of Human Rights. It also denies the fetus the right to life, highlighting repeated concerns about teenage girls' access to safe abortion services. The Committee on the Rights of the Child also stated that safe abortion is part of the right of adolescent girls to adequate health or to basic health and well-being. It also called for a review of state practices under existing legislation allowing abortion for medical

the Child, adopted by the General Assembly on 20 November 1959, already states—and I quote—that 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth.' [...] Thanks to modern scientific research, scholars in this field have reached the unanimous conclusion that the embryo perceives, feels and reacts. However, it cannot defend itself. If we are to avoid continuing violations of Articles 7 and 47 of the Convention, it is necessary to initiate a broad discussion and to fulfil Article 24(1)(f) of the Convention, which emphasizes education for family planning. In point 3, the Social and Cultural Committees highlight the need to bring domestic legislation into conformity with the Convention on the Rights of the Child, in particular with regard to legal protection before and after birth. Similarly, the Foreign Affairs Committees recommend that the Government, taking into account Article 6 of the Convention, adopt measures addressing the right to life of every child. For illustrative purposes, I would also like to note that there were 161,000 abortions in our country last year, whereas in the Netherlands there were fewer than 5,000, half of which involved women from Belgium, Austria and other countries. This reduction was achieved through systematic school education, accurate public information, and a focus on family planning." (Stenographic record No. 8 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 16 November 1990, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=82997> [16-01-2026]). Subsequently, MP Eva Nováková criticized "the cultivation of embryos for research and commercial purposes under laboratory conditions, various methods of in vitro fertilization, transplantation of human ova, and the use of tissues and organs of human fetuses for transplants and implantations." She also pointed out that: "Following the amendment of the Abortion Act in 1983, the number of abortions in our country has been steadily increasing, with all the associated negative health and moral consequences. There has been a profound shift in both public and medical opinion. Practices previously considered incompatible with the ethical foundations of medicine have, over the past thirty years, become routine medical procedures. Attitudes towards the child are increasingly shaped by utilitarian considerations. Advances in prenatal diagnostics make it possible to obtain information about the sex of the child and potential health impairments. Thus, parental decision-making begins to include not only the number of children, but also their 'quality'. For these reasons, abortion approaches the nature of active euthanasia. In recent years, there has been a renewed call for respect for conceived human life, as it is called into humanity. There is no true culture without respect for oneself and one's neighbor." (Stenographic record No. 8 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 16 November 1990, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=82998> [16-01-2026]).

reasons, in order to prevent illegal abortion and improve the protection of girls' physical and mental health. It also follows from the above that the definition of a child for the purposes of the Convention on the Rights of the Child does not include the fetus."⁴³ In addition, it is also worth noting Article 7(1) of the Convention on the Rights of the Child, which states that every child is registered immediately *after birth* and that he or she has the right to a name, nationality and, where possible, the right to know his or her parents and receive their care *from birth*. This is a supporting argument (which is also pointed out by the Constitutional Court in its decision) in favor of the claim that fetus does not fall under the concept of a child (as a legal entity) within the meaning of the Convention. We do not find anything explicit about the protection of the fetus as an object of law in that document, unless we deduce it from the above-quoted preamble reference to the Declaration of the Rights of the Child from 1959.⁴⁴ To sum up, although the Convention on the Rights of the Child does not imply a right to abortion on request, it likewise does not provide any clear substantive legal protection from conception. At the very least, it may be said that any positive conclusion of this kind would be highly uncertain.

Other relevant international documents are not particularly helpful either. The European Convention on Human Rights formulates the right to

⁴³ Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/ 01 of 4 December 2007, II. A., 3.3, p. 44.

⁴⁴ In this context, Tomáš Lálík points to the reservation made by France with respect to Article 6 of the Convention on the Rights of the Child, in which France stated that this article, which formulates the child's right to life, *"cannot be interpreted as creating an obstacle to the application of the legal norms of French legislation concerning voluntary termination of pregnancy."* (Cited from LÁLÍK, T. Judgment of the Slovak Constitutional Court PL. ÚS 12/01: critical reflections and proposals for improving the protection of the unborn child. In *Justičná revue*, 2026, Vol. 78, No. 2, p. 119). Lálík understands this step by France as an argument in favor of the conclusion that the right to life belongs to the unborn under the Convention. He emphasizes that the Preamble is interpretively relevant for the Convention, as follows from Article 31(2) of the Vienna Convention on the Law of Treaties, and in relation to the French reservation he adds: *"Although there are also opinions that states did not have to make such a declaration due to national legislation allowing voluntary abortions, I believe that, for the sake of legal certainty, Slovakia should have done so, because the wording of the Preamble does not raise any doubts as to who is a child."* (Ibid.). Lálík considers the reference by the Constitutional Court of the Slovak Republic to the statement of a group of proponents of the Convention text, according to which the term "human being" applies only to the born, to be unfounded: *"This group of proponents is not cited by the Constitutional Court, so it is not clear what it means."* (Ibid.).

life in Article 2, and just like the Constitution of the Slovak Republic guarantees this right to "everyone". However, the term "everyone" is not further defined, and in practice it has long been understood to refer to individuals who have already been born. As the Constitutional Court noted in its ruling: *"From the content of the decisions of the Commission and the European Court of Human Rights [...] it follows that, according to their previous case-law, the fetus (nasciturus) is not a person entitled to a 'right to life' within the meaning of Article 2(1) of the Convention."*⁴⁵ He added that the decisions *"make it quite clear that individual states have a broad discretion on the issue of abortion regulation. Similarly, the dispute about when the right to life arises falls within the discretion that the European Court of Human Rights generally grants to individual states in this area (e.g. V v. France, judgment of 2004)."*⁴⁶ The prevailing interpretation of the Convention thus holds that the determination of when legal personhood begins is a matter for the domestic legislation of individual states and is not governed by this international instrument.

Concerning the International Covenant on Civil and Political Rights, Article 6(1) provides that *"every human being has the inherent right to life."* However, as the Constitutional Court has observed: *"It is clear from the history of the drafting of the International Covenant that a proposal to extend the application of Article 6(1) to the period before birth was rejected. This is confirmed by the Commission's travaux préparatoires, which indicate that a proposal was introduced and subsequently rejected that sought to provide that 'the right to life is vested in the human person from the moment of conception and shall be protected by law.'* The Commission ultimately approved Article 6, without any reference to conception, by 55 votes to 0, with 17 abstentions [...]"⁴⁷ Thus, it cannot be inferred from this multilateral international treaty that the fetus possesses a right to life.

The protection of human life before birth and the regulation of abortion are, according to these documents, ultimately matters for national legal systems; states retain the discretion to determine how these issues are to be regulated. In the decision in question, the Constitutional Court also addressed the Convention on the Elimination of

⁴⁵ Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/ 01 of 4 December 2007, II. A., 3.1, p. 41.

⁴⁶ Ibid., pp. 41-42.

⁴⁷ Ibid., II. A., 3.2, p. 42.

All Forms of Discrimination against Women. Unlike the previously mentioned international treaties—which may, at least theoretically, be invoked by proponents of a pro-life position—this Convention may serve as a potential argumentative tool for advocates of a pro-choice position, who may seek to defend the right to abortion on request. However, just as the earlier instruments cannot be interpreted as imposing a prohibition on abortion on request, neither can the Convention on the Elimination of All Forms of Discrimination against Women be construed as establishing a right to such an abortion. It is also appropriate to note that, in the nearly two decades since the judgment of the Constitutional Court of the Slovak Republic was delivered, there have been no fundamental developments in international law concerning the issue of the protection of the fetus—whether viewed as a subject or an object—vis-à-vis the right to choice. It therefore remains the case that the scope of protection afforded to unborn human life, as well as the legal conditions governing access to abortion, continues to lie primarily within the competence of individual states.⁴⁸

On a comparative level, the petitioners in the given proceedings before the Constitutional Court referred to a number of foreign constitutional decisions and argued that *"a number of European constitutional courts, such as the Federal Constitutional Tribunal in Germany, the Constitutional Tribunal of the Republic of Poland or the Spanish Constitutional Tribunal, have protected human life from the moment of conception or from the moment of nidation of a fertilized ovum in the uterus, despite the absence of similar provisions as Article 15(1), second sentence of the Constitution. A fortiori, it is therefore necessary to conclude that Article 15(1) of the Constitution also enshrines the protection of unborn life from conception."*⁴⁹ In particular, they referred to the decision of the German Federal Constitutional Court, which had already held in 1975 [BVerfGE decision, 39, 1 (1975)] that no distinction could be made between the various stages of developing life before birth or between prenatal and postnatal life. In the petition, they added that in 1993 the German Federal

⁴⁸ For a discussion of the right to abortion with regard to international conventions, see e.g. RADAY, F. Culture, religion and women's international human rights. In BANDA, F. – JOFFE, L. F. (eds.). *Women's Rights and Religious Law. Domestic and International Perspectives*. Abingdon: Routledge, 2020, pp. 23-25.

⁴⁹ Decision of the Constitutional Court of the Slovak Republic, PL, ÚS 12/ 01 of 4 December 2007, I., p. 8.

Constitutional Court *"reiterated its unequivocal decision according to which 'abortion must be regarded as an injustice throughout the pregnancy and must therefore be prohibited by law.'* [BVerfGE, 88, 203 (1993)]."⁵⁰

At that time, the comparative issue also became the subject of a minor academic exchange between Daniel Lipšic (who represented the petitioners in the proceedings as an attorney)⁵¹ and Ján Drgonec (who in turn represented the Ministry of Health of the Slovak Republic) on the pages of *Justičná revue* journal. In his contribution, Daniel Lipšic repeated the argument of *several constitutional courts*, referring to the two German decisions, one Spanish, and one Polish.⁵² For this, he earned a rather sharp reaction from Ján Drgonec who stated: *"Other examples can hardly be found in comparative law, so the mathematical expression of 'several constitutional courts' takes the form of the number 'three'. However, such a statement finds it difficult to find a reasonable basis for concluding that Article 15(1) is 'necessary' to be interpreted 'in accordance with the case-law of the constitutional courts' in Germany, Poland and Spain. Why did the three and not the others who acted on the matter, but did not decide in favor of the interpretation of the protection of the human fetus within the framework of the right to life? After all, this is how all the proceedings before the bodies of the Council of Europe ended, when complainants from various countries invited them to speak out in favor of the protection of the human fetus! [...] The haste of the claims is a distinctive feature of the argumentation used to give the impression of an 'undemocratic' abortion law, of the exclusion of the Slovak Republic from the world of 'democratic states' until this regulation is fundamentally changed in favor of the protection of human life."*⁵³ In another article, Daniel Lipšic objected to such statements and stated that

⁵⁰ Petition pursuant to Article 125(a), (b) of the Constitution of the Slovak Republic to initiate proceedings on the conformity of legal regulations of 3 May 2001, II-B, p. 6. Quoted from LUTERÁN, M. et al. *How to Protect Life?* Rovinka: Institute for Human Rights and Family Policy, 2014, appendix on p. 62 ff.

⁵¹ The Ministry of Health did not agree with the proposal to limit abortion. Among the state institutions invited by the Constitutional Court to take a position on the proposal, only the Supreme Court of the Slovak Republic sided with the petitioners. The Prosecutor General and the National Council of the Slovak Republic took the opposite position.

⁵² LIPŠIC, D. The Constitutional Dimension of the Legal Regulation of Artificial Termination of Pregnancy. In *Justičná revue*, 2002, Vol. 54, No. 2, pp. 167-168.

⁵³ DRGONEC, J. The Constitutional Dimension of the Legal Regulation of Abortion. In *Justičná revue*, 2002, Vol. 54, No. 2, pp. 177-178.

the inappropriate generalization in the argumentation was not made by him (by referring to only three constitutional courts), but by his opponent, who claimed in his article *"that the legal restriction of abortion will make our legal system 'less compatible with the legal regulations in force in other countries'. In fact, only a minority of developed democratic countries have such a liberal abortion law as is the case in Slovakia, i.e. such a regulation that allows abortion to be performed at an earlier stage of pregnancy at the request of a woman without having to prove any relevant reason. From this point of view, not only Poland, Germany and Spain, but also Finland, France, Ireland, Luxembourg, Canada, Portugal, Switzerland, Italy, Great Britain and other countries have more restrictive legislation."*⁵⁴ It is not my intention to address this discussion in detail here, and I will therefore not pursue it further. However, in the context of comparative argumentation, it may be regarded as a stimulating academic exchange with a healthy degree of controversy, which is why I have briefly referred to it in this chapter.

The Constitutional Court does, of course, take into account the comparative dimension in the decision in question and seeks to address it. With regard to the decision of the Federal Constitutional Court of 1975 (and, implicitly, also the later decision of 1993), it notes that German law underwent a fundamental shift in 1995 in this area: *"[...] the performance of abortion is not criminal (illegal); it must be carried out by a physician within the first twelve weeks of pregnancy, and the pregnant woman is required to undergo mandatory counselling at least three days prior to the procedure, with a network of counselling centres provided by the state."*⁵⁵ At the same time, the Court points out that in 2002 there was also a shift in Switzerland, when a referendum relaxed the conditions set in the 1940s, while *"strict restrictions on abortion apply only in a small number of countries (Andorra, Ireland, Liechtenstein, Malta, Poland and San Marino)."*⁵⁶ The Constitutional Court states that the legal regulation of abortion varies considerably across Europe and that, aside from a few countries where abortion is significantly restricted, many jurisdictions adopt relatively liberal approaches. It notes that Austria, the Netherlands, and France

⁵⁴ LIPŠIČ, D. Once again on the constitutionality of abortion. In *Justičná revue*, 2002, Vol. 54, No. 3, pp. 318-319.

⁵⁵ Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/ 01 of 4 December 2007, II. A., 4., p. 46.

⁵⁶ Ibid.

(with amendments adopted in 2004 and later in 2014) have regulatory frameworks comparable to that of Slovakia. The Court also refers to Sweden, where the termination of pregnancy is not governed by criminal law and is instead regulated in a manner that affords a very high degree of protection, including coverage under the public health insurance system. In addition to European examples, the Court draws attention to the (now obsolete) U.S. Supreme Court decision in *Roe v. Wade*, which precluded individual states from interfering with abortion during the first two trimesters of pregnancy.⁵⁷

The Constitutional Court, in essence, employs a *retorsio argumenti*, concluding that the comparative perspective speaks against the proposal rather than in its favor. This may well be the case with regard to the protection of the fetus as a subject of law—which represents a minority paradigm in Europe (at the relevant time, arguably present only in Ireland and, in some form, in Germany)—but not necessarily with respect to its protection as an object.⁵⁸ At the same time, it should be noted that the Slovak constitutional regulation (Article 15(1), second sentence) is specific

⁵⁷ Ibid., pp. 46-48. The fact that the decision was later overturned may serve as a comparative argument that there is no such thing as a right to abortion, as explicitly stated in the overturning decision (*Dobbs v. Jackson Women's Health Org.*, 597 U.S. ____ (2022), p. 69, online: https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf [13-05-2026]).

⁵⁸ A few years ago, Nikoleta Bitterová expressed quite harsh criticism in relation to Ireland (where, however, some liberalization took place since 2018), criticizing the European Court of Human Rights for giving the country an excessive (illegitimate) margin of discretion in the issue of legal regulation of abortion with its decision in the case of *A, B and C v. Ireland* back in 2010. At the same time, Bitterová criticized that the decision gave too much space to the value of public morality, at the expense of a woman's right to privacy, which she perceived as an unacceptable approach: "*Thus, according to the ECtHR, Ireland was guaranteed a wide margin of discretion with regard to the regulation of abortion because of the 'deep moral convictions' of the Irish people, which prevailed over the European consensus, as a result, it can be concluded that the ECtHR ruled contrary to its standard ways and methods of interpreting the Convention. [...] In cases A, B and C, the ECtHR did not consider (weigh) two fundamental rights to decide which of them had more weight, but instead only assessed the ability of the state to restrict a fundamental right, the right to privacy in the name of protecting public morality.*" (BITTEROVÁ, N. Reproductive Freedom and Reproductive Self-Determination of Women through the Eyes of the European Court of Human Rights. In LENHART, M. – ANDRAŠKO, J. – HAMULÁK, J. (eds.). *Milestones of Law in the Central European Area 2017*. Proceedings of the International Scientific Conference of PhD Students and Young Scientists. Bratislava: Faculty of Law, Comenius University, 2017, p. 792, online: https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/Milniky_zborniky/Zbornik_Milniky_2017.pdf [13-01-2026]).

and has no analogues in the compared countries⁵⁹ (with the exception of the Czech Republic, where it has not yet been the subject of proceedings before the Constitutional Court concerning the constitutionality of the existing abortion legislation).⁶⁰ Thus, with regard to the protection of the

⁵⁹ In this regard, see the dissenting opinion of judges Ján Auxt, Peter Brňák and Rudolf Tkáčik, as well as the dissenting opinion of judge Ján Luby.

⁶⁰ However, the Constitutional Court of the Czech Republic partially commented on it in its decision I.ÚS 605/24 of 19 November 2024, which concerned the issue of the criminal liability of a woman and a doula for the death of a child during home birth (and which also referred to the Slovak decision): *"In the case of the protection of life before birth, it is really not a fundamental right to life. It is a 'mere' objective value protected by constitutional law, as the Slovak Constitutional Court called it in its judgment PL. ÚS 12/01, in which it interpreted a provision of the same wording as Article 6(1) of the Charter of Fundamental Rights and Freedoms of the Czech Republic (Article 15(1) of the Constitution of the Slovak Republic). The Czech constitutional order and the legal system take a liberal stance on the rights of women to decide about their pregnancy. This is reflected in particular in the legal regulation of the conditions of abortion or in the impunity of a pregnant woman for abortion under Section 163 of the Criminal Code. Even in a situation of imminent threat to the life of a pregnant woman, priority will be given to her life as a value more strongly protected than the life of an unborn child [...]. However, it is the second sentence of Article 6(1) of the Charter that represents a slight correction of the otherwise liberal attitude regarding the rights of women to decide on their pregnancy. This applies especially to the stage of childbirth, during which the child cannot be left completely without legal protection, even if it is not born in the constitutional law sense. However, it is necessary to point out again the difference in the point of view of which branch of law the unborn child is referred to (whether in the sense of constitutional or criminal law). If the commentary literature on the Charter states that the unborn child is not criminally protected against attacks by the mother, it means an unborn child within the meaning of criminal law, i.e. a fetus that has not begun to be expelled from the mother's body [...]. On the other hand, a child born, i.e. a child in the course of childbirth, which has not yet been completely expelled from the mother's body and is an unborn child in the constitutional law sense, is criminally protected against attacks by the mother. It can therefore be summarized that if the Constitutional Court proceeds from the facts as clarified by the ordinary courts, in the case under consideration the child was not yet the subject of the right to life under the first sentence of Article 6(1) of the Charter, yet his life was already worthy of protection, i.e. it was a constitutionally protected value within the meaning of the second sentence of the same provision. During childbirth, the protection of the unborn child is stronger from the point of view of constitutional law than during pregnancy, in which, on the contrary, the mother is unpunished for a wide range of actions, including causing an abortion."* It is therefore very likely that if the Constitutional Court of the Czech Republic had dealt with the issue that the Constitutional Court of the Slovak Republic dealt with in the years 2001 to 2007, it would have come to similar ("liberal") conclusions. In any case, it is also worth mentioning that in the past, some judges of the Constitutional Court of the Czech Republic have expressed (at least at first glance) slightly more "conservative" opinions. Judge Miloslav Výborný, in a dissenting opinion on the decision Pl. ÚS 26/11 of 28 February 2012, stated: *"In my opinion, in the issue of home births, it is not only the accentuated right of the mother to the protection of her private life that is at stake, which can be applied*

fetus as an object of law, references to foreign jurisdictions do not constitute a particularly strong pro-choice argument. Conversely, reliance on "conservative" constitutional decisions from jurisdictions lacking a constitutional clause comparable to the Slovak one (as a form of *argumentum a fortiori*) is likewise not especially persuasive in support of stronger protection of the fetus in this sense. Indeed, even at the relevant time, examples of European countries with relatively liberal regulatory frameworks were already abundant⁶¹ (not to mention the Czech Republic with a similar practice) and the existing stricter regulations in some other jurisdictions cannot be regarded as a clear interpretive guideline for the contested interpretation of the Slovak constitutional clause on the protection of human life before birth. Moreover, developments since the Constitutional Court of the Slovak Republic issued its 2007 decision suggest that European legal frameworks have tended to become more, rather than less, liberal—although Poland is a well-known example of a shift in the opposite direction.⁶²

according to the reasoning of the decision either by way of an action for the protection of personality or by means of administrative justice, but also, and above all, the right of an unborn or newly born child to life and health." (Dissenting opinion of Judge Miloslav Výborný on the decision Pl. ÚS 26/11). Výborný speaks here about the right of the born and the unborn to life and health. In her dissenting opinion on the same decision, judge Michaela Židlická stated: *"Considerations about the conditions of childbirth are complicated because it is necessary to pursue two legitimate goals in parallel, namely the well-being (rights) of the mother and the well-being of the child. In my opinion, however, it is not possible to increase the comfort of the mother during childbirth where the price for the exercise of her right to choose the place of birth would be the deterioration of the health care to which the child is entitled. According to Article 6 of the Charter of Fundamental Rights and Freedoms, everyone has the right to life, and human life is worthy of protection even before birth. According to Article 3(1) of the Convention on the Rights of the Child, the best interests of the child must be the primary consideration in any activity concerning children, according to Article 6(2) of the same document, the contracting parties are obliged to ensure the preservation of life and development of the child to the highest possible extent. I believe that it is not decisive whether home birth is riskier by one, three, five, ten or fifteen percent, because the mere fact that it poses a threat to the health of the child that can be avoided is considered to be a sufficient reason for the state to refuse active support for home births."* (Dissenting opinion on the justification of the decision Pl. ÚS 26/11). However, it must be said that it is not really possible to reliably deduce any "conservative" attitude from the cited divergent positions.

⁶¹ According to a 2007 BBC report, most European countries allowed abortion on request in the first trimester, i.e. without giving reasons (Europe's abortion rules, BBC, 12.2.2007, online: <http://news.bbc.co.uk/2/hi/europe/6235557.stm> [05-12-2025]).

⁶² World's Abortion Laws. Center for Reproductive Rights, online: <https://reproductiverights.org/maps/world-abortion-laws/> [05-12-2025]. This fact is not so

Overall, the international and comparative dimension cannot make a decisive contribution to the Slovak debate on the interpretation of the constitutional provision on the protection of human life before birth. This follows from the fact that the relevant constitutional clause is relatively specific and lacks direct counterparts in other constitutions. Nevertheless, given the complexity of the issue, it was appropriate to address this dimension, at least briefly, in order to substantiate this conclusion.

surprising, as Poland is a country with a strong conservative tradition. In Polish history, we can find several legal thinkers who advocated a more consistent protection of human life before birth. For example, Professor Andrzej Stelmachowski, who after 1989 participated in the transformation of the Polish legal system and who quite strongly opposed the existing abortion legislation. (see KORZYCKA, M. – WOJCIECHOWSKI, P. Andrzej Stelmachowski (1925–2009). In BÉRIER, F. L. de – DOMINGO, R. (eds.). *Law and Christianity in Poland: The Legacy of the Great Jurists*. Abingdon: Routledge, 2023, pp. 291-292). On the current Polish situation, see, for example, MIKLÓSSYOVÁ, L. The Rule of Law in the Context of the tightening of Abortion Legislation in the Republic of Poland. In ADAMKOVIČ, M. – HOCHMANN, R. – ŤAŽKÁ, V. (eds.). *Bratislava Legal Forum 2024: Europeanization of Criminal Law and the Principles of the Rule of Law*. Bratislava: Faculty of Law, Comenius University, 2024, pp. 317-330, online:

https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/BPF/2024/BPF_2024_trestne_pravo.pdf [03-01-2026]; VALC, J. Legal Regulation of Abortions in Poland and (Im)possibility of its Circumvention through Abortion Tourism. In *Právnik*, 2022, Vol. 161, No. 8, pp. 729-752, online:

https://www.ilaw.cas.cz/upload/web/files/pravnik/issues/2022/8/2_Valc_729-752_8_2022.pdf [03-01-2026]. However, Poland is not the only country to have tightened abortion laws. For a (Slovak) discussion of certain changes in the American environment, see, for example, MIKLÓSSYOVÁ, L. – ŠIMEKOVÁ, A. Criminalisation of Abortions in the USA. In ŤAŽKÁ, V. (ed.). *Milestones of Law in the Central European Area 2024*. Bratislava: Faculty of Law, Comenius University in Bratislava, 2024, pp. 719-732, online:

https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/Milniky_zborniky/Milniky_2024.pdf [03-01-2026]; BALOG, B. The Obligation to Live (Even at the Cost of Life). In CIBIK, S. – BUJŇÁK, V. – ŤAŽKÁ, V. (eds.). *Bratislava Legal Forum 2023: State as a Protector and Violator of Individual Rights*. Bratislava: Faculty of Law, Comenius University, 2023, pp. 13-17, online:

https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/BPF/2023/BPF_2023_u_stavne_pra_vo.pdf [04-01-2026].

3.

AN ATTEMPT TO INTERPRET THE CONSTITUTIONAL CLAUSE

The dispute over the protection of human life before birth, dealt with by the Constitutional Court between 2001 and 2007, concerned the extent of legal protection afforded to the fetus during the first twelve weeks of pregnancy (when abortion may be performed without giving a reason). In light of the petitioners' petition—who, as noted above, originally invoked the fetus's right to life as standing in opposition to the woman's right to privacy—the first fundamental question to be addressed was whether the holder (subject) of the right to life is the *nasciturus* (fetus) or only a person who has already been born.⁶³

The Constitutional Court's answer to this question was in the negative: the fetus is not protected by the Constitution as a subject, but only as an object. The Court arrived at this conclusion concerning the absence of the fetus's legal personhood through linguistic (or perhaps linguistic-teleological) and systematic arguments. The linguistic argument was based on the differing textual formulation of the constitutional guarantees afforded to human life before birth, as compared to those granted to "everyone" (understood as referring to persons already born). Unlike "everyone," who *"has the right to life"* [within the meaning of the first sentence of Article 15(1)], the fetus (within the meaning of the second sentence) is merely described as *"worthy of protection."* Although the Constitutional Court rejected the view that the second sentence constituted merely a non-binding proclamation (i.e. a normatively irrelevant and unenforceable provision),⁶⁴ it nevertheless considered it clear that the provision in question protects the fetus only as an object (a constitutional value), and not as a subject possessing rights, such as the right to life: *"From a comparison of the literal interpretation of the first and second sentences of Article 15 (1) of the Constitution, in particular, the*

⁶³ Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/ 01 of 4 December 2007, II. A., 1.1, p. 27.

⁶⁴ The rejection of the view that this would be a non-binding provision can also be seen in the discussion among federal MPs, who in 1991 debated the wording of the provision in question as part of the Charter from which the provision was later incorporated into the Constitution (specifically in the speech of Vlastimil Ševčík, who opened the entire discussion; although, as will be noted in the conclusion, Ševčík was not satisfied with the adopted wording and believed that it was merely a proclamatory statement).

*phrases 'has the right to life' v. 'worthy of protection' it follows that the constitution-maker quite clearly distinguishes in Article 15 of the Constitution between the legal status of a nasciturus and the legal status of a born person."*⁶⁵

In essence, this constitutes an application of a linguistic-teleological *argumentum ex dicto*: a seemingly unexpected difference in wording reveals the intention of the rational constitution-maker to distinguish between the normative status of "everyone" (in the sense of "persons already born") and "human life before birth".⁶⁶ A conservative opponent of such an interpretation may argue that the second sentence merely serves to clarify the first—namely, that the first sentence also encompasses human life before birth. From the perspective of the *ex dicto* argument, however, it appears quite clear that the second sentence addresses something distinct from the first and constitutes a separate norm. After all, the constitution-maker could easily have employed the formulation "everyone has the right to life from conception" (which, as noted above, was in fact proposed during the discussion in the Federal Assembly when the Charter was adopted, but such a formulation was ultimately rejected). Alternatively, both propositions could have been expressed within a single sentence, separated, for example, by a semicolon: "Everyone has the right to life; human life is worthy of protection even before birth." It is therefore also possible to rely on a syntactic interpretation that supports the *argumentum ex dicto*.⁶⁷

On the other hand, from the perspective of a formal-systematic interpretation, it may be argued that if the rational constitution-maker had truly intended to shift from referring to a subjective right to life to the protection of the unborn as an object of law, such a change would more likely have been expressed in a separate paragraph—namely, in an additional paragraph (e.g. a non-existent fifth paragraph)—rather than within the same paragraph. This is particularly so given that the right to

⁶⁵ Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/ 01 of 4 December 2007, II. A., 1.2, p. 28.

⁶⁶ On this argument, see MRVA, M. – TURČAN, M. *Interpretation and Argumentation in Law*. 2nd ed. Bratislava: Wolters Kluwer, 2024, pp. 100-101.

⁶⁷ The use of semicolons is not uncommon in the Constitution or the Charter. There are nine semicolons in the Charter and thirteen in the Constitution at the time of its adoption, and twenty-two at the time of the delivery of the decision of the Constitutional Court.

life is otherwise elaborated across the subsequent paragraphs of the provision. Thus, while the syntactic argument supports a distinction between two norms within a single paragraph (the right to life versus the protection of the unborn as an object), the formal-systematic interpretation calls such a distinction into question. The fact that both sentences are located within the same paragraph, followed by other paragraphs addressing consistently the right to life, may instead support the conclusion that the provision concerns a single normative idea—namely, the subjective right to life.

In addition to the linguistic and teleological arguments outlined above, the Constitutional Court also relied on a material-systematic argument in concluding that the second sentence of Article 15(1) protects the fetus as an object and not as a subject. This argument was based on the broader constitutional context, from which, according to the Court, it can be clearly inferred that the Constitution does not recognize the legal personhood of the fetus: *"This linguistic interpretation is also supported by a systematic interpretation. The catalogue of fundamental human rights and freedoms, set out in the second section of the second title of the Constitution, begins with Article 14, according to which everyone has the capacity for rights. There is no doubt that the term 'everyone', as used in this (as well as in other) provisions of the Constitution, must be understood as referring to all persons who have been born (see, e.g., Čič, M. et al., Commentary on the Constitution of the Slovak Republic, Martin: Matica Slovenská, 1977 [sic!], p. 82; Prusák, J., Theory of Law, Bratislava: UK, 1995, p. 279). Legal capacity thus arises at birth and ends at death or upon a declaration of death. Accordingly, the Constitution fundamentally links the emergence of subjective rights to the moment of a person's birth, rather than to conception. In the context of the issues addressed in these proceedings, it is also appropriate to refer, for example, to Article 41(3) of the Constitution, according to which children born within and outside marriage have equal rights."*⁶⁸ The claim that the term "everyone" in Article 14 and elsewhere in the Constitution is limited to persons who have been born is supported in legal doctrine. However, this can serve only as a supplementary argument. The Constitutional Court further refers to Article 41(3) (which provides for the equal status of children born within and outside marriage), yet offers

⁶⁸ Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/ 01 of 4 December 2007, II. A., 1.2, pp. 28-29.

no more compelling justification for its conclusion that legal personhood arises only at birth. In essence, the Court treats this premise as self-evident, although it need not be so. Admittedly, the conclusion that legal personhood arises already at conception would be far-reaching and could entail the unconstitutionality of certain existing sub-constitutional provisions. For example, an unborn child would have to inherit irrespective of whether it was born alive or not, and its intentional unlawful killing would have to be treated as homicide rather than as a distinct criminal offence protecting the mother. Such considerations, however, amount rather to a form of economic or consequentialist reasoning and their relevance may be questioned on the ground that, where the human person and human dignity are concerned [Article 12(1) and Article 19(1)], cost-benefit analysis is inherently problematic.

Concerning Article 41(3) of the Constitution (Article 32(3) of the Charter), the reference to the equal rights of children born within and outside marriage does not appear as a decisive argument—which is also implicitly acknowledged by the Constitutional Court, as it relies on this provision only in an auxiliary manner. The explicit reference to "birth"—which, apart from the second sentence of Article 15(1), is otherwise largely absent from the constitutional text—must be understood in its historical context. This provision responds to an old-day social and legal marginalization of children born outside of marriage, a phenomenon that had significant legal consequences in earlier periods. Such discrimination did not arise, however, where the parents married during pregnancy and the child was subsequently born within marriage. The reference to birth in Article 41(3) therefore need not be connected to the issue of legal personhood at all. Rather, it may be understood as a normative assurance that the Constitution rejects such forms of "old morality" and does not accept the historical practices of moral and legal exclusion of children born outside of marriage. In this connection, Livia Trellová has pointed out that the provision in question (Article 41(3) of the Constitution of the Slovak Republic; taken over from Article 32(3) of the Charter of Fundamental Rights and Freedoms) is rooted in the case law of the European Court of Human Rights, in particular the landmark decision in *Marckx v. Belgium*, and she states that *"the existing case law of the ECtHR in relation to the legal status of illegitimate children tends to eliminate various forms of*

discrimination between legitimate and illegitimate children."⁶⁹ The focus of the provision is therefore on the problem of discrimination, not on the problem of legal personhood. The search for an answer to the question of when legal personhood is acquired under that provision is therefore highly dubious.

In addition, a conservative may point to Article 12(1), which precedes both Article 14—relied upon by the Constitutional Court, and interpreted as clearly presupposing legal personhood only from birth—and the aforementioned Article 41(3). As the foundational provision of the constitutional catalogue of fundamental rights, Article 12(1) provides that all *people* are free and equal in dignity and rights. At the same time, the second sentence of Article 15(1) refers explicitly to *human* life before birth. A conservative argument may therefore proceed on the basis that the unborn constitutes a human being in the same sense as the born, and should thus accordingly be regarded as equal. Such an argument, however, is not persuasive. As the philosopher Peter Singer has pointed out, the adjective "human" does not necessarily entail that the entity in question is a human being (person).⁷⁰ The claim that it is a human being in the morally relevant sense (based on the fact that it is an entity of the human species in the biological sense) is at the very least disputable. The question of how to define a human being as a moral (and, consequently, legal) subject is, in essence, a bioethical and socio-ethical one. The Constitutional Court's decision also engages, at least in part, with these considerations, to which I will return later.

In addition to the two aforementioned primary arguments (linguistic-teleological and material-systematic), the Constitutional Court also advances an argumentum ad absurdum. It argues, first, that acceptance of the petitioners' thesis concerning the legal personhood of the fetus would place them in tension with their own proposal, since *"they themselves admit that not every ground for abortion would necessarily be contrary to the subjective right of the nasciturus to life within the meaning of Article 15(1) of the Constitution."*⁷¹ Second, the Court maintains that such

⁶⁹ TRELLOVÁ, L. Article 41. In OROSZ, L. – SVÁK, J. et al. *The Constitution of the Slovak Republic. Commentary. Volume I*. Bratislava: Wolters Kluwer, 2021, p. 543.

⁷⁰ SINGER, P. *Practical Ethics*. New York: Cambridge University Press, 1979, pp. 74-76, 117 ff.

⁷¹ Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/ 01 of 4 December 2007, II. A., 1.2, p. 29.

an attitude raises *"on the one hand, the problem of a dangerous emptying of the very concept of the fundamental right to life and, on the other, the problem of the creation of different categories of the right to life, not all of which would have the same weight. Especially the aforementioned problem could have potentially destructive effects on the Slovak Republic as a state governed by the rule of law."*⁷² The Court bases these two theses on the assumption that abortion must remain permissible in cases involving a threat to the woman's health, severe fetal impairment, or pregnancy resulting from rape. At the same time, it argues that recognizing the legal personhood of the fetus would either entail the exclusion of abortion in each of these circumstances or, alternatively, lead to the implicit recognition of different categories of the right to life. As the Court puts it: *"If the second sentence of Article 15(1) of the Constitution were to be understood as establishing an absolute subjective right, and if Article 15(4) of the Constitution were subsequently applied (which, as noted above, necessarily involves an element of proportionality), abortion would have to be excluded even on grounds relating to the protection of the pregnant woman's health, fetal impairment, or pregnancy resulting from a criminal offence—contrary to what the petitioners themselves demand. This is because the nasciturus' right to life could not, within a standard balancing of fundamental rights, be outweighed by the protection of the woman's health or by other interests, typically associated with the protection of her privacy. Conversely, if, in the petitioners' view, Article 15(4) of the Constitution were to justify abortion on medical, genetic, or social grounds, this would result in a problematic dilution of the very concept of the fundamental right to life, as well as in the emergence of different categories of that right, not all of which would carry equal weight."*⁷³

However, a consistent pro-life position based on the recognition of the fetus's legal personhood need not maintain that abortion must be excluded even in cases involving a threat to the woman's health, as assumed by the Constitutional Court.⁷⁴ From the moral and legal principle

⁷² Ibid., II. A., 1.2, p. 30.

⁷³ Ibid.

⁷⁴ The Constitutional Court even states elsewhere in the same decision that recognizing a fetal right to life would entail the exclusion of abortion even in cases where the woman's life is at risk (the court does so with reference to the opinion of the European Commission of Human Rights). The statement addresses the question of whether the fetus falls within the scope of Article 2 of the European Convention on Human Rights, which guarantees the right

of self-defense, it is possible to derive the legitimacy of a woman's request for an abortion where the continuation of the pregnancy would endanger her life or health. Thus, abortion in cases involving a threat to the woman's health need not be excluded.⁷⁵ As far as abortion in cases of rape or severe fetal impairment is concerned (not to mention social reasons), a consistent position based on the legal personhood of the fetus would, in principle, exclude such grounds. At the same time, however, such a position would remain internally coherent and would not entail the creation of different categories of the right to life. Thus, irrespective of how the petitioners themselves understood the matter, it is far from obvious that recognizing the fetus's legal personhood would have the alleged absurd consequences.

At this stage, it may be observed that, within the core legal argumentation concerning the legal personhood of the unborn, the linguistic-teleological argument (*argumentum ex dicto*) and the formal-systematic argument (based on the fact that both sentences appear within the same paragraph) stand in opposition to one another. The linguistic-teleological argument finds additional support in the syntactic

to life, while paragraph 2 provides for exceptions to this right, including "*defence of any person from unlawful violence*," which is clearly intended to reflect the concept of necessary defence. The Court states: "*The provision of Article 2(2) of the Convention therefore does not apply to the fetus, and thus to the legal regulation of abortion, because such an interpretation would essentially deny any possibility of abortion, including for reasons of the protection of the life and health of the mother (i.e. for a reason whose constitutionality is not disputed even by the petitioners).*" (Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/01 of 4 December 2007, II. A., 3.1, p. 42). It is, however, clear that the exception in question must be interpreted broadly under the Convention and should encompass unlawful situations, not only unlawful acts, and should be understood as an expression of the principle of self-defence. For example, if a person is threatened by a mentally ill individual, this does not constitute "violence" in the sense of a deliberate act, as the person lacks intent, but rather an objective legal fact (see, for example, HARVÁNEK, J. et al. *Theory of Law*. Plzeň: Aleš Čeněk, 2008, p. 314). It is precisely within this category that situations in which the fetus threatens the life of the mother could be placed. Therefore, one may contest the view of the Constitutional Court (and of the European Commission of Human Rights, from which this view is derived) that the application of Article 2(2) of the Convention to the fetus would necessarily lead to the exclusion of abortion even in cases where the woman's life is at risk.

⁷⁵ However, how this idea is applied will depend on how self-defense is understood and which ethical theory is chosen. For example, the so-called *principle of double effect* rules out certain ways of causing the death of the fetus, even if they are seen as acts of "self-defense". The distinction between *killing* and *letting die* might play its role.

structure of the provision, namely the separation of the two sentences rather than a single sentence divided by a semicolon. By contrast, the material-systematic argument based on Articles 14 and 41(3) remains open to contestation and may, at least in principle, be countered by a linguistic-systematic argument drawing on Article 12(1). Such a line of reasoning, however, inevitably leads into metaphysical and ethical questions—issues that fall outside the scope of the present analysis and whose proper place within constitutional adjudication itself may reasonably be questioned.

It therefore appears that the question of the legal personhood of the unborn cannot be resolved with sufficient clarity on the basis of these arguments alone. Although the Constitutional Court presents the issue as relatively straightforward, and although the linguistic-teleological interpretation may indeed appear somewhat more persuasive than the formal-systematic one, this does not seem sufficient in itself to justify a definitive conclusion.⁷⁶ As shown in the second chapter, neither the comparative argument nor the international-conformist argument (which was also invoked in the constitutional dispute in question) is of significant assistance. Neither provides a conclusive basis for interpreting the relevant constitutional provision. It is therefore appropriate to turn to historical interpretation, in particular to an intentionalist argument.

In their proposal, the petitioners relied on the intentions of the MPs who voted to adopt the Charter—from which the provision in question was

⁷⁶ In the words of Marian Kokeš: *"With regard to the wording of the second sentence of the commented provision ('Human life is worthy of protection even before birth'), it must be stated that the Czech constitution-maker did not contribute much to the solution of the first question, i.e. the determination of the beginning of human life. It leaves the problematic question of the possible application of the right to life and the area of prenatal development of human life completely unclear and open. The quoted wording of the second sentence is the result of an effort to find a compromise solution between two opposing approaches, where in general, supporters of one plead for extending the scope of protection of the right to life to the fetus of the mother from the very conception, while the supporters of the second approach take the position that the right to life can be applied strictly only from the moment of birth (as follows from the explanatory memorandum to the Charter [Kokeš probably wants to say "from the parliamentary debate on the Charter"; author's note], the wording 'Everyone has the right to life from conception' was also proposed). The normative value of the second sentence thus appears to be very ambiguous."* (KOKEŠ, M. Art. 6 The Right to Life. In WAGNEROVÁ, E. et al. *Charter of Fundamental Rights and Freedoms. Commentary*. Prague: Wolters Kluwer, 2012, p. 156).

subsequently incorporated into the Constitution. However, the petitioners did so in a somewhat ambivalent manner, as it remained unclear whether they understood the provision as protecting the fetus as a subject or merely as an object: *"The protection of unborn life undoubtedly derives from Article 15 (1) of the Constitution, the wording of which was taken verbatim from Article 6 (1) of the Charter of Fundamental Rights and Freedoms (Constitutional Act No. 23/1991 Coll., establishing the Charter of Fundamental Rights and Freedoms as a constitutional law of the Federal Assembly of the Czech and Slovak Federative Republic—hereinafter referred to as 'the Charter'). On the basis of the report on the 11th joint session of the House of the People and the House of Nations of 8-11 January 1991, which can undoubtedly help to identify the meaning and purpose of the norm in question, it can be concluded that, from a number of circumstances surrounding the adoption of the regulation in question (for example, the fact that the members who proposed to explicitly enshrine the protection of life from conception abandoned their amendments after the proposal was submitted, which was finally approved) that the regulation in question was adopted in order to protect life from conception. Since there was no change in the factual circumstances or legal doctrines between the approval of the Charter and the approval of the Constitution, the purpose of the second sentence of Article 15(1) of the Constitution must be interpreted in the same way as the ratio legis of the second sentence of Article 6(1) of the Charter. [...] However, the provision of Section 4 of the Abortion Act allows abortion to be performed in the first 12 weeks of pregnancy without proving a specific reason, only on the basis of a woman's request, which means that unborn human life up to the 12th week of its development does not enjoy any protection. Thus, the legal regulation of abortion grants protection to unborn life only after 12 weeks of its development, while the unborn life in the first 12 weeks is no less worthy of constitutional protection than the unborn life after 12 weeks of its development."*⁷⁷

The Constitutional Court commented on the historical (intentionalist) argument in question in the following words: *"In their proposal, the petitioners also argue with the history of the creation of the Charter of Fundamental Rights and Freedoms. According to the petitioners, the history of the creation of the Charter of Fundamental Rights and*

⁷⁷ Cited from the decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/01 of 4 December 2007, I., p. 8.

Freedoms, Article 6(1) of which was taken over verbatim into the Constitution of the Slovak Republic in 1992, itself answers the key question of the admissibility of abortion in the negative, since this provision was adopted with the aim of protecting life from conception. In this point, the petitioners refer to the opinions of several members of the Federal Assembly of the Czech and Slovak Federative Republic during the discussion on the draft Charter. In this regard, the Constitutional Court notes that the argument by the intention of the historical constitution-maker (the method of historical interpretation) has only a subsidiary place in the interpretation of the Constitution. What matters is not what the individual members of the constituent body intended by a certain constitutional provision, but what text they adopted after the ongoing discussion. Representative bodies (constituent bodies) are made up of tens or hundreds of people, while a certain subjective opinion of a member or members of a representative body cannot be identified with the objective meaning of the law. Moreover, it is precisely because of the collective nature of the representative body that the very concept of the intention of the legislator or the constitution-maker is a fiction which must be treated with great caution, especially in the case of judicial review of constitutionality. At the same time, the Constitutional Court considered it necessary to emphasize that a detailed analysis of the debate in question in the Federal Assembly of the Czech and Slovak Federative Republic may also lead to other conclusions than those formulated by the appellants regarding the 'intention of the constituent author' translated into the wording of Article 6(1) of the Charter. The historical method of interpreting the Charter of Fundamental Rights and Freedoms is also of lesser importance because there is no detailed explanatory memorandum on the Charter, which is common in European countries as far as similar documents are concerned (e.g. Poland from recently adopted constitutional documents). There is no such detailed report in connection with an analogous provision of the Constitution of the Slovak Republic. Therefore, the adoption of an identical constitutional text by the 'Slovak constitution-maker' cannot mean that the 'Slovak constitution-maker' simultaneously identified himself with the views of several members of the Constituent Assembly—the Federal Assembly of the Czech and Slovak Federal Republic. It follows that for the interpretation of Article 15(1) of the Constitution, it is not the subjective opinions of some of the members of the constituent body of the Czech and Slovak Federative Republic, presented more than 16 years ago, that are essential for the interpretation of Article 15(1) of the Constitution, but the

objective meaning of the constitutional text itself. Therefore, the Constitutional Court did not accept this objection of the petitioners either."⁷⁸

The Constitutional Court's arguments in response to the petitioners' reliance on historical (intentionalist) interpretation may be grouped into three main points: (1) subjective historical interpretation is only an auxiliary method of interpretation; (2) the transfer of the intentions of the members of the Federal Assembly to those of the Slovak National Council, which later adopted the Constitution of the Slovak Republic using identical wording, is rather problematic; and (3) the intention of the constitutional legislator itself may be inferred from the relevant records of the federal parliamentary debate in a manner different from that proposed by the petitioners.

Regarding the first point, the Constitutional Court's position can readily be accepted. Arguments based on explanatory memoranda or parliamentary session records constitute only an auxiliary method of interpretation.⁷⁹ It should also be noted, however, that the petitioners did not themselves claim that historical interpretation should serve as a primary method. And at this stage of the analysis, we are the ones resorting to auxiliary interpretive methods.

With regard to the second point, this objection had already been anticipated by the petitioners in their petition, and their response may, in principle, be regarded as reasonable. Argumentation based on explanatory memoranda or parliamentary transcripts almost invariably relies on a certain degree of fiction or assumption. A well-known example is the *Paktentheorie*, which posits that, together with the wording of a provision, the legislator also implicitly adopts the reasoning set out in the explanatory memorandum accompanying the draft of a statute or constitutional amendment.⁸⁰ And unless there were any fundamental doctrinal or social changes, it seems quite rational to assume that the original intent was taken over when the text was taken over verbatim by the Slovak constitution-maker in the short time. Even the explanatory

⁷⁸ Ibid., II. B. 5, p. 54.

⁷⁹ See, for example, MRVA, M. – TURČAN, M. *Interpretation and Argumentation in Law*. 2nd ed. Bratislava: Wolters Kluwer, 2024, pp. 39, 193 and 195.

⁸⁰ MELZER, F. *Methodology of Finding Law: Introduction to Legal Argumentation*. 2nd ed. Prague: C. H. Beck, 2011, p. 120.

memorandum to the government's draft of the Constitution of the Slovak Republic actually states continuity with the Charter: *"The submitted draft of the Constitution takes over and further develops the regulation of fundamental human rights and freedoms contained in the Charter,"*⁸¹ whereas the second sentence of Article 6 (1) of the Charter was not further developed in Article 15 (1) of the Constitution; rather, it was simply adopted by copying the same text.

However, there is a third point raised by the Constitutional Court. An examination of the parliamentary debate in the Federal Assembly suggests quite clearly that an intentionalist argument speaks against recognizing the right to life of the fetus. Prior to the vote on the final wording of the provision in question, two competing proposals remained under consideration: Michálek's formulation: *"Everyone has the right to life from conception,"* and Fišera's formulation: *"Human life is worthy of protection even before birth."* The latter was ultimately adopted by an overwhelming majority of votes.⁸² Fišera stated that his proposal represented a relaxation of the requirement advanced by others, in particular Michálek. In this sense, it falls short of recognizing a right to life, as provided for in some of those competing proposals. Michálek appears to have been fully aware of this. Indeed, this is already suggested by his statement that he wished to remain principled, would not compromise, and would not withdraw his proposal. How, then, can one explain the enthusiasm with which Fišera's proposal was received by a number of conservative (Christian) MPs, and even by entire parliamentary groups? Is it possible that they understood it as a provision with a different wording—one that appears, at first glance, "milder"—yet, in fact, carries the same substantive meaning?

⁸¹ Explanatory Memorandum to the Government's Draft Constitution of the Slovak Republic, p. 4, online:

https://www.nrsr.sk/dl/Browser/DsDocumentVariant?documentVariantId=17346&fileName=rozne_01.pdf&ext=pdf [01-10-2025].

⁸² The vote on Michálek's proposal was as follows: House of the People—in favor: 36, against: 38, abstentions: 46, House of Nations (Czech part)—for: 13, against: 21, abstentions: 26, House of Nations (Slovak part)—for: 28, against: 13, abstentions: 16. The vote on Fišera's proposal was as follows: House of the People—for: 111, against: 2, abstentions: 7, House of Nations (Czech part)—for: 52, against: 3, abstentions: 6, House of Nations (Slovak part)—for: 53, against: 0, abstentions: 4. For an overview of the proposals of Article 6(1) [originally Article 7(1)] of the Charter, see Appendix 1 of this monograph.

From the perspective of the assumption of a rational constitution-maker, such an affirmative answer appears unconvincing. Having in mind the development of the parliamentary discussion (described in Chapter 1) and the legal-hermeneutic principle of *rejecting the discarded alternative*,⁸³ it is necessary to conclude that human life before birth is not protected as a subject, but as an object of law (at least at the early stage of development; but rather throughout the whole time—in contrast to Michálek's formulation mentioning the right to life from conception, which belongs, understandably, to a subject of law). As we have seen, in the discussion, Kvasnička drew attention to the difference in the protection of the subject and the object. His own amendment operated with the subject, as he talked about *the right* (it represented a "harsher" solution). Let us remember that he proposed the formulation: "*The right to the protection of human life and the basic conditions for its physical and mental development are guaranteed.*" However, he also stated: "*The absence of legal personhood as the bearer of the protection of life does not mean life before birth could not or should not become legally protected. Quite the opposite. Legal protection does not include only the subject, it can also be an object that requires legal protection, e.g. from a social, moral or other point of view.*"⁸⁴ As stated, the parliamentary debate explicitly addressed the distinction between protecting the unborn as a subject and as an object. Although Kvasnička himself advocated the protection of the unborn as a subject—namely, the recognition of a right to life irrespective of the stage of development—he also acknowledged the possibility of protecting the unborn as an object. In this context, Fišera's proposal, as a compromise between the formulations proposed by Michálek and Kvasnička, appears to reflect an effort to adopt this latter model, i.e., to protect human life before birth as an object of law. The difference between these two approaches is significant. Where the unborn is treated as an

⁸³ On this principle, see WINTR, J. *Methods and Principles of Interpretation of Law*. 2nd ed. Prague: Auditorium, 2019, p. 151; HORÁK, O. – OSINA, P. Historical Interpretation. In SOBEK, T. – KOTÁSEK, J. – HAPLA, M. (eds.). *Legal Argumentation*. Prague: C. H. Beck, 2024, p. 350. Horák and Osina state that "*It does not have to concern only amendments, but may relate to the entire course of the legislative process (including committee discussions) or to subsequent debates on amendments.*" (Ibid.).

⁸⁴ Stenoprotocol No. 11 of the joint sitting of the House of the People and the House of Nations of the Federal Assembly of 8 January 1991, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=83168> [09-09-2025].

object of legal protection, proportionality may justify abortion in certain circumstances—for example, in cases involving a serious risk of fetal impairment (such as Down syndrome) or where the pregnancy results from rape. By contrast, if the unborn is treated as a subject possessing the right to life, abortion would generally be permissible only in situations involving a threat to the life or health of the woman. Thus, the scope of protection afforded to the unborn as a subject would be broader than that resulting from its protection as an object.⁸⁵

It is therefore difficult to fully explain the enthusiasm of the conservative members of parliament. What is decisive, however, is that the analysis of the parliamentary debate suggests that, from the perspective of historical (intentionalist) interpretation of both the Constitution and the Charter, the conclusion that human life before birth

⁸⁵ Lucia Nedzbalová believes (in agreement with the Constitutional Court) that if the fetus were considered a legal subject, abortion would not be permissible even in situations where the woman's health is at risk. (NEDZBALOVÁ, L. The Right to Life in the Context of Abortion. In DÁVID, R. – SEHNÁLEK, D. – VALDHANS, J. (eds.). *Days of Law 2010*. Brno: Masaryk University, 2010, p. 2917, online: https://www.law.muni.cz/sborniky/dny_prava_2010/index.html [02-10-2025]). As I have already demonstrated, this view can be contested. A different objection may be based on Thomson's thought experiment of the brilliant violinist (who cannot survive without our blood, and we are therefore forcibly connected to his bloodstream; the coercive nature of the act should lead to the intuitive conclusion that we have a moral right to disconnect). This objection would argue that even if the fetus is a legal subject, abortion remains morally permissible after rape. However, the acceptability of abortions based on this objection depends on the broader theoretical context. For example, some libertarians who distinguish between killing and letting die (not to mention proponents of the Aristotelian–Thomistic Natural Law tradition and others) would disagree with the current practice of abortion (where the fetus is directly killed), even if Thomson's example was accepted. It is interesting that the group of 31 petitioners clearly understood the fetus as a subject of law (which poses a problem from the perspective of their attempt at a historical-subjective interpretation, since the plenary session rejected Michálek's formulation: *"Everyone has the right to life from conception,"* and Ševčík also reported that the committees rejected the formulation: *"Everyone has the right to be born"*), while at the same time the group of petitioners admitted that abortion in cases of rape is legitimate: *"The legal regulation of abortion should therefore express due respect for the right to life and allow for its restriction only in those exceptional cases in which the interest in protecting a woman's constitutional right to private life does not impose an obligation on the legislator to prohibit abortion (e.g. if the pregnancy is the result of a criminal offence or the fetus is severely damaged)."* (Cited from the decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/01 of 4 December 2007, I., p. 9). Paradoxically (pragmatically?) they were in harmony with Judith J. Thomson (for her famous argument, see THOMSON, J. J. and Defense of Abortion. In *Philosophy & Public Affairs*, 1971, Vol. 1, No. 1, pp. 47-66, online: <https://www.jstor.org/stable/2265091> [30-10-2024]).

is protected as an object (i.e., as a constitutional value), rather than as a subject, is clearly more persuasive. Consequently, it is not appropriate to speak of a right to life of the fetus. Moreover, the petitioners themselves appear to have revised their position during the proceedings before the Constitutional Court, ultimately arguing only for enhanced protection of the unborn as an object.⁸⁶

This raises a further question: How should the issue of protecting the fetus as an object of law be assessed? Clearly, the intentionalist argument cannot support the recognition of a right to life of the fetus. But might it nonetheless support the case for stronger protection of the unborn as an object—for instance, by implying a need to establish material conditions for the permissibility of abortion? The key issue, then, is how the voting members of the Federal Assembly understood the wording of the second sentence of Article 6(1) of the Charter—specifically, what their presumed common intention was with respect to the protection of human life before birth as a constitutional value. Another words: the question is whether the historical interpretation advanced by the 31 petitioners in the constitutional dispute between 2001 and 2007 can be regarded as persuasive, at least insofar as it concerns the protection of the fetus as an object. At the same time, given the need to rely on a certain degree of fiction or presumption regarding a unified intention within a collective body, any affirmative conclusion in this respect will inevitably retain an element of assumption.⁸⁷ Can we (re)construct it from the discussion?

If Christian members of parliament, as well as other voting members, could not reasonably have understood Fišera's proposal as recognizing a right to life of the fetus, two possible interpretations remain: (1) that it constitutes a legally enforceable regulation of the protection of the fetus as an object of law, or (2) that it merely articulates a non-binding recommendation for the legislator.⁸⁸ It is clear that the subsequent dispute

⁸⁶ Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/01 of 4 December 2007, I., p. 23.

⁸⁷ Jan Wintr talks about *the principle of the presumed uniform will of the legislator*. (WINTR, J. *Methods and Principles of Interpretation of Law*. 2nd ed. Prague: Auditorium, 2019, p. 154).

⁸⁸ From the perspective of historical interpretation, the second alternative may theoretically be supported by Sokol's statement that the aim is to change the given area "*gradually, indirectly and towards the goal we are aiming for*," as well as by the statements of Čičmanec, who proposed a formulation partially similar to Fišera's (namely: "*Human life is worthy of protection from conception*"), stating that his proposal is "*softer than the proposal of colleagues*

between the 31 petitioners and the Constitutional Court regarding the historical interpretation at issue—albeit addressed only marginally and in a rather cursory manner in both the petition and the decision—does not concern a preference between these two alternatives. In its decision, the Constitutional Court explicitly characterizes human life before birth as a constitutional value and describes the view that the second sentence of Article 15(1) is non-binding as extreme, rejecting it accordingly. Moreover, the Court makes an effort to demonstrate that the fetus is not entirely devoid of legal protection even during the first trimester: *"The starting point of the petitioners is the claim that during the first 12 weeks of pregnancy, human life does not enjoy any legal protection. If that were the case, the legislature would indeed create an unconstitutional situation with regard to the wording of the second sentence of Article 15(1) of the Constitution. [...] In particular, the Constitutional Court cannot agree with the petitioners' claim that the Abortion Act does not provide any protection against the mother to unborn human life during the first 12 weeks of its development. The law preferentially establishes a mechanism (procedure) on the basis of which an abortion can be performed, while within this mechanism the interests of unborn human life are also taken into account. An analysis of the legislation contained in the Abortion Act shows that the mechanism expressed in Section 7 of that Act also works against a woman's ill-considered and short-circuited decision to have an abortion. This mechanism consists of four subsequent steps necessary to have her pregnancy aborted. The woman must first apply for an abortion in writing. She will then undergo a medical examination and an interview with a doctor, which must include information 'about the possible health consequences of abortion'. Admittedly, this instruction is also given in order to influence the pregnant woman to consider whether to abandon her intention to perform the procedure, which ensures not only the protection of the woman's health, but (although the cited part of Section 7 of the Abortion Act does not expressly state this) also the protection of unborn human life. At the same time, the doctor is probably the most suitable person to implement the*

Michálek and Lux and is more declarative." However, Sokol and Čičmanec could theoretically have understood the references to the aim and the declarative nature in the sense of the first alternative. It should also be recalled that the introductory statement of the rapporteur Ševčík emphasized the respected principle of the *"enforceability of the constituted law"* and the effort to avoid introducing the Charter *"into the realm of proclamations"*—i.e. legally unenforceable provisions.

protection of unborn human life and to intervene in the unique relationship between the nasciturus and his mother, also with regard to the text of the Hippocratic Oath, which doctors have traditionally taken for thousands of years and which personifies the basic medical code of ethics, while it obviously implies the fundamental ethical disagreement of the medical order with abortion. After an interview with a doctor, the woman must insist on the procedure (Section 7) and then pay a fee in accordance with Section 11 of the Abortion Act. Thus, the current regulation guarantees that the woman's will shall prevail over the protection of unborn human life only after mature consideration based on relevant medical information conveyed in an accessible form."⁸⁹ Therefore, when the Constitutional Court challenges the petitioners' interpretation of the intent of the historical constitution-maker, it does so not because it disagrees with the conclusion drawn from that interpretation regarding the need for some form of protection of the fetus, but rather because it considers the petitioners' particular interpretation of such intention indefensible from a historical perspective (whereas the Court differs from the petitioners in its assessment of whether the existing protection of the fetus—essentially limited to formal safeguards—is adequate).

In their dissenting opinions, several constitutional judges (Auxt, Brňák, Tkáčik, Luby, and Mészáros) disagreed with the majority's view that the protection of human life before birth is sufficient. They argued that the limits on abortion referred to in the majority opinion are merely formal in nature and cannot be equated with the substantive (material) limits that, in their view, are required by the constitutional provision in question.⁹⁰ From the perspective of historical interpretation, can it be

⁸⁹ Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/01 of 4 December 2007. B. 1. and B 3, p. 51.

⁹⁰ "Contrary to Article 15(1) of the Constitution, from the content of which unborn human life must be considered an extraordinary constitutional value enjoying special legal protection. In our opinion, the challenged legal regulation, as well as any other legal regulation, does not provide any relevant protection to unborn human life (up to the 12th week of its development), unlike the right to privacy, to a pregnant woman. If a pregnant woman then passed the constitutional test of the compared rights (the right of the unborn human life and the right to privacy of a pregnant woman), we think that in this case 'nothing' and 'something' were put into the ratio. In this respect, the reference of the majority voting judges to the mechanism (procedure) of performing abortions and to their charging (see Part II(B)(3) of the judgment justification) only confirms our statement. In our opinion, in the considered conflict between the right to life (because it is at the core of the protection of the constitutional value of 'unborn

assumed that the federal MPs, who approved Fišera's proposal by an overwhelming majority (216 to 5, with 17 abstentions), would have endorsed the Constitutional Court's position in principle? A conservative perspective would suggest that an affirmative answer is unlikely. The very fact that Fišera's proposal was conceived as a compromise between pro-life and pro-choice positions supports the view that it was intended to imply the introduction of certain material conditions governing the permissibility of abortion. This would have marked a departure from the legal framework in place at the end of the communist period, which, from the standpoint of fetal protection, imposed virtually no substantive constraints on abortion. Thus, the proposal may be understood as implicitly calling for the establishment of material conditions in sub-constitutional law regulating the admissibility of abortion, in the interest of protecting the unborn. Formal safeguards—such as the physician's obligation to inform the woman and the similar procedure—were already present at that time and therefore cannot be regarded as reflecting any

human life') and the woman's right to privacy, the majority voting judges have additionally subjected incomparable rights to the constitutional test, i.e. they have reached legal conclusions based on incorrect interpretive approaches." (Dissenting opinion of judges Ján Auxt, Peter Brňák and Rudolf Tkáčik on the justification of the judgment PL. ÚS 12/ 01 of 4 December 2007, A. 1.) "The result that the legislator has reached in relation to unborn life of less than 12 weeks does not indicate any balancing of constitutional rights, principles and values that have found themselves in mutual tension, but a complete and unconditional preference for one right over another constitutional value. Such a state of affairs not only does not respect the principle of proportionality as a binding balancing technique but is a resignation to the very obligation of balancing. Even if one of the variables is a constitutional value, not a subjective claim, i.e. if the legislator can consider the relationship between these variables rather than subject it to a precise balancing, such an assessment of the internal (axiological) and external (normative) quality of the norms that interact with each other cannot be based on a complete denial of one of them. Thus, irrespective of the modality of their linguistic expression, the two constitutional imperatives in question, addressed (also) to the legislature, require the legislature to take them into account and to give them their corresponding meaning in the context of its consideration. The absence of any trace of such deliberation inevitably adds a dimension of arbitrariness to the legislator's decision. In my opinion, there can be no doubt that the current legal regulation on abortion, which in the provision of Section 12 allows abortion to be performed in the first trimester without a reason, without an indication related to the protection of unborn human life (even without the obligation to declare any crisis situation on the part of the woman), is contrary to Article 15(1) of the Constitution, because such a legal regulation does not provide any and therefore not even minimal protection for unborn human life." (Dissenting opinion of judge Lajos Mészáros on the decision of the plenum of the Constitutional Court of the Slovak Republic in the case PL. ÚS 12/01, Conclusions, 1.).

significant normative shift.⁹¹ It is also worth mentioning that the last person to comment on the problem of protecting human life before birth before the vote was MP Molnár, who stated: *"Imagine that a 17-year-old girl comes with a confirmation from her parents that she is pregnant and that a certain procedure should be performed. What is the situation of the doctor who receives this paper? He receives a piece of paper on the table and is obliged by law to perform a certain procedure. If we were to translate this into an analogy, a doctor, let's say a surgeon, would be obliged to perform an intervention on the patient's order to remove his gallbladder tomorrow. Comparing human life with the gallbladder is ridiculous. I had a few more comments, but I agree with Professor Jičínský that it needs to be shortened. Once again, I would like to thank my colleagues and I would like to thank them for the fact that this parliament has a better and higher standard than it was before, and let me finally express my conviction that if this parliament were to express its opinion on the abortion law, the form that was approved at certain times would certainly not pass now."*⁹² It may also be recalled that the previously cited statements of opponents of recognizing a right to life of the fetus (Samková, Krejcar, Rothmayerová, and Ondrejko) —who ultimately appear to have supported Fišera's compromise proposal (at least Krejcar certainly did)—suggest that they, too, attributed value to

⁹¹ A conservative may theoretically respond to the objection that the protection of human life before birth can be achieved by means other than establishing the material conditions under which abortion is permissible (for example, by introducing baby boxes or through incentives for pregnant women, by reducing domestic violence or by improving general gender equality), with a claim that few people in Slovakia thought about baby boxes in 1991 (these were introduced later, in 2004) and that improving broader social conditions (such as the situation of pregnant women, domestic violence, or gender equality) represents a rather expansive reading of the second sentence of Article 15(1), although such measures are, of course, desirable. Therefore, if human life before birth is to be protected under the given provision, it is, in principle, primarily through setting limits on its direct destruction (abortion). Today, there is also an additional formal requirement, namely a 48-hour cooling-off period, which has been in place since September 2009 under the Health Care Act (No. 576/2004 Coll.). This undoubtedly has some impact (indeed, there have recently been quite heated discussions about extending this period), but it is still not a material condition, and the fate of the fetus remains in the hands of the woman in essentially all circumstances (i.e. regardless of whether there is a threat to her life or merely an inconvenient timing of pregnancy from the perspective of her personal plans). In any event, at the time of the decision in 2007, this requirement was not yet part of the legal framework.

⁹² Stenoprotocol No. 11 of the joint session of the House of the People and the House of Nations of the Federal Assembly of 8 January 1991, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=83178> [09-09-2025].

human life before birth. Several of them explicitly stated that they were personally opposed to abortion, or at least to its widespread practice. It may therefore be argued that the views of the voting MPs—i.e., the presumed unifying intention of the Federal Assembly—were grounded in the idea that the fetus should enjoy a higher level of protection than that provided by the sub-constitutional law in force at that time, even if they ultimately accepted the permissibility of abortion. In this sense, the historical interpretation advanced by the 31 petitioners, although only of auxiliary significance, appears to be correct. While the provision of the Charter in question (later incorporated into the Constitution) does not require a complete prohibition of abortion, it does support the introduction of certain material conditions for the permissibility of abortion in the first trimester.

A closer reading of the federal parliamentary debate, however, reveals at least one crack in this line of argument. It is the explicit statement of MP Fišera that the point is to "*open up space [...] for searching, without immediately getting into conflict with the current legal order.*"⁹³ Fišera did not appear to intend, through his amendment, to render the existing abortion legislation unconstitutional. Given the enthusiasm expressed by conservative members of parliament, however, it is possible that they did not fully understand his proposal in this way. They may instead have interpreted his reference to a potential conflict with the existing legal order—which he clearly sought to avoid—as concerning only a general prohibition of abortion, i.e., the entrenched recognition of a fetal right to life. On this reading, they may have accepted postponing such a far-reaching step, while at least endorsing the protection of the fetus as an object, coupled with an implicit expectation that the legislature would introduce material conditions for the permissibility of abortion. This interpretation finds some support in the statement of J. Horník, cited above: "*That is why this must be taken into account and life must be defended from the beginning, and that is why I am joining this proposal made by Mr. Fišera and I will be voting in favor of it. This proposal is another step in the moral renewal of our state and all our*

⁹³ Stenoprotocol No. 11 of the joint session of the House of the People and the House of Nations of the Federal Assembly of January 9, 1991, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=83174> [09-09-2025].

people."⁹⁴ Thus, it is possible that Horník understood Fišera's proposal in a manner similar to the position later advanced by the 31 petitioners in the proceedings before the Constitutional Court—namely, as providing protection to human life from its beginning, through an implicit requirement to introduce material conditions (limits) governing the permissibility of abortion. The difficulty, however, is that this understanding was evidently not shared by all MPs. For instance, Čičmanec—who had originally proposed the wording: "*Human life is worthy of protection from conception*"—withdrew his proposal after Fišera's amendment, explaining that the latter was "*all the more acceptable to more people*."⁹⁵ Thus, although the formulation "*worthy of protection before birth*" should, at least *prima facie*, have the same meaning as "*worthy of protection from conception*" (since conception necessarily precedes birth and thus falls under the term "before birth" without specifying any limit), Čičmanec himself did not regard the two as equivalent, instead characterizing Fišera's proposal as somewhat "softer" than his own. This suggests that at least some members of parliament may have understood the provision in this manner, thereby raising fundamental doubts about the existence of a unified intention of the Federal Assembly when adopting Fišera's amendment.

In light of the foregoing analysis, it is therefore not unreasonable to conclude that Fišera's proposal may have been understood by some as a deliberately open-ended formulation of the protection of human life before birth (as an object of law), the precise contours of which were left to be further developed through constitutional adjudication. At the same time, it is equally plausible that the provision functioned primarily as a political compromise, enabling the different parties involved to interpret the adopted text in accordance with their own positions.⁹⁶ The idea of a unified intention thus falls apart.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Andrei Marmor talks about the so-called *strategic speech*, the basic feature of which is that the speaker tries to say more than he is willing to say. (MARMOR, A. Can the Law Imply More Than It Says? On Some Pragmatic Aspects of Strategic Speech. In MARMOR, A. – SOAMES, S. (eds.). *Philosophical Foundations of Language in Law*. Oxford: Oxford University Press, 2011, p. 93). A legislative compromise can sometimes only be achieved if political actors

Were it not for Fišera's statement that he did not intend to bring his proposal into conflict with the existing abortion regulation—which suggests that, perhaps, he understood it as not requiring the introduction of material conditions governing the permissibility of abortion—and for Čičmanec's statement that Fišera's proposal was more acceptable to a broader range of MPs than his own (thereby indicating that Fišera's proposal did not necessarily imply protection from conception, in contrast to Čičmanec's own formulation), the argument advanced by the 31 petitioners regarding the existence of a unified intention of the Federal Assembly would be relatively compelling. However, these two statements from the parliamentary debate significantly undermine that argument and ultimately render it unconvincing.

This does not mean, however, that a unified intention *not to protect* the fetus during the first twelve weeks can be established. On the contrary, it is possible to recall the previously cited statement of J. Horník, which suggests that he understood Fišera's proposal as providing protection to human life from conception (albeit as an object of law). Moreover, it appears highly unlikely that a substantial number of conservative members of parliament would have supported the proposal had they understood it as offering no meaningful protection during the early stages of pregnancy—particularly given that the abortion debate primarily concerns that very period. Thus, although the formulation "*worthy of protection even before birth*" prevailed over the wording "*worthy of protection from conception*" (which had originally been rejected by the constitutional law committees and which, after being reintroduced, was ultimately withdrawn by Čičmanec himself, so that it was not even put to a vote), in this case the interpretive principle of the rejection of a discarded alternative cannot be satisfactorily applied. It cannot therefore be argued that, whereas Čičmanec's proposal would have protected human life before birth as an object from the moment of conception, Fišera's proposal protects it as an object only from some later point after conception. Indeed, even the Constitutional Court did not proceed on such an assumption. As shown above, the Court maintained that the wording in question requires the protection of the fetus already during the first twelve

representing particular groups of voters do not fully articulate what the adopted text is intended to mean, thereby allowing different interpretations.

weeks, albeit—according to the Court—only to the extent provided by existing sub-constitutional law, which is predominantly formal in nature.⁹⁷

The analysis of the federal parliamentary discussion does not support the existence of an alternative unified intention. Rather, it demonstrates that no such unified intention can be reasonably reconstructed. At most, it suggests that the provision in question emerged as a form of legislative compromise, one that was clearly understood in different ways by the various groups involved in its adoption. From the standpoint of historical interpretation, the only conclusion that can be drawn with some confidence is that the fetus is protected not as a subject, but as an object of law. Beyond that, historical interpretation provides little additional guidance.

Views on whether the sub-constitutional regulation of abortion—both at that time and today—provides adequate protection of the fetus as an object (a constitutional value) are, of course, diverse. While the petitioners and several dissenting judges considered such protection insufficient, the majority of the Constitutional Court reached the opposite conclusion. In the Court's view, the existence of formal conditions, supplemented by indirect protection in labor and criminal law, constitutes a sufficient implementation of the second sentence of Article 15(1) of the Constitution. This position, however, did not gain unanimous support: five of the twelve judges disagreed. Two of the dissenting opinions were based on the premise that the fetus holds a right to life and therefore treated its protection as the protection of a subject of law—a thesis that, as argued above, raises significant difficulties. A third dissenting opinion, that of judge Lajos Mészáros, correctly distinguishes between the protection of "everyone" and the protection of "human life before birth" as, respectively, the protection of a subject and of an object. At the same time, however, judge Mészáros's argument in favor of substantive (material) conditions governing the permissibility of abortion relies on the concept of human dignity, which is more naturally attributed to a subject than to an object. This raises a conceptual difficulty—namely, whether dignity can meaningfully be ascribed to a merely potential subject, i.e., to an entity that has not yet acquired legal personhood. In this respect, his

⁹⁷ A related contemporary issue is the use of abortion pills. For a discussion on this issue in the Slovak context, see KÁČER, M. Why is the ban on abortion pill in conflict with the Constitution? In *Právny obzor*, 2025, Vol. 108, No. 2, pp. 145-158.

position may also be seen to contain a certain internal tension. In any event, the correctness of the majority's conclusion—that formal conditions alone suffice to ensure constitutionally adequate protection of the fetus—is far from evident and remains open to question. This is reflected not only in the division of judicial opinion, but also in the underlying methodological uncertainties. Accordingly, if other interpretive methods are available that may help clarify the issue—while remaining within the framework of protection of the fetus as an object of law—it is appropriate to consider them.

One such method remains available and is directly connected to the broader aim of this tiny book: a material-systematic form of interpretation based on the Preamble of the Constitution. The Preamble articulates the values in light of which the Constitution is adopted, and among these values it refers to a tradition that may be relevant in the present context—namely, the Cyrilo-Methodian spiritual heritage. This reference may be understood as pointing to a set of cultural and moral values associated with a particular tradition (Christianity), the ethical framework of which tends to support the protection of human life before birth. However, the applicability of such an interpretive approach to determining the minimum level of constitutionally required protection of human life before birth—even when conceived as an object of law—remains open to doubt. At a minimum, it presupposes two contested assumptions: (1) that the concept of the Cyrilo-Methodian spiritual heritage can indeed be interpreted as a reference to Christian moral thought; and (2) that the constitutional Preamble has interpretive relevance.

I am aware that I am touching on a controversial and sensitive issue closely connected with the broader question of the relationship between the state (law) and religion. An attempt to interpret the Constitution in light of the concept of the Cyrilo-Methodian spiritual heritage—including Christian ethical values—inevitably raises the question of the state's declared non-affiliation with any particular religion, as expressed at the very outset of the Constitution [Article 1(1)]. In what follows, I will briefly outline what I take to be the strongest possible case for considering this reference in the Preamble in the context of the protection of human life before birth (i.e. the Christian morality argument).⁹⁸

⁹⁸ I want to add, however, that personally, I am not a supporter of some kind of "Christian republic". On the contrary, I am critical of such an idea and instead advocate rather the

How, then, should the concept of the Cyrilo-Methodian spiritual heritage be interpreted? It is relatively uncontroversial that it refers, at least in part, to the cultural and political dimensions of the historical development of the nation. Few would dispute that the reference in the Preamble alludes to the contribution of the Cyrilo-Methodian mission to the development of political independence and associated cultural achievements—such as the strengthening of Great Moravia’s autonomy from the Frankish Empire through ecclesiastical organization, the introduction of writing, and the advancement of education and legal culture. The more difficult question, however, is whether this concept should be confined solely to these political and cultural dimensions, or whether it should also be understood as encompassing a moral dimension—specifically, one rooted in Christian moral thought. One possible objection to such an interpretation is that a rational constitutional legislator, had he intended to align the Constitution explicitly with Christian morality, would have done so directly rather than relying on the relatively indeterminate concept of the Cyrilo-Methodian spiritual heritage. A further argument may be drawn from Article 1(1) of the Constitution, which proclaims that the Slovak Republic is not bound to any religion. On this basis, it might be argued that any reference to Christian morality as such is, in principle, excluded. Yet such a conclusion appears overly restrictive. The constitutional commitment to religious neutrality

concept of a secular state. The politicization of faith in our country today is strongly criticized by my colleague Prof. Ľubomír Batka, who warns against religious exclusivism as a risk to liberal democracy and emphasizes the importance of secularism, liberalism, and an open society, which, in his view, do not pose a threat to religion but, on the contrary, create an appropriate framework for the coexistence of diverse worldviews and protect plurality, autonomy, and the dignity of the individual. (BATKA, Ľ. Religious Exclusivism and Liberal Democracy: The Risks of Politization of Faith in the Slovak Republic. In TURČAN, M. (ed.). *Slovak Law, Ideology and Values*. Proceedings of a Scientific Conference. Bratislava: Faculty of Law, Comenius University, 2025, p. 117). In principle, I agree. However, I would argue that religious freedom is guaranteed only by a "non-aggressive" form of liberalism. And I can theoretically envisage the exceptional legitimacy of religious argumentation in liberal-democratic decision-making, particularly in the adoption of legislation concerning the protection of the unborn (innocent third parties), because this is an issue that touches on the core of our moral convictions regarding the value of human beings and their dignity (TURČAN, M. *Human Rights in the Context of Christian Theology Today*. 2nd ed. Prague: Advent-Orion, 2025, pp. 175–177). However, the question remains as to the optimality and practical necessity of this type of argumentation, as well as the appropriate configuration of its constitutional framework.

does not necessarily preclude the state from grounding its legal order in a set of values that overlap with, or are historically influenced by, religious traditions. Indeed, many of the values commonly associated with Christian moral thought—such as the equality of all persons, the institution of monogamous marriage, or an emphasis on social solidarity—are not exclusively religious and are widely shared across different moral and philosophical frameworks. A state may therefore adopt a moral framework as part of the normative foundations of its legal order without thereby becoming a confessional or religious state. Another words, the state may legitimately adopt a particular moral framework as the foundation of its legal order without immediately becoming "bound to religion". This is especially the case where such a framework is grounded in the second table of the Ten Commandments as a widely accepted set of natural-law norms—albeit, perhaps, interpreted in its nuances in accordance with a particular (and therefore not entirely uncontested) moral paradigm. Within such a framework, it is at least conceivable that the prohibition against killing could be extended, in some form, to the protection of unborn human life.⁹⁹ Otherwise, we would have to assume that the pro-life position is simply a priori excluded and that the constitution *must not* enshrine it or come closer to it in any fundamental way, which would be a rather extreme position.

As for the alleged ambiguity of the concept of the Cyrilo-Methodian spiritual heritage—and whether it encompasses at least the core of Christian morality—it is, of course, possible to debate the extent to which such a moral dimension is present in that concept. At the same time, however, it is difficult to deny that the concept carries at least some such connotation. To suggest that the spiritual heritage of two central Christian missionaries in this region signifies anything other than, at a minimum, the core of Christian moral thought—typically understood to include respect for the human person—appears somewhat artificial.¹⁰⁰ Thus,

⁹⁹ At the same time, it can be noted that although this is typically considered a Christian position, the pro-life approach is not exclusively Christian, and there have been proponents of it (whether individuals or movements) with a purely secular orientation. An example today is the American organization *Secular Pro-Life* (SPL), founded in 2009 by Kelsey Hazzard, who identifies as an atheist. (See HAZZARD, K. Ask a Pro-Life Atheist: Kelsey Hazzard, online: <https://secularprolife.org/2022/09/ask-a-pro-life-atheist-kelsey-hazzard/> [23-12-2025]).

¹⁰⁰ By this, I do not seek to elevate the fact that the Preamble refers to the Cyrilo-Methodian spiritual heritage, nor do I aim to necessarily defend the constitutional inclusion of such a

although the precise content of the concept is not entirely clear, it seems reasonable to assume that it likely encompasses at least a minimal core of Christian moral principles.¹⁰¹ If respect for unborn human life—a common tenet of Christian ethics—is also part of these underlying values,¹⁰² then an argument based on the Preamble may be applied to the present issue.

concept (a rather Catholic one?—see the preambles of the treaties with the Holy See in Appendix 3 of this monograph), which may ultimately be vulnerable to political misuse (for such concerns, see DRGONEC, J. *The Constitution of the Slovak Republic: Theory and Practice*. 2nd ed. Bratislava: C. H. Beck, 2019, pp. 159–160). (In any event, I would like to note that I, as a Protestant, also respect Cyril and Methodius, particularly for their efforts to make the Bible understandable to ordinary people; for a Protestant perspective on these figures, see, for example, KLIŠŠ, I. Cyril and Methodius from the Point of View of the Lutheran Church: Thessalonian Brethren – Our Teachers of Faith. In KLÁTIK, M. (ed.), *Cyril and Methodius – a Message for Today*. Liptovský Mikuláš: Tranoscius, 2013, pp. 46–59). My concern here is therefore limited to an interpretation of the text of the Preamble as it stands. Regarding the use of the concept of the Cyrilo-Methodian spiritual heritage in Slovak case-law, see Appendix 4 of this monograph.

¹⁰¹ The Constitutional Court has not yet addressed the issue of Christian values and their presence in the Preamble. At most, this has been mentioned by the parties to the proceedings. As an example, reference may be made to the following statement in a dispute concerning the protection of a judge's personality rights: *"The purpose of exercising freedom of expression against a person subject to criticism is to help such a person to correct themselves in the course of their life, not to insult, humiliate, ridicule, scandalize or otherwise disparage their human dignity. Sacred Scripture also states that a good name is more valuable than great riches (cf. Proverbs 22:1). The unjust deprivation of reputation is therefore a more serious offense than theft. If someone loses their property and is sufficiently resourceful, they may acquire it again, or family or friends may assist them in times of need. However, if someone loses a good reputation, no one will restore it. This is what occurred in the contested case, and the complainant's effort is nothing more (or less) than an attempt to secure 'impunity' in the manipulation of half-truths and to use emotions to interfere with my most personal rights, including boundless respect for Christian values, which are the foundation of every civilized society, including our own (see the Preamble to the Constitution, etc.)."* (Decision of the Constitutional Court of the Slovak Republic, I. ÚS 408/2010 of 16 June 2011).

¹⁰² After all, Christians usually speak of the "sanctity of life". (Cf., e.g., GEISLER, N. *Christian Ethics: Contemporary Issues and Options*. 2nd ed. Grand Rapids: Baker Academic, 2010, pp. 159, 187). As Norman Geisler states: *"Of all the moral questions, the most pressing are those involving life and death. And of the life-and-death issues, the one that involves the taking of the most lives is abortion."* (Ibid., p. 131). Of course, there is a certain variability of attitudes among Christian ethicists. For instance, Geisler, quoted above, is an example of an ethicist whose views on abortion have undergone some development (originally, he was somewhat more liberal). Monika Zaviš also states that within Christianity, *"new theological, philosophical or ethical arguments are constantly emerging, which are dominantly divided into two large camps: pro-life and pro-choice,"* and that *"it cannot be said that the Christian Church unequivocally holds the same position, or perhaps that it could be concluded on the basis of the declaration of*

But what if the Preamble is to be understood as lacking legal relevance altogether? Opinions among constitutional scholars on the interpretive significance of the Preamble diverge, although the prevailing view appears to attribute at least some interpretive weight to it.¹⁰³ A critic of this prevailing view is the aforementioned jurist Ján Drgonec, who argues that the Preamble should be understood as a preamble *to* the Constitution rather than a preamble *of* the Constitution—a distinction he supports with reasoned arguments.¹⁰⁴ Marián Giba aligns with this position.¹⁰⁵ However, even if one accepts the view that the Preamble is not formally part of the constitutional text—being a preamble "to", rather than "of", the Constitution—this does not necessarily render it interpretively irrelevant. From this perspective, it may be questioned whether reliance on the Preamble should properly be classified as a form of systematic (or "material-systematic") interpretation. More plausibly, such an approach is better understood as a form of historical interpretation. The Preamble may thus be seen as a relevant interpretive tool, insofar as it constitutes an introductory statement reflecting the intentions and value orientations of the Constitution's authors.¹⁰⁶ The

faith of Christian women that they are proponents of the moral wrongness of abortion and would never undergo it themselves." (ZAVIŠ, M. *Abortion. An Ethical Challenge for the World's Religions*. Bratislava: Comenius University, 2016, p. 86). In any case, I dare to suppose that Christianity typically rejects abortions.

¹⁰³ This is noted, for example, by Ján Drgonec, who speaks of to the majority view in legal doctrine, although he himself argues against it and takes a different position. (DRGONEC, J. *The Constitution of the Slovak Republic. Theory and practice*. 2nd ed. Bratislava: C. H. Beck, 2019, pp. 151-152).

¹⁰⁴ See *ibid.*, p. 151 ff.

¹⁰⁵ GIBA, M. The Preamble. In OROSZ, L. – SVÁK, J. et al. *The Constitution of the Slovak Republic. Commentary. Volume I (Basic Principles and Human Rights)*, Bratislava: Wolters Kluwer, 2021, p. 2 ff.

¹⁰⁶ Although there have been several attempts to amend the Preamble, including even a proposal to remove it altogether, Peter Kresák and Ladislav Orosz point out that "*the proposal to abolish or fundamentally change the text of the Preamble of the Constitution*" arose during the negotiations on the so-called major amendment to the Constitution of the Slovak Republic, specifically at an expert seminar organized as part of its preparation in 1999 (KRESÁK, P. – OROSZ, L. *Preparation and Approval of the So-Called Major Amendment to the Constitution – Problems and Pitfalls (Notes of the Proponents)*. In BUJŇÁK, V. (ed.). *30 Years of the Constitution of the Slovak Republic: Experience and Perspectives in Good and Bad Weather*. Bratislava Legal Forum 2022. Bratislava: Wolters Kluwer, 2022, p. 15, online: https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/BPF/2022/Zbornik_BPF_2021_Sekcia_5_Ustavne_pravo.pdf [21-01-2026]), and later also during the

Preamble may therefore be understood, at least, as analogous to the general part of an explanatory memorandum. Any interpretation of the Constitution based on the Preamble will, of course, remain merely supportive in nature. However, this is precisely the type of interpretive approach required at this stage, as the aim is to identify a plausible auxiliary line of argument.

In light of the foregoing, it is not unreasonable for the concept of the Cyrilo-Methodian spiritual heritage to play a role in this context—namely, in the interpretation of the second sentence of Article 15(1) of the Constitution, whether through a systematic approach or, at the very least, through a form of historical interpretation. Recently, I have shown elsewhere¹⁰⁷ that the application of this type of interpretation presupposes two conditions. First, it must retain a secondary (auxiliary) character.¹⁰⁸ Second, in order to avoid or at least minimize tension with Article 1(1) of the Constitution, there must be a specific textual indication in the provision under interpretation—in this case, Article 15(1)—suggesting that the constitution-maker has chosen, from among the available regulatory options, one that is more consistent with Christian moral principles. In the absence of such an indication, reference to the Cyrilo-Methodian spiritual heritage cannot play a role in constitutional interpretation. Otherwise, it could be invoked indiscriminately, which

parliamentary debate on the amendment itself, where the deletion of the Preamble was proposed (ibid., p. 23). Despite these efforts, the Preamble has not been amended. It thus remains "*a historical document, a kind of mirror of the era in which the Constitution was adopted*" (PETRANSKÁ ROLKOVÁ, N. *The Constitution of the Slovak Republic and Its Twenty-Five Years (1992–2017)*. Bratislava: Office of the National Council of the Slovak Republic, 2017, p. 35). It may further be emphasized that this is not merely any historical document, but one that forms part of the constitutional text and is officially promulgated together with it in the Collection of Laws. It is precisely this fact that suggests its interpretive relevance (at least at the level of historical interpretation as an auxiliary method of legal interpretation).

¹⁰⁷ TURČAN, M. Cyrilo-Methodian Spiritual Heritage as a Legal Argument? In *Právny obzor*, 2026, Vol. 109, No. 1, pp. 59-63.

¹⁰⁸ This requirement can also be justified (similarly to the second requirement mentioned above) by an effort to minimize conflict with Article 1(1) of the Constitution. In any case, as I have argued in this chapter, the requirement may also be derived from the thesis outlined above that the Preamble should have roughly the same degree of interpretive relevance as the general part of the explanatory memorandum, and thus that relying on the Preamble effectively constitutes an application of some form of historical interpretation, which is an auxiliary method of interpretation.

would be incompatible with Article 1(1) of the Constitution. The second sentence of Article 15(1) appears to provide precisely such an indication. It explicitly refers to the protection of human life before birth and thereby creates a textual basis for considering the value framework reflected in the Preamble. It does not follow, however, that the first sentence could be interpreted in light of the Preamble alone. If that were the case, the principle of state neutrality expressed in Article 1(1) would be significantly weakened, if not undermined. The second sentence explicitly refers to the protection of the fetus, and it is precisely for this reason that there is a theoretical possibility of applying the perspective of the relevant value tradition in its interpretation—namely, because it contains an explicit reference to the protection of human life before birth that calls for interpretation.

At this stage, the question is no longer whether the fetus should be treated as a rights-bearing subject—a position that has already been rejected. Rather, the issue is how consistently human life before birth, understood as an object of legal protection, is to be protected under the Constitution. More specifically, the question is whether such protection is to remain merely "formal" or whether it should also include "material" elements, in the sense of substantive conditions governing the permissibility of abortion. If one takes the Preamble into account as an auxiliary interpretive tool, the more persuasive conclusion is that the Constitution favors the latter approach. Even in a system that is not bound to any particular religion, the constitutional legislator may, in certain contexts, adopt solutions that align more closely with particular moral traditions, including those associated with Christian ethics.

Thus, the protection of human life before birth should not be limited to formal requirements alone—such as procedural conditions or consultation duties—but should also encompass material conditions, such as the existence of medical or otherwise substantively justified grounds for abortion. Protection is evidently more robust in the presence of such conditions, as they restrict the circumstances in which termination of pregnancy is legally permissible. The auxiliary use of the Preamble thus supports an interpretation under which the Constitution requires these conditions.

The overall conclusion is therefore that the Constitution protects human life from conception—albeit only as an object of law, not as a

rights-bearing subject—in such a way that the legitimacy of abortion, even during the first trimester, presupposes the existence of specific substantive grounds.

4.

FURTHER CONTEXT

I have come to the thesis that the protection of human life before birth should be understood, under the Constitution of the Slovak Republic, as the protection of an object of law (a constitutional value). At the same time, according to the above-mentioned (hypothetical) argument based on the values expressed in the Preamble, the legal order should also contain substantive conditions governing the admissibility of abortion in the first twelve weeks of pregnancy. In this chapter, I will discuss this thesis in light of further interpretive contexts.

First of all, it may be asked whether, once we accept an interpretation based on the Preamble and its reference to the aforementioned "conservative" (Christian) tradition, it is not necessary to reconsider the presented position and instead incline directly toward the idea of protecting the fetus as a subject of law. Or, to put it differently: if we accept the possibility of interpreting the second sentence of Article 15(1) in a manner consistent with the Cyrilo-Methodian spiritual heritage, understood as a tradition that includes the norms of Christian morality, then why should we not also attribute subjective rights to the fetus, in particular the right to life? After all, the two conditions formulated for the interpretive use of such a Preamble-based argument—namely, the existence of an explicit textual indication (which, in Article 15(1), is represented by the second sentence itself) and the secondary, that is, auxiliary nature of such interpretation—are also satisfied in this view. Therefore, if we are already operating at the second level of evaluating interpretive arguments, that is, at the level at which auxiliary arguments are taken into account (because the primary arguments at the first level did not lead to a sufficiently unambiguous solution—something that, as I have previously suggested, applies even to the very question of the legal personhood of the fetus), then the question arises why this type of argument should not be carried through to its full conclusion, namely to the recognition of legal personhood of the fetus. Why should it lead only to a somewhat higher level of protection of the fetus as an object of law from that implied by the current "liberal" sub-constitutional regulation, and not directly to the recognition of the fetus's right to life?

In order to answer this question, it is necessary to reconsider the balance of interpretive arguments applied so far. We have seen that, at the first level of interpretation of Article 15(1) of the Constitution, linguistic-teleological and formal-systematic arguments stand in opposition to one another. Of the two, I have assessed the linguistic-teleological argument as not conclusive, but nevertheless somewhat more persuasive. At the second level, I have taken into account comparative interpretation, which, however, does not help us. On the one hand, European legal systems have generally undergone a process of liberalization over time (even though not uniformly); on the other hand, the Slovak constitutional framework remains specific, precisely because of the presence of the second sentence of Article 15(1), which has no real equivalent elsewhere (with the partial exception of the Czech Republic). Nor is the issue resolved by an interpretation of international obligations, although such an approach must, of course, be taken into account at the primary level and has already been discussed together with comparative interpretation in the second chapter. I therefore relied on historical (intentionalist) interpretation, which clearly supports the view that the fetus is protected as an object of law rather than subject. Regarding the scope of such protection—i.e., the question whether formal criteria for the admissibility of abortion are sufficient, or whether substantive (material) conditions should also be required—I further employed an interpretation based on the value tradition reflected in the Preamble. On this basis, I arrived at the conclusion that it supports stronger (i.e., material) protection of the fetus than that provided by current sub-constitutional regulation, since the introduction of material conditions for the admissibility of abortion is more closely aligned with the pro-life orientation typically associated with this tradition. At the same time, however, I have also noted that the Preamble-based argument operates at the same interpretive level as the argument based on the stenographic record of the parliamentary debates. At this second level, the intentionalist argument and the argument based on the Cyrilo-Methodian spiritual heritage stand in opposition to each other. The former supports the protection of the fetus as an object of law and reinforces the previously mentioned linguistic-teleological interpretation, while the latter supports the protection of the fetus as a subject of law and reinforces the previously mentioned formal-systematic interpretation.

The answer I propose for resolving this interpretive tension is as follows. First, the relative persuasiveness of the arguments identified at the primary level must also be taken into account in the overall balance. At that level, the linguistic-teleological argument—although not conclusive—remains somewhat more convincing, supporting the conclusion that the second sentence of Article 15(1) does not establish the legal personhood of the fetus, but rather expresses its protection as an object of law (as was also noted by judge Mészáros in his dissenting opinion). As for the arguments operating at the second level, it may appear that the stenographic-record argument and the Preamble-based argument are evenly balanced. In reality, however, the former is somewhat more convincing. The parliamentary record is quite clear in this respect: the proposal recognizing a right to life from conception (Michálek's proposal) was rejected by the Federal Assembly, whereas Fišera's proposal was adopted instead.¹⁰⁹ The recognition of the fetus as a moral subject is equally unambiguous from a conservative Christian perspective. However, when considered in connection with the *legal* concept of the Cyrilo-Methodian spiritual heritage, it appears to be, say, a probable rather than necessary conclusion. A further possible line of reasoning could be based on a *posterior–prior* argument, namely that the Preamble was adopted later than the Charter, and that the Slovak constitution-maker could therefore have "redefined" the original intention of the federal constitution-maker. In other words, while the federal MPs may have understood the provision as protecting the fetus as an object, the Slovak MPs could have understood it as protecting the fetus as a subject.¹¹⁰ However, this speculative claim would require some evidence, which is missing. Moreover, the petitioners themselves argued that, in this respect, the intention of the Slovak constitution-maker coincides with

¹⁰⁹ Therefore, at least at the level of the fiction of a unified intention of the constitution-maker, it is appropriate to count on the idea of protecting the fetus as an object of law.

¹¹⁰ However, pointing to the Preamble may serve as an argument against a potential comparative argument based on some future "liberal" decision of the Constitutional Court of the Czech Republic concerning the issue in question (since the Czech constitutional preamble does not contain a reference to the Cyrilo-Methodian spiritual heritage). This, however, applies only where the argument based on the Cyrilo-Methodian spiritual heritage is used in a secondary, rather than tertiary, manner (see below), i.e. as an auxiliary interpretive method where standard interpretive methods fail, and not as a last-resort argument to be employed only when the issue cannot be resolved through any other interpretive methods.

that of the federal constitution-maker, and that there is no reasonable basis for questioning this continuity. In addition, it may be suggested that, in applying an argument based on the Preamble (and the Cyrilo-Methodian spiritual heritage), which carries a certain religious dimension, a rather restrictive approach is appropriate in light of the secular character of the state as expressed in Article 1(1) of the Constitution. In other words, where an alternative and otherwise legitimate interpretive argument leads clearly to a different conclusion, that argument should be preferred.¹¹¹ Thus, admitting the use of an argument based on Christian morality to define the depth of protection of human life before birth as an object of law under Article 15(1) does not require a revision of the overall conclusion—it does not justify reclassifying the fetus as a subject of law within the meaning of that provision. It therefore remains tenable to maintain that, under the Constitution, human life before birth is protected as an object of law, with the consequence that the legal order should formulate material conditions governing the admissibility of abortion during the first twelve weeks of pregnancy.

But what, then, of the previously mentioned potential reference to Article 12(1) and the constitutional guarantee of the equality of all people in dignity and rights? Does it not, at least indirectly, point toward the competing conclusion that the fetus possesses legal personhood? As argued above, the fact that the second sentence of Article 15(1) explicitly refers to "human life before birth" does not necessarily mean that the Constitution treats the unborn as a human subject. In the absence of a legal definition of the term "human", the question of what constitutes a human being—as a subject of moral and legal relations—is, in essence, a metaphysical (ontological) and ethical one. In the decision in question, the Constitutional Court addressed this problem primarily through a comparative approach (although it also attempted to take into account certain "scientific" considerations, in particular by relying on the opinion

¹¹¹ I concede that, in such a case, the argument based on the Cyrilo-Methodian spiritual heritage is effectively shifted from the second to the third level, thereby becoming a last-resort argument to be employed only where all other arguments have failed to resolve the issue unambiguously. In my previous work, however, I have also accepted such an approach (TURČAN, M. Cyrilo-Methodian Spiritual Heritage as a Legal Argument? In *Právny obzor*, 2026, Vol. 109, No. 1, p. 63). Even if one adheres to a two-level approach, I submit that, on balance, it remains somewhat more persuasive—even without this thesis—to conclude that the Constitution, as currently framed, protects the fetus as an object rather than as a subject.

of an expert who participated in the proceedings)¹¹²—it solved this issue by referring to foreign jurisprudence and practice, which tend to adopt a gradualist approach to the protection of the fetus (i.e., one that attributes different degrees of legal protection at different stages of its development), as well as by pointing to a broader European, or "Western," consensus on the matter.¹¹³ One may ask whether it is appropriate for the

¹¹² The bioethicist prepared an expert opinion in which he addressed two questions: (1) from what the moral responsibility of society derives and what its content is, and (2) how the scope of society's moral obligations towards the fetus varies across the different stages of its biological development. In response to the first question, the expert stated that society's moral responsibility derives from a social consensus on fundamental moral values, which is itself the product of negotiation and, therefore, of necessary compromise. As to the second question, he argued that the extent of society's obligations towards the fetus depends on the stage of its biological development, precisely because of the need of a compromise in the clash of two recognized values—namely, the interests of the fetus on the one hand and the interests of the woman on the other. According to him, any different approach would constitute *"a violation of the principles of the liberal-democratic state."* (Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/01 of 4 December 2007, I., pp. 15–16).

¹¹³ *"The constitutional imperative establishing the legislator's obligation to protect human life before birth does not imply the conclusion that the legal protection of the fetus against the mother must be identical at every individual stage of prenatal development (similarly also Drgonec, J. Constitution of the Slovak Republic. Commentary. Šamorín: Heuréka, 2004. p. 113). On the contrary, it is also possible to deduce from the case-law of the European Court of Human Rights (in particular V v. France) a minimum European consensus based on the premise that unborn human life is to be protected during pregnancy with an intensity increasing gradually from conception to birth. From the above, it follows that the key decisions of the US Supreme Court Roe v. Wade 410 U. S. 113 (1973), and Planned Parenthood of Southeastern, PA. v. Casey, 505 U.S. 833 (1992) are based on this basis. [...] The distinction between the individual phases of prenatal development, regarding the possibility of abortion, is also justified by looking at European legal systems, not only those that, similarly to the Slovak Republic, allow abortion on request (e.g. the Scandinavian countries, the Netherlands, France, Austria, the Czech Republic), but also those that are characterized by very strict conditions for abortion (e.g. Poland, with regard to abortion for medical, eugenic or legal reasons, which is also permissible only in a certain first stage of pregnancy) (see A.4). In the opinion of the Constitutional Court, the choice of twelve weeks as the limit for performing an abortion at the request of the mother cannot be considered arbitrary either. This period is based on the formation of the sensitivity of the fetus and is in line with the prevailing European practice of the relevant legislation of the countries allowing abortion on request (possibly on the basis of a social indication), which usually ranges between the 10th and 15th week of pregnancy. At the same time, the Constitutional Court proceeds from the fact that the period of 12 weeks must be considered as a period which, with regard to the real possibility of establishing the very existence of pregnancy, provides the mother with a reasonable opportunity to consider the possibility of abortion and for its eventual implementation. If this period were to be significantly shorter, the purpose (objective) of the law, which is to give a woman the opportunity to decide on her motherhood, may not be met. If, on the other hand, the period were significantly longer (e.g. the first two trimesters of pregnancy),*

Constitutional Court to try to answer moral and metaphysical questions. If we say no,¹¹⁴ then it becomes questionable whether it is appropriate at all to rely on foreign jurisprudence and sub-constitutional legislation for resolving this issue. If the Constitutional Court, as such, is not called to resolve moral and metaphysical questions, and if such questions—particularly in the realm of human rights and other fundamental values—fall within the competence of the constitution-maker (whether domestic or foreign), then comparative arguments based merely on foreign judicial practice or legislation become problematic. In the absence of a relevant foreign constitutional provision defining different levels of protection of the fetus at various stages of its biological development, or at least an explicit constitutional instruction that such differentiation is to be determined by legislation, reliance on foreign practice may in fact amount to nothing more than a disguised form of moral argumentation. Yet this is precisely the type of argument that neither foreign constitutional courts nor foreign legislators are institutionally competent to resolve; rather, such questions belong to constitution-makers, as these questions involve fundamentally metaphysical and ethical judgments of constitutional

it could come into conflict with the constitutional imperative of Article 15(1) of the second sentence of the Constitution, especially with regard to the proportionality of the regulation in relation to the constitutional value of the protection of unborn human life. At most, the Constitutional Court reiterates that the legislator is called upon to determine the relevant maximum period for abortion, while the Constitutional Court reviews (and cannot review anything else through the lens of a constitutional imperative expressing constitutional value) only a possible excess in the legislator's consideration, but not whether the given period is in optimal accordance with the current state of knowledge of medical science." (Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/01 of 4 December 2007, II., B.4, pp. 52-53).

¹¹⁴ The Constitutional Court of the Slovak Republic begins its reasoning by stating: *"The task of the Constitutional Court in these proceedings is not to answer the philosophical, moral or ethical question of when human life begins, nor the question of the correctness or morality of abortion, nor the question of what the optimal legal regulation of abortion in the Slovak Republic should look like, but only the question, What are the constitutional limits that the Constitution imposes on the legislator in relation to the legal regulation of abortion? In other words, the key question that the Constitutional Court must answer in these proceedings is whether the Constitution makes it impossible for the legislator to regulate abortion in the manner that results from the challenged provisions of the Abortion Act."* (Ibid., II., A., p. 25). Tomáš Ľalík once stated that *"the Constitutional Court of the Slovak Republic decided appropriately when it did not try to slip into the role of a positive legislator, and also avoided philosophical, ethical and moral issues that do not fall within its competence."* (ĽALÍK, T. The Right to Life as a Fundamental Human Right. In *Bulletin of Slovak Advocacy*, 2008, Vol. 14, No. 7-8, p. 26).

significance. From this perspective, one might conclude, that the protection of the unborn should thus be conceived as uniform throughout its development. That is, either the legal order permits abortion up to the moment of birth (whether without restriction or at least on specified grounds such as rape, fetal impairment, or social considerations), or, alternatively, it must recognize the fetus as a bearer of the right to life from conception, thereby granting it legal personhood. Indeed, it is widely accepted that there is no essential metaphysical or moral distinction between a fetus in the final stages of pregnancy and a newborn child. If the Constitutional Court lacks the competence to resolve metaphysical and ethical questions, it follows that constitutional interpretation must ultimately lead to one of only two conclusions. Either abortion remains constitutionally permissible up to the moment of birth, because the unborn cannot be subsumed under the term "everyone" as used in Article 15(1), or the fetus must be regarded as falling within that term, thereby possessing a constitutional right to life from conception. *Tertium non datur*. Such a line of reasoning, formulated as an argument *ad absurdum*, may be advanced by proponents of the view that the Constitution protects the fetus as a subject of law.

However, even a proponent of the view that the Constitutional Court should refrain from engaging in moral reasoning or from deciding issues of a metaphysical-ethical nature will likely admit that, at least in certain "Radbruch-type" situations, the Court may be required to take such considerations into account—even if, strictly speaking, it would not ordinarily be regarded as competent to do so. To illustrate, let us imagine that the second sentence of Article 15(1) did not exist, and that the legal order permitted abortion without restriction up to the moment of birth. In the United States, for example, the permissibility of such extremely late-term abortions continues to be debated, and in some jurisdictions it is even formally allowed, although in practice it is reportedly rarely carried out.¹¹⁵ There are also jurisdictions in which abortion in the ninth month of

¹¹⁵ See, for example, HOLLAND, M. Exploring The Complex Ethical Scenarios That Justify Abortion Up Until Birth, online: <https://medshun.com/article/what-situations-would-allow-for-abortion-up-until-birth> [07-01-2026]. At the same time, the concept of so-called "after-birth abortion" has already emerged—a term that is a euphemism for infanticide (see GIUBILINI, A. – MINERVA, F. After-birth abortion: why should the baby live? In *Journal of Medical Ethics*, 2013, Vol. 39, No. 5, p. 263, online: <https://jme.bmj.com/content/medethics/39/5/261.full.pdf> [25-06-2024]).

pregnancy is permitted in cases of severe fetal impairment, even though, in such circumstances, it would not be permissible to end the life of a newborn for the same reason. It may nevertheless be argued that, within the Western world, there persists a broadly shared intuition that a fetus in the ninth month possesses a moral status comparable to that of a newborn, and that its deliberate termination would be morally akin to infanticide. It follows that such a fetus is generally regarded as deserving of a similar level of protection as a newborn. To deny this would, in effect, require acceptance of infanticide—something that remains widely rejected. Although this position is not universally held without qualification, it is possible to identify a general pattern: the killing of a fetus in the ninth month without any justificatory reason would typically be regarded as a violation of fundamental principles of justice¹¹⁶ (although the fetus does not formally have legal personhood even in the ninth month; it would simply be a violation of its desired protection as an entity of objective value). Thus, if sub-constitutional legislation were, through a sequence of circumstances, to permit abortion in the ninth month without any requirement to provide a justification—while the constitutional clause on the protection of human life before birth were absent—it is difficult to imagine that any conservative thinker would reject the view that, in such a situation, constitutional judges would have a natural-law obligation to declare such a provision grossly unjust. This would be analogous to a norm permitting the unjustified killing of a newborn and would therefore amount, in substance, to a denial of justice. In such a case, judges would necessarily rely either on their own metaphysical-ethical reasoning or, at the very least, on an appeal to prevailing social morality—in other words, on some form of non-positivist argumentation, which would typically be described as "natural law."

At the same time, the content and foundations of natural law itself remain contested and may be articulated in different ways. For example, Locke's account of natural law differs significantly from the Thomistic account, particularly in their respective understandings of subjective rights and

¹¹⁶ On the concept of justice as present in the jurisprudence of the Constitutional Court of the Slovak Republic, see, for example, JÚDA, V. The Search for Justice in the Jurisprudence of the Courts. In KLUKNAVSKÁ, A. – GÁBRIŠ, T. (eds.). *Ad iustitiam per ius*. Bratislava: Wolters Kluwer, 2018, pp. 163-185.

objective values.¹¹⁷ Therefore, it makes practical sense to conceive of a judicially applicable concept of natural law better as a form of overlapping consensus among our moral views (however much this may entail the sacrifice of certain genuinely objective moral requirements that some of us do not see or do not wish to see).¹¹⁸ As is evident from both the decision of the Constitutional Court of the Slovak Republic discussed above and the federal parliamentary debate, there is currently no general consensus as to whether the fetus possesses natural rights, in particular the right to life. At the same time, "natural law," understood as an imagined set of fundamental moral imperatives, need not be limited to the protection of subjective rights; it may also serve to protect objective values. A common example might be the widely accepted obligation to protect animals from cruelty—not as subjects of rights, but as objects of moral and legal concern. A similar pattern may be observed, I would suggest, in the broadly shared perception that a fetus in the ninth month of pregnancy deserves protection, even if such protection is not necessarily grounded

¹¹⁷ On Christian approaches to the concept of natural law, see, for example, TURČAN, M. On the Concept of the Natural Law and the Perverted Faculty Argument in the Contemporary Christian Thought. In *Testimonia theologica*, 2020, Vol. 14, No. 1, pp. 10-30, online: https://fevth.uniba.sk/fileadmin/ebf/testimonia_theologica/2020/TT_2020_1_Turcan_K_pojmu_prirodzeneho_zakona_a_argumentu_zo_zneuzitia_schopnosti_v_sucasnom_krestanskom_mysleni.pdf [13-01-2026]; BATKA, Ľ. *Natural Law and the Creation Order in Lutheran Ethics*. Bratislava: Comenius University, 2015. Concerning the liberal tradition and the question of the protection of human life before birth, see, for example, TURČAN, M. Right to Life and Freedom of Choice according to Evictionism: A Christian Critique. In *Communio Viatorum*, 2020, Vol. 62, No. 2, pp. 184–207. See also NEŠTINA, M. *Forms of Religious Argumentation in Liberal Democracy*. Bratislava: Comenius University, 2017. In the aforementioned monograph, Marek Neština observes that, although Locke does not directly address the issue of abortion in his works, there is "a fairly strong indication that Locke was against abortion." He adds: "It should also be noted, however, that Locke's philosophical concepts are often invoked by proponents of abortion, who refer in particular to his concept of natural rights, as developed in the *Second Treatise of Government*, in support of a woman's right to decide what happens to her own body." Neština concludes: "While we may derive this liberal view of abortion from Locke's works, we cannot unequivocally attribute it to him" (p. 46). He further argues that the pro-choice position is, in fact, more compatible with the idea of liberal democracy, at least from the perspective of the later Rawlsian theory of public reason on which his book is based.

¹¹⁸ Even the Thomist-oriented politician and thinker, Anton Neuwirth, who, during the drafting of the Constitution, proposed explicitly enshrining an obligation to respect natural law as superior to positive law, also suggested that, in cases of doubt concerning the content of natural law, the matter should be decided by the Constitutional Court (see the footnote at the end of the first chapter).

solely in the criterion of suffering, which is central in the case of animals. Accordingly, irrespective of disagreements about the precise moral status of the fetus, there appears to be a broad consensus that it is morally wrong to kill a human fetus without justification in the ninth month of pregnancy. In this sense, a fetus at such an advanced stage of development is generally regarded as deserving respect and protection, including protection through legal norms that articulate the conditions under which its termination is permissible. By contrast, no comparable consensus exists with respect to the moral status of the zygote.¹¹⁹ As Philippa Foot once put it: *"One of the reasons why most of us feel puzzled about the problem of abortion is that we want, and do not want, to allow to the unborn child the rights that belong to adults and children. When we think of a baby about to be born, it seems absurd to think that the next few minutes or even hours could make so radical a difference to its status ; yet as we go back in the life of the foetus, we are more and more reluctant to say that this is a human being and must be treated as such."*¹²⁰

Thus, even if we say that the Constitutional Court does not have the competence to decide on moral questions in other than absolutely extraordinary ("Radbruchian") circumstances, this does not necessarily mean that we have to choose either between the possibility of theoretically admitting (in the absence of a constitutional prohibition) the legal killing of the unborn in the ninth month, if we already allow it once in the early stages of human fetal development, or the possibility of endowing, on the contrary, subjective rights to both (embryo and highly developed fetus). Of course, many conservatives will disagree (because the natural law doctrine they hold will lead to a different conclusion; which

¹¹⁹ While proponents of the Thomistic version of natural law do not distinguish morally between a zygote and a fully developed fetus, proponents of certain liberal versions of natural law draw a fundamental moral distinction between the two.

¹²⁰ FOOT, P. The Problem of Abortion and the Doctrine of the Double Effect. In FOOT, P. *Virtues and Vices and Other Essays in Moral Philosophy*. Oxford: Oxford University Press, 2002, p. 19. Similarly, M. Káčer, referring to J. Markoš, argues that society—including Christians—behaves as if embryos were not human persons; for example, in cases of miscarriage, they are not normally given names and funerals are not typically held (KÁČER, M. *Argumentation Fouls in Law*. Prague: Leges, 2022, pp. 88–89). It is fair to add, however, that some do assign names and organize funerals. Moreover, one may recall existing criticism of the apparent inconsistency whereby the human fetus does not enjoy stronger legal protection than an animal until the twelfth week of pregnancy (PROCHÁZKA, R. Of Mice and Men. In *Impulz*, 2008, Vol. 4, No. 2, pp. 110–119).

is fine). However, if we work with the concept of natural law in the sense of the conformity of our carefully considered moral convictions (and the question is whether we are really left with anything else from a practical point of view), then it will be possible to conclude that while the zygote does not have "natural rights" (because we simply obviously do not agree on this in our moral convictions) and in the absence of a special constitutional norm (mentioning the protection of human life before birth), it would not, unfortunately, qualify even as a protected object of law (at least not protected directly, but at most indirectly—based on the protection of women's interests), a fetus in the ninth month is already an objective "natural-law value" (and therefore also a "constitutional value"), regardless of whether it is mentioned in any constitutional norm, since the agreement that there is no fundamental metaphysical or moral difference between a newborn and a nine-month-old fetus, in principle, exists—it falls under a relatively obvious (widely accepted) "natural-law norm".¹²¹

¹²¹ The picture is further complicated by utilitarian thinkers, who have, in some instances, expressed openness to infanticide (see, for example, SINGER, P. *Practical Ethics*. New York: Cambridge University Press, 1979, pp. 122-126, 131 ff.). This brings us to the broader question of the justification of human rights. On the one hand, it may be argued that human rights, as we understand them today, are primarily a political project shaped by specific historical circumstances, such as the struggle against Nazism. On the other hand, it can be maintained that, at least for Western societies of the twentieth and twenty-first centuries, they reflect a deeply rooted respect for fundamental moral intuitions, regardless of whether these intuitions are themselves historically conditioned. It is utilitarianism that, in certain respects, comes into tension with these intuitions (see TURČAN, M. On the Relationship between Utilitarianism and Human Rights (A Discussion Paper). In ĽAŽKÁ, V. (ed.). *Milestones of Law in the Central European Area 2024*. Bratislava: Faculty of Law, Comenius University, 2024, pp. 26–53, online:

https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/Milniky_zborniky/Milniky_2024.pdf [03-01-2026]). Although the usual natural law critique of utilitarianism is not without its own difficulties (see, for example, TURČAN, M. On Finnis's Natural Law Critique of Utilitarianism. In BRÖSTL, A. – BREICHOVÁ LAPČÁKOVÁ, M. (eds.). *The Rule of Law, Justice and the Future of Democracy*. Proceedings of the Meeting of the Slovak Section of IVR before the 31st World Congress. Košice: Faculty of Law, UPJŠ, 2024, pp. 49–72, online: <https://doi.org/10.33542/PSB-0376-0> [03-01-2026]), and although a significant portion of human rights can also be justified on utilitarian grounds (see, for example, HAPLA, M. *Utilitarianism and the Philosophy of Human Rights*. Prague: Leges, 2022), a utilitarian may nevertheless be better advised to abandon attempts to reconcile utilitarianism with prevailing moral intuitions. These intuitions, by contrast, largely resonate today with a "Christian" understanding of the value of the human person and human dignity. In this sense, human rights may be regarded as a phenomenon profoundly shaped by Christian thought and sensation.

The argument *ad absurdum* presented above will therefore not be capable of unequivocally excluding the rationality of the interpretive conclusion reached above, namely that the fetus is an object of law (and not a subject), even when the idea of the Cyrilo-Methodian spiritual heritage is applied to Article 15(1) of the Constitution—at least when working with a more "accommodating" concept of natural law.¹²² Accordingly, the reference to Article 12(1) of the Constitution should be treated with caution.

But what if we accept that the Constitutional Court may have a certain scope to engage in metaphysical and ethical reasoning, or to decide such questions, even outside strictly exceptional circumstances—namely, in situations that cannot be characterized as "Radbruchian"? Would this not argue against the need to protect the fetus during the first twelve weeks of pregnancy through material conditions? After all, the Constitutional Court could adopt a more "contemporary" ("European") and "liberal" idea of the moral status of the fetus, one that excludes such protection in the early stages of its development. This is indeed an important question. Nevertheless, in light of the analysis presented above, the answer should be in the negative. It may be argued that, even if the Constitutional Court is entitled to engage in metaphysical and ethical reasoning—and to decide such questions outside strictly exceptional ("Radbruchian") situations—it should exercise considerable restraint in doing so.¹²³ In particular, the Court should not disregard

¹²² At the same time, the Constitution also makes use of the concept of natural law. It does so explicitly in the Preamble, which refers to the natural right of nations to self-determination, and in Article 134(5), which, as part of the judicial oath, refers to the inviolability of the natural rights of man. The term also appears in the case-law of the Constitutional Court of the Slovak Republic, although its explicit use cannot be regarded as very frequent. As of January 2026, a search of the database of decisions and dissenting opinions of the Constitutional Court of the Slovak Republic available at *judikaty.info* yielded approximately 150 decisions or separate opinions containing an explicit reference to natural law, out of a total of roughly 50,000 such decisions and opinions. Thus, explicit references to natural law occur in (less than) 0.3% of these.

¹²³ The question of the role of moral considerations in the decision-making of the Constitutional Court (or of the judiciary more generally) remains a relatively vibrant issue in the Czech context (see, for example, HANUŠ, L. Arbitrariness and Moral Argumentation in Law. In SEHNÁLEK, D. et al. (eds.). *Contemporary Questions of Judicial Review. Days of Law 2009*. The Conference Proceedings. Brno: Masaryk University, 2009, pp. 700-715, online: https://www.law.muni.cz/sborniky/dny_prava_2009/files/sbornik/sbornik.pdf [22-12-2025]; on the issue of the place of moral reasoning in the interpretation and application of law in a

established interpretive methods, such as systematic or historical methods of interpretation. If reliance on the Preamble is a legitimate interpretive approach falling under these methods, then the Court should not elevate its own moral reasoning (even when informed by comparative practice or contemporary social trends) above the implicit moral orientation provided by the constitution-maker in the Preamble.¹²⁴ Admittedly, this is a controversial position. However, if the assumptions outlined above are accepted and the sensitive character of the topic is considered, it remains defensible.¹²⁵

broader context, see, for example, TVRDÍKOVÁ, L. Moral Reasoning (and Moral Intuition) in Judicial Decision-Making: Is It Possible to Arrive at a Rational Decision? Online: <https://www.pravniprostor.cz/clanky/ostatni-pravo/moralni-uvazovani-moralni-intuice-v-soudnim-rozhodovani-je-mozne-dospet-k-racionalnimu-rozhodnuti> [22-12-2025]).

¹²⁴ The most recent constitutional amendment, which enshrines the sovereignty of the Slovak Republic in cultural and ethical matters, including the issue of the "*protection of life and human dignity*," may theoretically also serve as an argument—albeit a relatively controversial one—in support of the claim that the relevance of an assumed European "liberal standard" of abortion is limited (thus again tending to reduce, rather than enhance, its significance). On the basis of Article 7(6) of the Constitution, it may be emphasized that the Slovak Republic is, in this regard, entitled to pursue its own approach. Should a human right to abortion eventually be recognized at the level of the European Court of Human Rights, those invoking Article 7(6) of the Constitution would, of course, argue that the Constitution takes precedence over the Convention, or at least over its interpretation by the Strasbourg Court. Conversely, proponents of the opposite view would rely on Article 27 of the Vienna Convention on the Law of Treaties, which provides that a state may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

¹²⁵ I am aware that the Constitutional Court's own moral reasoning is not the same as its effort to take into account social morality. The former represents a more fundamental jurisprudential step and is therefore more controversial. While the legitimacy of the Constitutional Court engaging in its own moral deliberation may be contested, the need to reflect social morality is arguably less problematic. Under the current constitutional framework (*de constitutione lata*), the Constitutional Court must, to some extent, take into account prevailing societal conceptions of morality, as these are explicitly envisaged by several constitutional provisions—namely, Article 20(5), Article 24(4), Article 26(4), and Article 28(2) of the Constitution, which refer to the protection of morality as a ground for limiting fundamental rights (including property rights, freedom of thought, conscience, religion and belief, freedom of expression, and the right of assembly). Reference should also be made to the newly introduced Article 7(6), which provides that the Slovak Republic "*retains sovereignty in cultural and ethical matters, including issues of public morality*." Even this qualitative distinction between autonomous moral reasoning by the Court and the mere consideration of prevailing social morality does not, however, imply that the Constitutional Court may disregard or effectively rewrite the moral foundations of the Constitution, as expressed, for example, in its Preamble—provided, of course, that the Preamble is

Thus, the theoretically possible version of the Christian morality argument in the interpretation of the current constitutional text—namely, the second sentence of Article 15(1), understood in light of the Preamble and its reference to the Cyrilo-Methodian spiritual heritage as a set of political, cultural, and *moral* values—leads to the conclusion that the fetus is protected as an object of law, with an important implication for sub-constitutional regulation, that the fetus should enjoy a higher level of protection than it currently does. In particular through the introduction of specific material conditions governing the admissibility of abortion during the first twelve weeks of pregnancy.¹²⁶

considered interpretively relevant and may indeed be understood as articulating the Constitution's underlying value system. The distinction between the Court's own moral reasoning and the consideration of social morality may also be framed in familiar Hartian terms as a distinction between critical morality (or perhaps objective morality) and positive morality (HART, H. L. A. *Law, Liberty and Morality*. Stanford: Stanford University Press, 1963, p. 17 ff.). The former concerns how things ought to be, whereas the latter merely describes prevailing views about what is considered right. That said, Tomáš Sobek argues that the concept of critical morality is not identical to that of objective morality: *"Hart understood critical morality as 'the general moral principles used in the criticism of actual social institutions, including positive morality.' The fact that certain moral principles are used to criticize positive morality does not, of course, imply that these principles are objectively valid. It is entirely possible that dubious or contestable principles may serve as a basis for such criticism. What unites critiques of positive morality, however, is a recurring set of subversive questions: 'This is the conventional morality of our society—but is it the right one?' 'We have inherited this morality from our ancestors—but should we continue to accept it?' 'Most people consider this morality objectively correct—but is it truly so?' In this sense, such critique constitutes a broader societal challenge to bring moral thinking under rational scrutiny."* (SOBEK, T. *Unnatural Law*. Prague: Institute of State and Law of the Czech Academy of Sciences, 2022, pp. 76-77, online: https://www.ilaw.cas.cz/upload/web/files/books/Sobek_Neprirozene_pravo_ele_verze.pdf [23-01-2026]).

¹²⁶ In turn, the Constitutional Court held in that decision that *"the course of pregnancy and the relationship between the fetus and the mother can best be characterized as a unity in duality: in the early stages of pregnancy, the unity of the mother and fetus prevails, whereas in the later stages, their duality becomes more pronounced."* (Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/01 of 4 December 2007, II.B.4, p. 52). It further stated that *"the need to balance the rights, values, and principles at stake in the present case precludes the absolutization of any one or more of them—for example, an absolute ban on abortion or, conversely, the removal of all restrictions on abortion. Such balancing requires, on the one hand, determining the level of protection to which unborn human life is entitled and, on the other hand, defining the scope and implications of a woman's right to self-determination, including control over her own body and life, in light of their mutual relationship"* (ibid., II.A.2.4, p. 39). However, rejecting the concept of the mother and fetus as a "unity in duality" does not necessarily entail a breach of the balancing requirement identified by the Constitutional

Court; in particular, it does not imply the feared absolutization of the value of the fetus leading to an absolute prohibition of abortion. As I have argued, even if the fetus were recognized as a subject of law, it would not inevitably mean that abortion should be absolutely prohibited and should not remain permissible in cases involving a threat to the life or health of the woman (at least under certain conditions or according to certain theoretical approaches). This applies *a fortiori* where the fetus is legally protected only as an object, which reflects the current Slovak constitutional framework. In this context, one may also object to the opinion of a court-appointed expert in bioethics, who stated that: "*The full and absolute application of one value would inevitably occur at the expense of the suppression of the other. Therefore, what is decisive is the proportion and degree to which each of these values is applied in practice. In the case of respect for human life, this depends on the 'degree of human life', which increases with the developmental stage of the fetus*" (ibid., I.6, p. 16). The outlined model of protecting the fetus as an object of law—even within the first twelve weeks of pregnancy and under stricter conditions than those currently in force—does not amount to its absolutization.

CONCLUSION

In this brief monograph, I have examined the constitutional dimension of the protection of human life before birth, focusing in particular on the interpretation of Article 15(1) of the Constitution of the Slovak Republic. I have attempted to present and analyze a theoretically possible version of an argument grounded in Christian morality, based on the constitutional Preamble, which—when applied to the interpretation of the provision in question—supports a more intensive protection of the fetus in the first twelve weeks than is provided by the current sub-constitutional legal regulation of abortion. Such an argument, however, relies on several essential assumptions.

First, it is based on the premise that the second sentence of Article 15(1) of the Constitution is a normative rather than a merely declaratory (proclamatory) provision—i.e., a provision capable of legal enforcement. This assumption was also accepted (and emphasized) by the Constitutional Court of the Slovak Republic in its 2007 decision. Nevertheless, it is fair to acknowledge that this position is not entirely uncontroversial. For example, Vlastimil Ševčík—whom I quoted in the first chapter in connection with the introduction of the federal debate on the adoption of the Charter of Fundamental Rights and Freedoms in 1991—later stated that the objective of avoiding normatively non-binding provisions in the Charter was ultimately not achieved with regard to the contested sentence on the protection of human life before birth [Article 6(1) of the Charter, originally Article 7(1)]. He argued that the proposal by

MP Fišera was adopted *"against the opinion of the rapporteur of the House of Nations,"* (a role he himself held), and that *"it is clear that this sentence, with its almost empty content, is one of those that defy the requirement of enforceability of rights, on which the Charter primarily seeks to be based (§ 1, para. 2 of the implementing Act)."*¹²⁷ The same legal opinion was expressed during the dispute over the constitutionality of the abortion regulation in 2002 by Matúš Petrík, who participated in the aforementioned discussion between Ján Drgonec and Daniel Lipšic. He stated: *"The wording of the second sentence of paragraph 1 of Article 15 cannot raise any doubts; nor does it do so, except in the case of those who project their own wishes onto the constitutional text. It is a declaratory formulation that lacks normative content."*¹²⁸ Petrík referred to several commentaries on the Constitution and the Charter in support of this legal opinion. These authors are thus quite critical of the position ultimately endorsed by the Constitutional Court in 2007—that the provision in question is normatively binding (although the Court did not fully accept the petition and upheld the constitutionality of the status quo concerning abortion practices during the first twelve weeks of pregnancy). The argumentation presented in this monograph therefore also rests on an assumption that is not entirely beyond dispute, even though it was accepted by the Constitutional Court.¹²⁹

The other two assumptions on which the theoretically possible version of the "conservative" argument grounded in Christian morality—intended for use in the interpretation of Article 15(1) of the Constitution—is based are, first, the thesis that this morality is encompassed within the

¹²⁷ ŠEVČÍK, V. *Law and Constitutionality in the Czech Republic*. Prague: Eurolex Bohemia, 2002, p. 47.

¹²⁸ PETRÍK, M. On the Constitutionality of Abortion Fourthly. In *Justičná revue*, 2002, Vol. 54, No. 12, p. 1444.

¹²⁹ And as Vincent Bujňák points out, the Constitutional Court has already referred to the decision PL. ÚS 12/01 in connection with the thesis on the normative nature of the provisions of the Constitution in two other decisions that concerned the interpretation of different constitutional articles (PL. ÚS 13/2022 and PL. ÚS 16/2023). This can be understood as its effort to be consistent in its view of the nature of the constitutional text. (BUJŇÁK, V. Limits of Digitalization in the Context of the Fundamental Right to Use Cash. In MIHÁLIKOVÁ, M. – ŤAŽKÁ, V. (eds). *Bratislava Legal Forum 2025*. Bratislava: Faculty of Law of Comenius University Bratislava, 2025, pp. 204-205, online: https://www.flaw.uniba.sk/fileadmin/praf/Veda/Konferencie_a_podujatia/BPF/2025/BPF_2025_final_1.pdf [13-05-2026]).

concept of the Cyrilo-Methodian spiritual heritage referred to in the Preamble, and, second, that the Preamble itself has some degree of interpretive relevance. Both of these assumptions can, in principle, be reasonably defended; however, they are not uncontroversial and many would clearly disagree with them. However, the very nature of the mission of Cyril and Methodius—which was indisputably value-oriented and aimed at the dissemination of Christian ideas (and, by extension, Christian moral values) in Great Moravia—lends support to the first assumption. In this respect, it is not easily contested.¹³⁰ Therefore, when the contribution of Cyril and Methodius (their spiritual heritage) is invoked, it is quite natural for it to be understood as support for Christian values, or for values consistent with Christianity, which Cyril and Methodius themselves represented. Regarding the second assumption, it is at least supported by the thesis that the Preamble constitutes an officially promulgated statement of the framers of the Constitution and, as such, should possess a degree of interpretive relevance comparable to that of the general part of the explanatory memorandum to the Constitution (i.e., it should be regarded, at a minimum, as an auxiliary interpretive instrument; and it may be noted that an additional argument in favor of the interpretive relevance of the Preamble may be based on the comparison with the case-law of the Constitutional Court of the Czech Republic, which has referred to the Czech Constitutional Preamble, for example, in the recent decision Pl.ÚS 8/25).¹³¹ These assumptions can be considered reasonably plausible;

¹³⁰ "The arrival of Constantine and Methodius meant the definitive Christianization of the people of Great Moravia, the beginning of an independent culture and integration among other cultural nations of that epoch." (VARGAŠ, Š. *Cyrilo-Methodian Heritage in the Religious, National and Cultural Life of Slovaks*. Bratislava: LÚČ, 1991, p. 20).

¹³¹ See paragraphs 146 and 197 of that decision. In para. 146, the Constitutional Court of the Czech Republic linked the reference of the Preamble of the Constitution of the Czech Republic to the "good traditions of Czechoslovak statehood" with the idea of not being tied to any ideology or religious confession within the meaning of Article 2 (1) of the Charter (the provision corresponds to Article 1 (1) of the Constitution of the Slovak Republic), and stated: "*Article 2 (1) of the Constitution of the Slovak Republic. 1 of the Charter is related to the 'good traditions of Czechoslovak statehood' (Preamble to the Constitution), which has been ideologically built since 1918 in the spirit of republicanism and in opposition to the privileged position of any church in the legal system and in the political system.*" The reference of the Slovak constitutional Preamble to the Cyrilo-Methodian spiritual heritage, of course, should not be used as an argument against a similar conclusion about the equality of churches and confessions in Slovakia. Its significance may theoretically lie in the *moral (axiological)* background of Slovak law in the sense I have dealt with in this monograph (Christian morality

however, it is clear that they ultimately remain open to debate and will continue to be the subject of legitimate controversy.

Finally, as stated in the introduction, an important prerequisite for the applicability of the outlined argument is that the conclusion regarding the need for more intensive protection of the fetus during the first twelve weeks of pregnancy—through the determination of the material conditions for the permissibility of abortion—must also withstand a proportionality test. The detailed application of this test, however, falls outside the scope (or, more precisely, the deliberately chosen objective) of this monograph and is therefore left to constitutional law scholarship.¹³²

Under these assumptions, it is possible to formulate the argument that the Constitution—on the basis of conservative value foundations (as expressed in the Preamble and its reference to the Cyrilo-Methodian tradition as a set of Christian moral values)—enshrines in the second sentence of Article 15(1) such a level of protection of the fetus that excludes the possibility of terminating its life during the first twelve weeks of pregnancy purely upon request and without stated reasons. The argument grounded in Christian morality, derived from the Preamble, thus comes into play in situations in which the interpretation of the provision in question [Article 15(1)] cannot be determined in a sufficiently satisfactory manner using standard methods of interpretation. It therefore functions as an auxiliary interpretive argument.¹³³

argument). Concerning para. 197, the Constitutional Court of the Czech Republic stated: "*The positive duty of the state to guard and develop the inherited cultural, material and spiritual wealth follows already from the Preamble of the Constitution.*"

¹³² I would like to reiterate that, even if the conservative argument in question does not fully satisfy the proportionality test, it would nevertheless retain some relevance. At the very least, it would point to the need for more intensive efforts to develop strategies and policies aimed at encouraging women not to seek abortions—in other words, to adopt measures that provide meaningful support to pregnant women in their decision-making, so as to reduce the likelihood that they will opt for abortion.

¹³³ Linguistic, teleological and systematic methods (and their individual variants) can be broadly described as standard methods of interpretation, and historical, doctrinal and comparative methods can be described as auxiliary methods. (FÁBRY, B. – KASINEC, R. – TURČAN, M. *Theory of Law*. 2nd ed. Bratislava: Wolters Kluwer, 2019, p. 214 ff.; MRVA, M. – TURČAN, M. *Interpretation and Argumentation in Law*. 2nd ed. Bratislava: Wolters Kluwer, 2024, pp. 194-195).

I have also addressed the question of which reasons support the protection of the fetus as a subject of law and which support its protection as an object of law. In this context, I considered whether, if the outlined argument grounded in Christian morality were to be accepted, it would not be necessary to proceed directly from the premise of protecting the fetus as a subject rather than as an object of law. The Constitutional Court, albeit in a more limited sense than requested by the petitioners, effectively adopted the latter approach when it held that the fetus is not a subject of rights within the meaning of Article 15(1) of the Constitution, but rather a constitutional value. My answer to this legal question is likewise negative. The fetus is not a subject within the meaning of that provision, but rather an object of legal protection, even if the aforementioned conservative value-based argument is applied. This conclusion is supported by historical interpretation, which remains relevant to the interpretation of Article 15(1) of the Constitution. In this connection, I have examined an argument based on the intent of the historical constitution-maker, which was ultimately invoked in the aforementioned dispute over the constitutionality of abortion legislation by those who initially argued that the fetus possesses a right to life. However, my analysis of the federal parliamentary debate preceding the adoption of the contested sentence on the protection of human life before birth in the Charter of Fundamental Rights and Freedoms shows that the notion of the fetus as a subject of rights was rejected by the voting members of parliament. Specifically, a competing proposal explicitly recognizing a right to life from conception was replaced by the formulation that now refers to the protection of human life before birth. From the perspective of historical interpretation, it is therefore justified to regard the fetus solely as a legally protected object (a constitutional value). Linguistic and teleological interpretation lead to the same conclusion. I have also examined additional arguments and concluded that, even when adopting an interpretation that takes into account Christian morality (or morality compatible with Christianity) as an implicit value reflected in the Preamble, the fetus is not protected as a subject within the meaning of the constitutional provision in question. A different conclusion would therefore require a constitutional amendment. Nonetheless, the value argument derived from the Preamble is relevant with regard to the extent of protection afforded to the fetus as an object of law and supports the conclusion already outlined above regarding the

need to define substantive grounds for the permissibility of abortion during the first twelve weeks of pregnancy. The argument from the intent of the historical constitution-maker provides an answer only to the question of the type of protection of the fetus—subject versus object—and not to the question of the scope of its protection as an object. It is precisely here that the value-based argument based on the Preamble acquires its significance, as it allows, at least in theory, for such a scope of protection to be derived.

As I have already noted in the introduction, I am fully aware that this thesis—the central claim of this monograph—is controversial. I have therefore also identified the assumptions on which it rests and which are likely to provoke debate. As indicated, the present work should be understood primarily as an academic exercise—a deliberately provocative contribution to the discussion on the protection of human life before birth and on the interpretation of the relevant provision of the Slovak Constitution. The dual aim of this monograph—to formulate and critically assess a hypothetical argument grounded in Christian morality in the interpretation of the constitutional provision at issue, and to analyze the related argument based on the intent of the historical constitution-maker—has thus been fulfilled through the foregoing analysis. I have demonstrated the theoretical possibility of invoking Christian morality in this context and have examined the circumstances surrounding the adoption of the constitutional provision in question.

I would like to conclude this text on a controversial legal and ethical issue with a quotation from the relevant decision of the Constitutional Court, followed by a brief comment: *"No modern constitution, including the Constitution of the Slovak Republic, is value-neutral; on the contrary, it is based on a relatively comprehensive set of values that the state recognizes, respects, and protects through public authorities. These values are objective in nature, reflecting a socially recognized general 'good,' and are generally immaterial. Unlike standard legal norms (rules of conduct), the state cannot create objective values, according to contemporary jurisprudence, but can only recognize and respect them, proceed from them, and, where appropriate, emphasize certain values in relation to others."*¹³⁴ I will add that

¹³⁴ Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 12/ 01 of 4 December 2007, II. A., 1.3, p. 32.

the definition of the constitutional values referred to by the Constitutional Court will, of course, always remain controversial (at least to some extent),¹³⁵ whereas in this monograph, I have sought to identify one of the theoretically possible ways of approaching these values, namely in connection with a question that has long divided "conservatives" and "liberals" (admittedly a simplification) and will undoubtedly continue to do so.¹³⁶ In any case, this observation does not diminish the value of the discussion. I hope this monograph demonstrates it in its own way.

¹³⁵ Tomáš Mészáros points out that the Constitutional Court "*consistently separates ontological questions from normative assessment and avoids deriving the status of a person or the scope of their protection from biological, psychological, or anthropological characteristics,*" while at the same time "*confirming that the legal order may differentiate the scope of protection or the exercise of rights without taking a position on the 'essence' of the person as such.*" (MÉSZÁROS, T. *Persona: On the Notion and Concept of a Person in Law*. Bratislava: Faculty of Law, Comenius University, 2026, p. 38). Mészáros is critical of this approach and argues that the lawmaker should explicitly acknowledge the implicit assumptions on which his treatment of the concept of the person is in fact based. According to Mészáros, the existence of such underlying assumptions is evident from the constitutional and statutory-law emphasis on the concept of human dignity, which is not value-neutral (*ibid.*, see, e.g., pp. 105–106).

¹³⁶ In the digital archive of the Slovak parliament, I have identified nearly three dozen proposals for direct amendments to the Abortion Act throughout the history of the National Council of the Slovak Republic (this means, such an attempt appears, on average, almost every year, not counting indirect amendments). The majority of these proposals can, of course, be described as "conservative," although "liberal" initiatives have also been put forward. Among the former, one may note, for example, proposals to change the terminology used in the Act (proposal by Daniel Lipšic, Pavel Hrušovský and Ľudmila Mušková from 2008; proposal by Martin Čepček from 2023); proposals to shorten the time limit for lawful abortion from twelve weeks to eight weeks of pregnancy (proposals by Marian Kotleba, Rastislav Schlosár, Jana Nehézová, Stanislav Drobný and Peter Krupa from 2019; Marian Kotleba, Rastislav Schlosár, Magdalena Sulanová, Miroslav Urban and Eduard Kočíš from 2020; and Anna Záborská and Richard Vašečka from 2024), or even to seven weeks (proposal by Milan Krajniak and Jozef Lukáč from 2019). Further proposals sought to restrict the admissibility of abortion within the first twelve weeks to cases involving a threat to the woman's life or pregnancy resulting from rape, and to allow it up to the twenty-fourth week only in cases of severe fetal impairment (proposals by Marian Kotleba, Rastislav Schlosár, Milan Uhrík and Stanislav Drobný from 2018 and 2019, as well as a later proposal by a similar group in 2021), or additionally on grounds of protecting the woman's health (proposals by Richard Vašečka from 2018 and 2019). Other initiatives included proposals to require physicians to inform women about available alternatives to abortion (e.g. Daniel Lipšic's proposal from 2009), to introduce an explicit ban on the abortion pill (proposal by Richard Vašečka, Erika Jurinová and Branislav Škripek from 2013), and to prohibit the promotion of abortion (proposals by Martin Čepček from 2020, 2021 and 2022). Some proposals went even

further, including attempts to repeal the abortion law altogether. For instance, a proposal by Peter Gabura from 2008 envisaged repealing the Act while explicitly affirming the natural right to life and incorporating a reference to the constitutional protection of human life before birth into the text of the new legislation. Similarly, a proposal by Štefan Kuffa, Marián Kvasnička and Jozef Mikloško from 2015 aimed not only to repeal the Act but also to introduce an explicit prohibition on depriving an unborn child of life or performing intentional abortion, while simultaneously amending the Civil Code to recognize legal personhood of the unborn and making extensive corresponding amendments to the Criminal Code. With regard to more "liberal" initiatives, particular attention should be paid to two proposals by groups of deputies around Jana Bittó Cigániková, which sought to guarantee access to abortion in accordance with the latest scientific knowledge, whether performed surgically or medically, including the use of the abortion pill (proposals by Jana Bittó Cigániková, Jarmila Halgašová and Branislav Gröhling from 2023, and by Jana Bittó Cigániková and Tomáš Szalay from 2024).

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APPENDIX 1:

Proposals of Article 6(1) [draft Article 7(1)] of the Charter

This is an overview of the proposals mentioned in the Federal Assembly discussion held on 8-9 January 1991:*

Committees of the Federal Assembly:

"Everyone has the right to life and healthy living conditions."

"Everyone has the right to life and a healthy environment."

"Everyone has the right to be born."

"... Human life is worthy of protection from conception."

František Michálek:

"Everyone has the right to life from conception."

Pavel Čičmanec (he proposed it as Article 7(2) of the Charter):

"... Human life is worthy of protection from conception."

Ladislav Kvasnička:

"The right to protection of human life and the essential conditions for its physical and mental development shall be guaranteed."

Ivan Fišera:

"Everyone has the right to life. Human life is worthy of protection even before birth."

In addition to the proposed wording of Article 6 (or then Article 7) of the Charter, two related proposals for other articles were also made:

Josef Lux (proposal on Article 32 of the Charter):

"Parenthood and the family and the human fetus from conception are under the protection of the law."

Eva Nováková (proposal on the second sentence of Article 33(1) of the Charter):

"Special protection for children before and after birth and for adolescents is guaranteed."

* Of course, there were other proposals before. For example, from the record of a meeting held in 1990, we learn that the Constitutional Law Committee proposed the wording: *"Everyone has the right to life and this right is protected by the law."* After a stylistic correction of the proposal of MP Michal Sedláček: *"Everyone has the right to life and the protection of this right by the law."* (Stenoprotocol of the meeting No. 8 of the Federal Assembly of 22 November 1990, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=77426> [16-01-2026]; stenoprotocol of the meeting No. 8 of the Federal Assembly of 22 November 1990, online: <https://www.nrsr.sk/dl/Browser/Document?documentId=77433> [16-01-2026]). MP Váca, on the other hand, proposed the wording: *"The right to birth is guaranteed."* (Ibid.).

APPENDIX 2:

Case-law citing the second sentence of Article 15(1) of the Constitution

Below is a list of decisions of the Slovak top courts (except for the decision PL. ÚS 12/01) drawn from the *judikaty.info* and *ustavnysud.sk* databases, which quote the second sentence of Article 15 (1) of the Constitution. In the following decisions of the Constitutional Court of the Slovak Republic, one different opinion and one decision of the Supreme Court of the Slovak Republic, the given sentence is only mechanically replicated (the relevance of its occurrence is therefore doubtful here):

1. Decision of the Constitutional Court, II. ÚS 191/04 of 8 September 2004.
2. Decision of the Constitutional Court, III. ÚS 258/07 of 27 September 2007.
3. Decision of the Constitutional Court, IV. ÚS 211/08 of 31 July 2008.
4. Decision of the Constitutional Court, II. ÚS 406/08 of 5 November 2008.
5. Decision of the Constitutional Court, PL. ÚS 15/06 of 20 May 2009.
6. Decision of the Constitutional Court, III. ÚS 351/2012 of 15 January 2014.
7. Decision of the Constitutional Court, I. ÚS 426/2014 of 18 August 2014.
8. Decision of the Constitutional Court, II. ÚS 424/2012 of 6 November 2014.
9. Decision of the Constitutional Court, PL. ÚS 10/2013 of 10 December 2014.
10. Decision of the Constitutional Court, II. ÚS 96/2016 of 4 February 2016.
11. Decision of the Constitutional Court, II. ÚS 697/2016 of 22 September 2016.
12. Decision of the Constitutional Court, II. ÚS 14/2017 of 12 January 2017.
13. Decision of the Constitutional Court, III. ÚS 665/2017 of 7 November 2017.
14. Decision of the Constitutional Court, II. ÚS 193/2020 of 12 May 2020.
15. Decision of the Constitutional Court, II. ÚS 356/2020 of 27 August 2020.
16. Dissenting opinion of Judge Ivetta Macejková on the Decision of the Constitutional Court, PL. ÚS 13/2018 of 12 September 2018.
17. Decision of the Supreme Court, 4Tdo/45/2019 of 27 November 2019.

A slightly more relevant mention in one of the found decisions of the Supreme Court of the Slovak Republic is:

Decision of the Supreme Court, 7Cdo/80/2014 of 23 February 2017:

"If the defendant 2/ objects to the amount of compensation for non-pecuniary damage determined by the appellate court, given that in his opinion it is of an enriching nature and the plaintiff did not and could not have a strong relationship with his unborn daughter, who lived only a few minutes, the Supreme Court states that the unexpected death of a child will affect family and family relationships, the same is true of an unborn child. The Constitution of the Slovak Republic also grants legal protection to an unborn child in Article 15: 'Everyone has the right to life. Human life is worthy of protection even before birth.' It cannot be generalized that a parent does not have an emotional relationship with the unborn child, especially if the evidence establishes that the surviving parents, whose rights have been affected by the death of the unborn child, the arrival of which they were looking forward to, have suffered emotional damage from the loss of a person close to them. Such unlawful interference by a third party with the right to privacy or the right to family life may cause damage to another party to the relationship that partially or wholly prevents them from meeting his or her emotional needs, i.e.

non-material damage affecting a sphere other than the material sphere, the personal sphere, which undoubtedly also includes emotional damage [...]."

Other citations of the second sentence of Article 15(1) of the Constitution were not found in the case-law of Slovak top courts in the *judikáty.info* system in January 2026.

What is true of the above-cited decisions of the Constitutional Court is also true of a set of fifty decisions of district (or municipal) and regional courts, which I found at the same time through a database available at *slov-lex.sk*, in which the second sentence of Article 15(1) of the Constitution is repeatedly cited only as part of the citation of the entire Article 15, which is mentioned here among several legal provisions listed by the court. So, the mention here is not even of an argumentative nature and occurs only marginally (basically randomly). One found decision stands out from this set, which contains a certain (at least implicit) discussion about the protection of the fetus (it was a question of mandatory vaccination, while the decision indicates that the vaccination of the mother is in accordance with the interest in the protection of the fetus):

Decision of Banská Bystrica Regional Court, 24Sa/7/2016 of 27 April 2017:

"With regard to rubella, the defendant stated (the appellants objected to the uselessness of vaccination in boys) that the infection of a pregnant woman can lead to miscarriage or damage to the fetus of various extent (mental retardation, blindness, deafness, heart defects), etc. [...] The fact that the legislation on mandatory vaccination in connection with the sanctioning for violation of this obligation is not in conflict with Article 16(1) of the Constitution, which guarantees the inviolability of a person and his privacy, was already answered by the Constitutional Court of the Slovak Republic. It also ruled that it is not in conflict with Article 15(1) of the Constitution, according to which everyone has the right to life, while human life is worthy of protection even before birth."

Other decisions quoting the second sentence of Article 15(1) of the Constitution were not found in the mentioned sources at that time.

APPENDIX 3:

Cyrilo-Methodian spiritual heritage in the Slovak legal order

Mentions of the Cyrilo-Methodian spiritual heritage can be found in the Preamble to the Constitution and in the preambles to two treaties with the Holy See. The texts of these preambles are reproduced in this Appendix. For the sake of comparison, the preamble to the agreement with registered churches and religious societies is also included; it refers to a different term instead of the Cyrilo-Methodian spiritual heritage. The explanatory memorandum to the draft of that agreement does not clarify this difference. It may be inferred, however, that the reason lies primarily in the fact that the Jewish Religious Communities are also a party to the agreement, and possibly also in the fact that most of the participating churches are Protestant denominations, for which an emphasis on this tradition is typically less characteristic than for the Catholic Church.

Constitution of the Slovak Republic (460/1992 Coll.):

"We, the Slovak nation, remembering the political and cultural heritage of our ancestors and the centuries-old experience of struggles for national existence and our own statehood, in the sense of the Cyrilo-Methodian spiritual heritage and the historical legacy of Great Moravia, based on the natural right of nations to self-determination, together with members of national minorities and ethnic groups living in the territory of the Slovak Republic, in the interest of permanent peaceful cooperation with other democratic states, striving for the application of a democratic form of government, guarantees of free life, development of spiritual culture and economic prosperity, i.e. we, the citizens of the Slovak Republic, resolve, through our representatives, on this Constitution:"

Basic Agreement between the Slovak Republic and the Holy See (326/2001 Coll.):

*"The Slovak Republic and the Holy See,
Proceeding, the Slovak Republic on constitutional norms and the Holy See on the documents of the Second Vatican Council and canon law,
Referring to the internationally recognized principles of religious freedom, to the important mission of the Catholic Church in the history of Slovakia, as well as to its current role in the social, moral and cultural spheres,
professing the Cyrilo-Methodian spiritual heritage,
Recognizing the contribution of the citizens of the Slovak Republic to the Catholic Church,
Declaring the will to contribute to the overall spiritual and material good of man and to the common good,
agreed as follows:"*

Treaty between the Slovak Republic and the Holy See on Catholic Education (394/2004 Coll.):

*"The Slovak Republic and the Holy See (hereinafter referred to as 'the Contracting Parties'),
relying on the Constitution of the Slovak Republic and the legal order of the Slovak Republic,
and the Holy See on the documents of the Second Vatican Council, in particular the Declaration Gravissimum Educationis and the norms of canon law, and both Contracting Parties on Article 13(9) of the Basic Treaty between the Slovak Republic and the Holy See signed on 24 November*

2000 in the Vatican, Referring to the internationally recognized principles of religious freedom, to the important mission of the Catholic Church of both the Roman Rite and the Byzantine Rite, i.e. the Roman Catholic Church and the Greek Catholic Church according to the legal order of the Slovak Republic (hereinafter referred to as the 'Catholic Church') in the history of Slovakia, as well as to its current role in the field of Catholic education and training, claiming the Cyrilo-Methodian spiritual heritage, recognizing the contribution of the citizens of the Slovak Republic to the Catholic Church, declaring their will to contribute to the overall spiritual and material good of man and the common good, they agreed as follows:"

Agreement between the Slovak Republic and Registered Churches and Religious Societies (250/2002 Coll.):

"Slovak Republic

and

Evangelical Lutheran Church of the Augsburg Confession in Slovakia,

The Reformed Christian Church in Slovakia,

The Orthodox Church in Slovakia,

Evangelical Methodist Church, Slovak Region,

The Baptist Brethren Union in the Slovak Republic,

The Church of the Brethren in the Slovak Republic,

Seventh-day Adventist Church, Slovak Conference,

The Apostolic Church in Slovakia,

Central Union of Jewish Religious Communities in the Slovak Republic,

Old Catholic Church in Slovakia,

The Czechoslovak Hussite Church in Slovakia,

as churches and religious societies registered pursuant to Act No. 308/1991 Coll. on Freedom of Religious Belief and the Status of Churches and Religious Societies, as amended by Act No.

394/2000 Coll. (hereinafter referred to as 'Registered Churches and Religious Societies'),

Referring to the Constitution of the Slovak Republic, the internationally recognized principles of religious freedom, the Convention for the Protection of Human Rights and Fundamental Freedoms, the United Nations documents declaring freedom of religion, and the legislation in force of the Slovak Republic, which enshrines the equality of registered churches and religious societies in the Slovak Republic and their right to conclude treaties with the Slovak Republic,

Recognizing the current role of registered churches and religious societies in the moral, spiritual, social and cultural spheres and their historical merits,

Committed to the principles of humanity, democracy, tolerance and a common spiritual heritage,

Declaring the will to contribute to the overall spiritual and material good of man and to the common good,

agreed as follows:"

APPENDIX 4:

Cyrilo-Methodian spiritual heritage in the Slovak case-law

Slovak courts refer to the concept of the Cyrilo-Methodian spiritual heritage only sparingly in their own reasoning. Nor does the term appear frequently in submissions by parties or other actors as reflected in published decisions, although such references are somewhat more common than in the courts' own statements. The following excerpts from judicial decisions illustrate the use of the term (based on databases of court decisions available at *judikaty.info*, *slov-lex.sk* and *ustavnysud.sk*; the decisions are presented in chronological order):

Decision of the Constitutional Court of the Slovak Republic, I. ÚS 96/93 of 16 November 1993:

"The complaint was sent on 13.10.1993 to the Municipal Office—the Mayor of the City of Žilina [...] with an invitation to comment on it. In its opinion, which the Constitutional Court of the Slovak Republic received on 3.11.1993, it states that the city of Žilina [...] has never given its consent to operate an erotic massage parlor. Its illegal operation is contrary to the city regulation No. 12/1992 and its subsequent amendments. The statement further states that: 'At the same time, we hereby express the opinion of the general public of our city that such business activities are contrary to the Constitution of the Slovak Republic, where the Preamble states «... In the sense of the Cyrilo-Methodian spiritual heritage..., resolve, through our representatives, on this Constitution...», such immoral activities are in sharp contradiction with this spiritual heritage and the moral principles resulting from it.'"

Decision of the Constitutional Court of the Slovak Republic, II. ÚS 87/2010 of 4 March 2010:

"In connection with the petitioner's arguments on the violation of Article 12 of the Treaty on the European Community, the Regional Court stated that this provision does not apply to the regulation of ownership relations in individual Member States of the European Community, and therefore Article 12 is not applicable in the present case. It referred to Article 295 of the Treaty on the European Community. In her appeal against the judgment of the Regional Court, the petitioner argued in a similar way, pointing to the need to respect the rule of law, the prohibition of discrimination, the protection of property, and also pointed to the cultural and civilizational values of the Slovak Republic expressed in the constitutional reference to the Cyrilomethodian heritage."

Decision of the Supreme Court of the Slovak Republic, 6SŽ/16/2011 of 26 September 2012 (the same is repeated in another decision of the Supreme Court of the Slovak Republic, 6SŽk/33/2020 of 3 April 2023):

"On 4 June 2009 and 20 August 2009, the Respondent commissioned the Institute for Relations between the State and Churches to prepare an expert analysis of periodical and non-periodical literature and recordings from liturgical events, seminars and conferences of B. with special regard to tolerance. On the basis of the analysis in question, it stated that in several issues of the journal Logos published by P. J. E. in Banská Bystrica and on the website of P. J. (V.) there are contributions and articles testifying to religious intolerance and rejection of contemporary ecumenism, hostile claims towards registered churches and religious societies, accusing them,

among other things, of occultism and the work of the devil, a negative attitude towards the ceremonial tradition of other churches, including questioning the Cyrilo-Methodian tradition."

Decision of the Košice II District Court, 41C/241/2015 of 11 November 2015:

"When asked by the court to clarify the petition, the plaintiff states in a submission delivered to the court on 25 June 2015 that he does not know the motive why the expert V. R. did not properly fulfill the obligation imposed by the court in the preparation of the expert opinion. However, the expert caused damage to him, among other things, in the amount of 354 euros. He noted that according to the Constitution of the Slovak Republic, he has the right to freely and publicly express his faith. He is a Christian and in the sense of the Cyrilo-Methodian spiritual heritage, the deed of V. R. is a sin. According to his faith, he should not judge him, but rather forgive him. Therefore, he asks the court to oblige the defendant to pay 1 euro."

Decision of the Supreme Court of the Slovak Republic, 8Sr/1/2014 of 1 June 2016:

"By a submission delivered to the Supreme Court on 26.01.2016, the plaintiff submitted an opinion on the defendant's statement of 28.07.2015. With regard to the first reason for refusal of registration, the petitioner stated: The Constitution of the Slovak Republic in its Preamble explicitly refers to the Cyrilo-Methodian spiritual heritage and the historical legacy of Great Moravia, on the basis of which the Constitution of the Slovak Republic was declared and approved. The mission of Cyril and Methodius in the years 863/864 – 867 was also to explain and spread the Christian faith. Constantine brought with him the symbol of the Byzantine double cross, which is still in the Slovak coat of arms. The proposed statutes of the civic association of the People's Party, where the subject of its activities refers to the protection of the Christian faith and the guarding of the Slovak national awakening, cannot be of a discriminatory and segregationist nature in any case. The defendant's argument that none of the civic associations named by the defendant has this object in its content of activities does not stand, because each association is specific and to argue that something does not exist somewhere, and therefore cannot exist in the case of the plaintiff, has no legal justification. The defendant's statement that the proposed statutes of the civic association PP do not specify the manner and specification of activities that pursue the achievement of the above goals and that the activities referred to in Article 2(2) of the statutes evoke a parallel with the content of the Hlinka Youth, does not stand up from a legal or factual point of view. Article 2(2) of the proposed statutes of the civic association of the People's Party states that this civic association will support the physical and spiritual growth of its members through its activities, especially camping, tourism, publications and public gatherings, spread and guard the Christian faith, traditions and values, support and guard the Slovak national awakening and feelings, provide undistorted information about events in Slovakia and the world, and enhance Slovak nature and the environment. None of these activities listed in the proposed statutes of the People's Party can be objectively and subjectively assigned to the activities of the Hlinka Youth, as the defendant claims, because it does not support any action that would be directed against the foundations of the state, or that would meet any of the factual bases of the criminal offences listed in Title XII. of the Criminal Code, as amended. The plaintiff stated as an analogy that the Statutes of Slovak Scouting in Chapter II. ods.8 (a) state that one of the basic goals and principles of Scouting is 'duty to God'."

Decision of the Prešov District Court, 24C/5/2018 of 14 May 2018 (judge's statement):

"The legal regulation of joint property of spouses in the Civil Code is traditional and conservative. It is based on the Preamble of the Constitution of the Slovak Republic and the Family Act. Future spouses enter into marriage with the intention of entering into a harmonious and lasting union

in the sense of the Cyrilomethodian spiritual heritage, therefore, for example, the so-called prenuptial agreements have no place in our legal system. Similarly, any agreements on the future settlement of joint property cannot be valid."

Decision of Nitra District Court, 16Pc/11/2020 of 17 September 2021:

"Our Preamble refers to the Cyrilo-Methodian tradition, which is a very strong reference of the basic legal norm to the rules of decent behavior. The basis of Christian norms of behavior is the Ten Commandments, at least his generation and older have been brought up and sees that many young people as well. In the sense of the Ten Commandments honor your father and mother, here is a hidden message—good manners. This should also apply to this case, at least to the extent that (the daughter) at least says hello to the father and does not say that she has nothing to talk to him about, and even if she is so proud and has nothing to talk about, she is so proud that she does not even want alimony, that would be a consistent view of personality. In this case, the contradiction with good manners is proved by at least 3 pieces of evidence and therefore they proposed that the court reject the same guideline on the basis of the evidence provided in accordance with Section 75 (2) and also fulfilling an educational function towards the parties to the proceedings. [...] The debtor's legal representative requested that the petition for an increase in alimony be rejected due to its contradiction with good manners. Although the court appreciates the efforts of the legal representative to present the acquired knowledge of an academic and philosophical nature, these did not in any way change the legal opinion presented by the higher court, not omitting the meaningless considerations about the legacy of the Cyrilo-Methodian tradition as a very strong legacy of the basic legal norm regulating the rules of decent behavior."

Decision of the Constitutional Court of the Slovak Republic, PL. ÚS 9/2023 of 11 June 2025:

"When examining the constitutional compliance of restrictions on fundamental rights and freedoms, the Constitutional Court traditionally emphasizes the necessary proportionality. In this respect, there must be proportionality, i.e. proportionality between the aim pursued and the means used to restrict a fundamental right or freedom (PL. ÚS 3/00). There is no doubt that the requirement of proportionality also applies to punishment, which was already known in antiquity in terms of the principle of 'lex talionis'. Naturally, its application grasp was subject to historical development and social ideas about justice. Since the Preamble of the Constitution mentions the Cyrilo-Methodian spiritual heritage, it is possible to recall the Judicial Code for the People, i.e. the most important Cyrilomethodian juridicum [for terminology, see GÁBRIŠ, T., JÁGER, R. Again to the Judicial Code for the People (Zakon sudnyj ljudem): on the possibilities of reconstruction of archaic law in Great Moravia. In: Právněhistorické studie, No. 46/1, 2016, p. 20] and its 29th article: 'Whoever captures a free man and sells him or enslaves him, let him be enslaved himself, since he also enslaved a free man, let him himself experience slavery.'"

In addition to the decisions mentioned above, the Cyrilo-Methodian spiritual heritage is also referred to in a decision of the District Court in Žilina, 6C/247/2011 of 14 September 2012, in which the court quotes the Preamble to the Constitution of the Slovak Republic among other legal provisions, without further elaboration. Although this constitutes merely a mechanical reproduction, it nevertheless suggests that the court attributes at least some legal relevance to the Preamble and does not regard it as entirely devoid of legal significance.

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