

DECLARATION  
OF THE RIGHTS  
OF THE CONCEIVED CHILD  
(UPDATED VERSION)



RAJECKÉ TEPLICE, APRÍL 2024

# DECLARATION OF THE RIGHTS OF THE CONCEIVED CHILD

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On Children's Day, 1 June 1999, four non-governmental organisations adopted the Declaration of the Rights of the Conceived Child as a positive contribution to the society-wide debate on the important issue of the protection of human life. It was later endorsed by the Life Forum, a platform of pro-life organisations.

The Slovak poet Milan Rúfus took over the auspices of the launch, which took place on Children's Day in Bratislava. At that time, it was supported by thousands of Slovak citizens, non-governmental organisations, and churches. There was a similar text of the declaration supported in the Czech Republic, for example, by the singer Marta Kubišová or the astronomer Jiří Grygar.

The Declaration offers principles, a positive outlook into the life of each of us. We believe that the conceived child should be a subject of the law, even though many of the rights mentioned in the Declaration can be realised only after birth. We are aware that dialogue is indispensable, especially in a democratic, pluralistic society, where the power of the law and not the law of force is to be decisive. The first human right is the right to life. Just as there should be no right to a child, there should also be no right to get rid of a child; and for this reason, the so-called right to abortion cannot be recognised.

Let us try to empathise with the unborn child and see the world through their eyes. The Declaration states the desired state that children should be born into a loving environment. There is always an alternative for a child's life. It is an autonomous human being linked to the other members of the human family. The conceived child and its mother must therefore receive special care and assistance. The responsibility of the child's father to provide support for the child and the mother must not be forgotten.

The Declaration uses the term conceived child in the sense of Article 7 of the Civil Code of the Slovak Republic. It is a translation of the term *nasciturus*, which originates from Roman law. The Declaration brings new insights, but it is neither a description of the Slovak legal order or international law, nor does it contain amendments to change the Slovak legal order. The text of the Declaration is about how precious human life is.

The text of the 1999 Declaration has not changed, but the notes to the articles have been updated, because the legal system of the Slovak Republic is also evolving. The 25th anniversary of the Declaration of the Rights of the Conceived Child is once again an opportunity to give a voice to those who are in hiding and cannot speak up, make themselves visible or defend themselves. A civilised society is judged by how it cares for its weakest members. We are aware of the urgency of the solidarity of all people of good will. The conceived child is one of us.

*Forum of Life*

 Fórum života

# Preamble

We are not forgetting that the life of each of us began with our conception, that is, with the fusion of a human sperm and a human egg, giving great gratitude to our mothers and fathers for giving us the chance to live,

because, according to the Preamble of the United Nations Universal Declaration of Human Rights, “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world,

whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind”,

and because we believe “in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of women and men”, in justice for all, the rule of law and democracy,

we call for the universal “respect for and preservation of human rights and fundamental freedoms” of the weakest among those who do not have a voice.

Because according to the Preamble of the Declaration of the Rights of the Child and the Convention on the Rights of the Child adopted by the General Assembly of the United Nations, “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,”

because according to the Charter of Fundamental Rights and Freedoms and the Constitution of the Slovak Republic, “human life is worthy of protection already before birth”,

and in the spirit of the principle of the classical Roman law “nasciturus pro iam nato habetur, quotiens de commodis eius agitur” – an unborn (conceived) child is considered born when their interests are considered, as well as the principle of in dubio pro vitae – when in doubt, we are to decide in favour of human life, which is always the good,

we declare this Declaration to be addressed to all people of good will, competent authorities, and other non-governmental organisations to provide conceived children with fair legal protection and parental assistance and counselling services.

## Notes:

### The Preamble:

The Preamble, which has a declarative character, is based particularly on:

- the natural law,
- the international documents on human rights and fundamental freedoms such as the Universal Declaration of Human Rights, the Declaration of the Rights of the Child, and the Convention on the Rights of the Child,
- the Charter of Fundamental Rights and Freedoms and the Constitution of the Slovak Republic, which is in terms of legal force the highest-ranking legislation of the Slovak legal order,
- the classical Roman law, on which the laws of the European continent are based,
- the one of the best traditions of medicine – cf. Hippocratic Oath,
- the latest scientific knowledge that confirms that human life begins with conception, i.e. the moment when a male sex cell, sperm, joins a female sex cell, egg, (fertilization), i.e. conception.

The interpretation of this Declaration must be based on the Preamble that, even in doubt, we are to make decisions for benefit of life,

and refers to:

- Decree No. 104/1991 Coll., by which the Federal Ministry of Foreign Affairs of the Czech and Slovak Federative Republic announced the adoption of the International Convention on the Rights of the Child,
- Article 6 para. 1, the second sentence of the Charter of Fundamental Rights and Freedoms, Constitutional Law No. 23/1991 Coll,
- Article 15 para. 1, the second sentence of the Constitution of the Slovak Republic of 1 September 1992, Act No. 460/1992 Coll. as amended.

# I. Every human being has the right to life from conception to natural death

## Article 1

(1) Every human being is equal in dignity and rights from conception to death. Everyone has the right to legal protection from the moment of conception. The adoption of legislation and all action and abstentions are intended to benefit the interests and rights of the conceived child.

(2) All children should be guaranteed, without any discrimination, the rights and protection of their own family, society, and the state, regardless of their age, health or mental status, sex, race, national and social origin, membership of a national minority or ethnic group, religion, property, gender, or another status.

## Article 2

Every human being has the right to life. This right is to be protected by law from the moment of conception until natural death. After the child is conceived, parents should carefully consider what is in the child's best interest, which, naturally, is not to kill the child. An intentional deprivation of the life of the conceived child is in contravention of this Article and of the other Articles of this Declaration, in particular Articles 1 and 3.

### Notes:

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#### Article 1

(1) The conceived child as a being belonging to a human family has rights that belong to him or her before birth.

(2) Prohibition of discrimination against unborn children, for example on grounds of sex or health.

Article 14 of the Council of Europe Convention on Human Rights and Biomedicine (Non-selection of sex): The use of techniques of medically assisted procreation shall not be allowed for the purpose of choosing a future child's sex, except where the serious hereditary sex-related disease is to be avoided.

#### Article 2

Cf. Article 2 para. 1 of the Convention on the Rights of the Child.

## II. The conceived child has the right to be born, to have their mother, father, and family

### Article 3

The conceived child has the right to be born. He or she has the right to be accepted and loved.

### Article 4

The conceived child has the right to be conceived in the marriage of one man and one woman. He or she has the right to be conceived and carried in their mother's womb.

### Article 5

The conceived child shall have the right to a harmonious life in a family based on the permanent marriage of one woman and one man.

### Article 6

The conceived child shall have the right to have their interests considered both in the formation and in the eventual dissolution of the marriage.

#### Notes:

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#### Article 3

According to the Preamble of the Convention on the Rights of the Child, "the child, for the full and harmonious development of their personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding". Of course, this is a desired state, love cannot be legally enforced. The shortcomings of the family environment cannot be the reason for the termination of human life, the induced abortion.

#### Article 4

Failure to secure this right, for example in the case of a single mother, cannot be a reason for killing a conceived child. On the contrary, a mother who gives birth and brings up a child herself deserves all-round help and admiration. The conceived child has the right to be conceived in marriage – the permanent union of one man and one woman – which creates the best conditions for the healthy development of the child. Therefore, the so-called womb-leasing (surrogate motherhood) interferences with the identity and dignity of the child. Pursuant to Section 82 paras. 1 and 2 of the Family Act and Section 39 of the Civil Code, the surrogacy contract would be null and void; it is against good morals and the law. The para. 1 says: The mother of the child is the woman who gave birth to the child.

#### Article 5

According to the Preamble to the Convention on the Rights of the Child, "the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community".

#### Article 6

According to the decision of the Supreme Court of the Czechoslovak Republic No. 48/1952, the court must examine whether the divorce would not be contrary to the interests of the conceived child.

## III. The conceived child has the right to have their health protected and to keep their human dignity preserved

### Article 7

(1)The conceived child has the right to have their health protected and especially the right to receive healthcare and the right to be a patient.

(2)The state should “ensure appropriate pre-natal and post-natal health care for mothers”.

### Article 8

(1)The conceived child has the right to the preservation of their physical, genetic, and mental integrity.

(2)The conceived child has the right to be protected against verification performances of medical knowledge on a human being. The conceived child shall have the right to be protected against the use of their organs and tissues for transplantation. The conceived child has the right to be protected against cloning, genetic or other manipulation, and against any use with a commercial, industrial, scientific, or other purposes.

### Article 9

(1)The conceived child shall have the right to have their human dignity preserved even after death.

(2)The conceived child has the right to a dignified burial.

#### Notes:

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#### Article 7

(1)Pursuant to Act No. 576/2004 Coll. on Health Care, Services Related to the Provision of Health Care and on Amendments and Additions to Certain Acts, as amended, Section 44(c), which deals with special protection of a pregnant woman and a nursing mother in the event of medical exposure:

- Para. 1(b) No. 1 reads: The threatening health professional who carries out medical exposure is obliged to demonstrably inform the pregnant woman of the potential risk associated with medical exposure of her foetus and to record this information in the medical record.
- Para. 2 reads: The healthcare provider shall also ensure that a pregnant woman who has undergone medical exposure at a time when she was unaware of her pregnancy has the dose to her foetus determined.

(2)Article 24 para. 1(d) of the Convention on the Rights of the Child

#### Article 8

(1)Intervention in favour of the life and health of the conceived child is not contrary to Article 4 of the Declaration. In vitro fertilization, during which several “useless” conceived children are produced, is contrary to the human rights of the conceived child, in particular the right to life and to the preservation of human dignity.

(2)Pursuant to Act No. 576/2004 Coll. as amended, Section 26 para. 11(a): Research without a medical indication cannot be carried out on a living human foetus or embryo.

Article 18 (Research on embryos in vitro) of the Convention on Human Rights and Biomedicine (Notice No. 40/2000 Coll.):

- Para. 1 reads: Where the law allows research on embryos in vitro, it shall ensure adequate protection of the embryo,
- Para. 2 reads: The creation of human embryos for research purposes is prohibited.

### III. The conceived child has the right to have their health protected and to keep their human dignity preserved

Penal Code No. 300/2005 Coll., as amended, deals in Section 161 para. 1(b) with Illegal experiments on a human being and cloning of a human being:

Whoever, under the pretext of acquiring new medical knowledge, methods or to confirm hypotheses, or clinical trials of drugs, performs the verification of new medical knowledge without authorisation, without medical indication and without the consent of the person concerned, or performing it on persons on whom verification without medical indication is prohibited, or if they conduct it on a human foetus or embryo, or they conduct it in contrary to other statutory conditions of verification without a medical indication.

The Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being regarding the Application of Biology and Medicine says about the Prohibition of the Cloning of Human Beings (Notice No. 143/2001 Coll.).

Exceptions to patentability pursuant to Section 6 of Act No. 435/2001 Coll. (Patent Act), as amended:

- Para. 1(e) reads: Patents shall not be granted to inventions commercial exploitation of which would be in contradiction with public order or good manners. The sole prohibition of exploitation of an invention by law shall not be in contradiction with public order or good manners pursuant to this provision.
- Para. 2 reads: According the para. 1(e), patents shall not be granted particularly for:
  - a) processes of cloning human beings,
  - b) processes of modifying the germ line genetic identity of human beings,
  - c) utilization of human embryos for industrial or commercial purposes.

#### Article 9

Act No. 131/2010 Coll. on Funeral Services, as amended, also applies to aborted human foetuses or prematurely withdrawn human foetuses, if the parent has requested their release for burial.

Cf. also Section 6 para. 11 of Act No. 576/2004 Coll., as amended.

## IV. The conceived child has the capacity to rights

### Article 10

The conceived child has the capacity to rights.

### Article 11

- (1) The conceived child has the right to compensation in the event of health injury.
- (2) The conceived child can never be considered a damage.

### Article 12

The conceived child has the right of succession.

### Article 13

The conceived child has the right to be endowed.

### Article 14

The conceived child has the right to claim from the insured event, which is the death of the person insured.

#### Notes:

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#### Article 10

According to Slovak law, even a conceived child has the capacity for rights if they are born alive. Whether the child was born alive used to be assessed according to the features set out in Decree No. 22/1988 Coll., on mandatory reports related to termination of pregnancy, which, however, was cancelled. At present, we are not aware that this is regulated by a generally binding legal regulation.

Pursuant to Article 5 of the Charter of Fundamental Rights and Freedoms and Article 14 of the Constitution of the Slovak Republic, everyone has the capacity for rights.

Section 7 para. 1 of the Civil Code stipulates that the capacity of an individual to have rights and duties shall arise in the moment of their birth. Also, a conceived child shall have this capacity if it is born alive.

Pursuant to Section 8 para. 1 of the Labour Code No. 311/2001 Coll., as amended, – Capacity of a natural person to rights and obligations pursuant to labour-law relations as an employer shall arise at birth. The conceived child, if born alive, shall also possess such capacity.

#### Article 11

(1) If a child is born with a health-related condition that was caused to them before birth, they should be entitled to compensation. In some of their decisions, courts in Western Europe (e.g., The United States and Germany) have awarded parents compensation for a child born after “unsuccessful” sterilization or “unsuccessful” abortion. Such decisions run counter to the dignity of the child. To regard a child who is conceived and born as damage would be discrimination contrary to human rights.

Cf. in particular Sections 420, 444, 449 paras. 1 and 3 of the Civil Code.

#### Article 12

According to Slovak law, the conditional capacity to rights of the conceived child allows the conceived child to be treated as the heir of a deceased in time from conception until the birth of the child.

Cf. Section. 460 et seq. of the Civil Code.

#### Article 13

According to Slovak law, the conditional capacity to rights of the conceived child allows the conceived child to be treated as a recipient from conception to the birth of the child.

Cf. Section 817 para. 1 of the Civil Code.

#### Article 14

According to Slovak law, the conditional capacity to rights of the conceived child allows the conceived child to be treated as the recipient of a claim from the insured event, which is the death of the person insured – e.g., the life insurance of the father.

Cf. Section 817 paras. 1 and 2 of the Civil Code.

## V. The conceived child and their mother shall have the right to special care and assistance

### Article 15

The conceived child has the right to grow up and develop in health and to receive adequate nutrition.

### Article 16

The conceived child and their mother have the right to special care and assistance.

### Article 17

The mother of the conceived child has the right to protection of her working relationships and adequate working conditions.

### Article 18

The mother and the father of the conceived child have the right to counselling and truthful information about the life of their conceived child.

#### Notes:

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#### Article 15

Roman law reserved certain rights for the conceived child (*nasciturus*) that benefited them, for example, inheritance law and ensuring nutrition and upbringing.

Paulus, a lawyer, said: "A child in its mother's womb is cared for just as if it were in existence, whenever its own advantage is concerned." (In: Rebro, K. – Blaho, P.: Roman law. Bratislava. Obzor 1991, p. 138.)

Cf. Principle 4 of the 1959 United Nations Declaration of the Rights of the Child.

#### Article 16

Failure to ensure this right may put the health and life of the mother in a social crisis, especially in the case of an unmarried mother, at risk, both for her and for the child conceived.

Cf.:

- Article 25 para. 2 of the United Nations Universal Declaration of Human Rights of 10 December 1948,
- Article 10 para. 2 of the United Nations International Covenant on Economic, Social and Cultural Rights (Communication No. 120/1976 Coll.),
- Article 32 of the Charter of Fundamental Rights and Freedoms,
- Article 41 para. 2 of the Constitution of the Slovak Republic.

By Notice No. 273/2009 Coll., the Ministry of Foreign Affairs of the Slovak Republic announces the accession of the Slovak Republic to the European Social Charter of 18 November 1999, according to which the Slovak Republic has undertaken to establish supportive social measures:

Cf. The European Social Charter (revised):

- Article 13 Part I: Every person without adequate resources has the right to social and medical assistance.
- Article 14 Part I: Everyone has the right to benefit from social services.
- Article 30, Part I: Everyone has the right to protection from poverty and social exclusion.

Social assistance and the provision of crisis intervention for pregnant women are not sufficiently addressed in the legislation of the Slovak Republic. There is a need to develop support measures for pregnant women, especially in the case of unplanned pregnancies.

#### Article 17

Cf.:

- Article 41 para. 2 of the Constitution of the Slovak Republic
- Article 32 para. 2 of the Charter of Fundamental Rights and Freedoms

## V. The conceived child and their mother shall have the right to special care and assistance

### Article 18

Pursuant to Section 6b of Act No. 576/2004 Coll. as amended, regulates Informed Consent in the event of an induced abortion:

- Para. 1 reads: An induced abortion requires written informed consent following prior instruction. The informed consent must specify the date when it was given and must be signed by a woman requesting the induced abortion or by her legal representative.
- Para. 2 reads: The instruction preceding the informed consent must be provided in the way provided for by Section 6 para. 2 and must include information about:
  - a) the purpose, nature, procedure, and consequences of the induced abortion,
  - b) the physical and mental risks associated with the induced abortion,
  - c) the current development stage of an embryo or a foetus whose development is to be terminated, and the entitlement to obtain a recording from an ultrasound examination,
  - d) alternatives to having an induced abortion, particularly on the possibility,
    - 1) to conceal her identity in connection with a childbirth (Section 11 para. 11)
    - 2) to give the child up for adoption after the birth,
    - 3) to receive financial, material, or psychological assistance during pregnancy provided by civic associations, non-profit organizations, foundations, churches, and religious communities.