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Att: Madame Anne Brasseur  
President  
Parliamentary Assembly of the  
Council of Europe  
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Strasbourg, April 10<sup>th</sup> 2015

### **Petition for the rights of new-borns surviving their abortion**

Madam President,  
Ladies and Gentlemen, Members of the Parliamentary Assembly,

I have the honour of submitting this petition to the Parliament Assembly of the Council of Europe, in accordance with Rule 65 of the Rules of Procedure and Directive n°342 from January 22<sup>nd</sup> 1974 of the Assembly, in my own name, in the name of almost 200,000 petitioners and in the name of diverse NGOs including the *International Catholic Child Bureau*, the *Federation of Catholic Family Associations in Europe* and the *European Centre for Law and Justice* who associate themselves with this petition and support it.

This petition denounces the torture and infanticide inflicted on some children born alive following an attempted late term abortion. Every year, numerous babies survive an abortion. In these cases, they are left to die or even killed.

This petition denounces these serious and repeated violations of human rights, practiced in various member States of the Council of Europe, and which constitute a structural problem. It has not been previously transmitted to the Assembly or to another authority of a European assembly and it is not likely to receive a response through the procedure established by the European Convention on Human Rights. The object of this petition primarily concerns health and human rights.

When a child is born very prematurely, everything is put in place to save them. If survival is not possible, the baby still receives care and is supported until their death. This conforms with the International Convention on the Rights of the Child according to which: "*States Parties shall ensure to the maximum extent possible the survival and development of the child*<sup>1</sup>". Palliative neo-natal care is developing in hospitals, in accordance with Resolution 1649 (2009) of the Parliamentary Assembly of the Council of Europe.

With the advance of medicine, premature babies can be saved as early as 21 weeks, even before the limit of viability as defined by the World Health Organisation (22 weeks or 500g). Figures show that in the United Kingdom<sup>2</sup>, five babies out of 247 who were born alive at less than 22 weeks have lived at least a year<sup>3</sup>. 11 out of 171 born at 22 weeks and 76 out of 332 born at 23 weeks have survived. In France or in Switzerland, it is rare that babies at 22 or 23 weeks are revived but after 24 weeks resuscitation is always undertaken as the chances of survival, without complications, are high.

The situation of babies who are born alive after abortion is quite different. Not those whose birth is induced because the continuation of the pregnancy poses a major threat to them or their mother, but rather to those who are born alive *accidentally*.

Presently, abortion is free on demand until the 18<sup>th</sup> week in Sweden (even if the sole reason for this abortion is the sex of the baby), and up to 24 weeks in the United Kingdom and the Netherlands and under extensive conditions in Spain with no real control. It is even possible until birth in the case of a serious (but non-fatal) anomaly in several countries such as France and the United Kingdom<sup>4</sup>; that is to say that abortion is possible in different European countries even if the foetus is viable and healthy. Late term abortions are technically difficult to perform (at 20 weeks, the rate of complications is ten times higher than that before 12 weeks according to the official statistics of the United Kingdom). Thus, it can occur that viable

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<sup>1</sup> Art. 6 of the International Convention on the Rights of the Child

<sup>2</sup> <http://www.telegraph.co.uk/health/healthnews/9598649/One-in-ten-babies-born-under-abortion-limit-survives.html>

<sup>3</sup> I draw attention here to the case of Amilia, born in October 2006 in the Baptist Children's Hospital of Miami. This "miracle baby", according to statements of American doctors who were in charge of her, was born at 22 weeks of pregnancy and at her birth she measured only 24.1 centimetres and weighed only 284 grams. She survived without future difficulties.

<sup>4</sup> However, such an anomaly does not necessarily have to be fatal. For example in 2012, according to the official statistics of the United Kingdom, there had been four cases of abortion (before 24 weeks) because of a cleft lip or palate, 191 of anomalies were of the cardiovascular system, many of which could have been treated by surgery, 149 were spina-fida, 5 of which were after the 24<sup>th</sup> week, and 544 were Down Syndrome, 3 of which were after the 24<sup>th</sup> week.

babies who were supposed to be aborted are born alive. After 21 weeks, some of those were able to breathe unaided for a long period of time.

When a pregnancy has reached its 16<sup>th</sup> week, the termination method employed is often birth induction. In most cases the heart of the baby stops during labour and is born dead. It happens however that certain babies survive this procedure and this number increases as the pregnancy advances. From the 22<sup>nd</sup>-24<sup>th</sup> week it often happens that a child is born alive, so foeticide is most often practiced here: an injection into the umbilical cord or sometimes directly into the heart of the baby, preceded or not with an anaesthetic, to stop the heart. This is an act which is technically difficult and which can consequently have a high failure rate<sup>5</sup>. The child is therefore born alive. It also happens that the injection can be practiced during delivery, that is to say when the child is partially born.

**Being born alive after an abortion is not exceptional.** This possibility is enlisted on the International Classification of Diseases published by the World Health Organisation; Chapter XVI entitled '*Certain conditions originating in the prenatal period*'; section P96-4, '*Termination of pregnancy affecting foetus and newborn*<sup>6</sup>'.

## **A Widespread Practice in Europe**

**This problem occurs in all countries allowing late term abortion** on demand or for medical reasons.

Thus, for example, 622 children were born alive in **Canada** after termination of pregnancies between 2000 and 2011<sup>7</sup>, and 362 between 2001 and 2010 in the **United States** where a law was adopted in 2002, the *Born-Alive Infants Protection Act*, to protect these children. In **Norway**, from 2001 to 2009, five babies had been aborted after the 22 week limit; between 2010 and 2011, 12 such late term abortions were carried out. The hearts of some of the aborted children continued to beat for almost 45 to 90 minutes<sup>8</sup>. Following this, Norway prohibited all abortions after 22 weeks in January 2014. In 2010 in **Italy**, a baby, who was aborted at 22 weeks because of a cleft palate, was discovered alive 20 hours after birth and continued to survive for one more day. A similar case had already

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<sup>5</sup> According to a study, the success rate is 87%, in other words there is a 13% failure rate: Nucatola D, Roth N, Gatter M. [A randomized pilot study on the effectiveness and side-effect profiles of two doses of digoxin as fetocide when administered intraamniotically or intrafetally prior to second-trimester surgical abortion.](http://www.ncbi.nlm.nih.gov/pubmed/20004276) Contraception. 2010 Jan;81(1):67-74. doi: 10.1016/j.contraception.2009.08.014. Epub. Available at:

<http://www.ncbi.nlm.nih.gov/pubmed/20004276>

<sup>6</sup> <http://apps.who.int/classifications/icd10/browse/2015/en#/P90-P96>

<sup>7</sup> "Termination of pregnancy, affecting fetus and newborn" [P96.4]:

<http://www5.statcan.gc.ca/cansim/a26>

<sup>8</sup> <http://www.newsenglish.no/2014/01/02/total-ban-on-late-term-abortions/> The side P96-4 is an issue of the International Statistical Classification of Diseases and Related Health Problems published by WHO.

happened in 2007<sup>9</sup>. In the **Netherlands** the situation is even worse: after 24 weeks, in cases of serious malformation, not only is abortion possible but so is infanticide<sup>10</sup>. The majority of these countries do not give any information on these events. It is very difficult to obtain precise data because these States rarely acknowledge this situation let alone provide information.

In **France**, children born before 22 weeks or during a medical termination of pregnancy, have no birth certificate but only a record of a lifeless child, even if they were born alive. "*The record drawn up shall be without prejudice to knowing whether the child has lived or not*" according to Article 79-1 of the Civil Code. No information is given on the number of children born alive, how long they survive such procedures nor what is to be done with them. Even parents do not know: sometimes they are given the child, who dies in their arms, but often the child is brought to another room. The parents, therefore, only see (if they wish) the child later, without having been able to be there with their child during those few moments, not knowing how the baby died.

In the **United Kingdom**: In 2005, the *British Journal of Obstetrics and Gynaecology* published the conclusions of Dr. Shantala Vadeyar, researcher at the St. Mary Hospital (Manchester), who states that children aged 18 weeks have survived, for a certain time, outside the uterus after an abortion. Dr. Vadeyar revealed that in the North West between 1996 and 2001, at least 31 children survived attempted abortions<sup>11</sup>. In 2007, a study published in the *British Journal of Obstetrics and Gynaecology*<sup>12</sup> concluded that around one abortion out of 30 beyond 16 weeks of pregnancy results in the birth a living child. At 23 weeks, the level of children born reached 9.7%. According to a Swedish mid-wife, the figure could even reach 25%<sup>13</sup>. In the CEMACH 2007 "*Perinatal Mortality*", releasing data from hospitals in England and Wales in 2005, it was revealed that:

*"Sixty-six of the 2235 neonatal deaths notified in England and Wales followed legal termination (predominantly on account of congenital anomalies) of the pregnancy i.e. born showing signs of life and dying during the neonatal period. Sixteen were born at 22 weeks' gestation or later and death occurred between 1 and 270 minutes after birth (median: 66 minutes). The remaining 50 fetuses were born before 22 weeks' gestation and death occurred between 0 and 615 minutes after birth*

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<sup>9</sup><http://www.telegraph.co.uk/news/worldnews/europe/italy/7646540/Baby-boy-survives-for-nearly-two-days-after-abortion.html>

<sup>10</sup> <http://leblogdejeannesmits.blogspot.fr/2014/07/pays-bas-vers-lajustement-des-regles-de.html> ; cf. A. Giubilini and F. Minerva, « After birth abortion: why should the baby live? » *J Med Ethics* doi:10.1136/medethics-2011-100411 <http://jme.bmj.com/content/early/2012/03/01/medethics-2011-100411.full>

<sup>11</sup> <http://www.lifesitenews.com/news/66-british-babies-survived-abortion-all-were-left-to-die-without-medical-ai>

<sup>12</sup> <http://onlinelibrary.wiley.com/doi/10.1111/j.1471-0528.2007.01279.x/abstract>

<sup>13</sup> <http://www.varldenidag.se/nyhet/2014/10/22/Vad-ska-jag-gora-med-fostret-nar-det-lever/>

(median: 55 minutes)", p.28<sup>14</sup>. In other words, one of these new-borns breathed without assistance for more than ten hours.

The director of the CEMACH Richard Congdon stated that the lethal injection had not been given in the 16 cases when the abortion took place after 22 weeks of pregnancy because death was "inevitable"<sup>15</sup>. Therefore, they were left to die. The following reports do not include any information on the subject matter of child born alive during termination of a pregnancy.

Therefore, there is no more recent data on the number of children born alive during an abortion. CEMACH statistics after "*Perinatal Mortality*" 2005 (published in 2007) do not give any information about the children in such a situation. While the Data Sources, p.3 of the 2005 report (published 2007) began with: "*Since 2003, the Confidential Enquiry into Maternal and Child Health (CEMACH) has collected epidemiological and clinical information on: all fetuses delivering after 22 completed weeks of gestation (including legal terminations of pregnancy notifiable under the 1967/1992 Abortion Act)*", the data source of the following report, which can be found at the end of the report, includes a short paragraph, lost among many others: "*This year, to allow for a more meaningful comparison, a number of exclusions have been applied to the data within the mortality variation chapter (Chapter 2). The exclusions are to remove all terminations of pregnancy, all lethal and severe malformations, all neonatal deaths below 22 weeks' gestation and all babies with birth weight below 500g.*" (*Perinatal Mortality 2006* (published in 2008), p. 93).

The UK has moved to a change in method so that no mention of neonatal death following abortion appears. In subsequent reports, the data source is at the start of the report and declares that: "*CEMACH collects epidemiological and clinical data on all stillbirths and neonatal deaths (see Glossary) in England, Wales, Northern Ireland, the Crown Dependencies of the Channel Islands and the Isle of Man*"<sup>16</sup>. The foetus and the infant born after a late abortion are not mentioned. All the statistics given are "excluding notified terminations of pregnancy".

In 2004, delegates to the *British Medical Association's* annual conference in Llandudno voted 65% in favour of a motion that said children born alive

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<sup>14</sup> <http://www.hqip.org.uk/assets/NCAPOP-Library/CMACE-Reports/41.-April-2007-Perinatal-Mortality-2005.pdf>

<sup>15</sup> <http://www.dailymail.co.uk/health/article-512129/66-babies-year-left-die-NHS-abortion-wrong.html>

<sup>16</sup> *Perinatal Mortality 2007*, published 2009, p.5; see also *Perinatal Mortality 2008*, published 2010, p.6 and *Perinatal Mortality 2009*, published 2011, p.8, identical, except that CEMACH has become CMACE, Centre for Maternal and Child Enquiries. All reports available at <http://www.hqip.org.uk/cmace-reports/>; there are no CMACE reports for 2010, 2011 and 2012; figures on perinatal mortality are available on the Office for National Statistics website, without any mention of children born alive after an abortion.

after an attempted abortion should be given the same care and treatment as other infants<sup>17</sup>.

The *Royal College of Obstetricians and Gynaecologists* published new recommendations in May 2010. According to them: *"Live birth becomes increasingly common after 22 weeks of gestation and, when a decision has been reached to terminate the pregnancy for a fetal abnormality after 21+6 weeks, feticide should be routinely offered. (...) Where the fetal abnormality is not lethal and termination of pregnancy is being undertaken after 21+6 weeks of gestation, failure to perform feticide could result in live birth and survival, an outcome that contradicts the intention of the abortion. In such situations, the child should receive the neonatal support and intensive care that is in the child's best interest and its condition managed within published guidance for neonatal practice. A fetus born alive with abnormalities incompatible with life should be managed to maintain comfort and dignity during terminal care"*<sup>18</sup>.

However, these are only recommendations. Resuscitation depends largely on the wishes of the parents, and it is evident that, in the case of a botched abortion, the parents would not want their baby to receive intensive care. Additionally, as babies born alive after abortion do not feature in statistics, it is not possible to control the manner in which they are treated. Do all who have a reasonable chance of survival receive appropriate care? Are relief from suffering and dignity assured when death is inevitable? Does palliative care not sometimes transform into euthanasia?

**The taboo which surrounds these children is suitable to such an abuse as control is impossible**, with the majority of information originating from news items and witness testimonies. It seems as though **these children are frequently abandoned without care, put aside in an empty room or closet, where they struggle to breathe, sometimes injured by the abortion, before dying alone**. In certain countries or hospitals, the parents may retrieve the body or a cemetery can be provided. In other cases, they are incinerated with organic hospital waste, and even sometimes burnt as fuel used for heating hospitals<sup>19</sup>. According to witness testimonies, some may be asphyxiated or thrown away with waste despite signs of life. In other words, these newborns are killed or left to die, even though in another room, doctors try to save premature babies of the same gestational age. These situations are significantly traumatising for medical personnel.

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<sup>17</sup> <http://www.lifesitenews.com/news/66-british-babies-survived-abortion-all-were-left-to-die-without-medical-ai>

<sup>18</sup> *Termination of pregnancy for fetal abnormality*, Chapter 8, p. 31: <https://www.rcoq.org.uk/globalassets/documents/guidelines/terminationpregnancyreport18may2010.pdf>

<sup>19</sup> British journals revealed in 2014 that the bodies of thousands of foetuses were burned for heating. See <http://au.ibtimes.com/thousands-dead-fetuses-burned-without-parents-permission-heat-british-hospitals-1335740#.UzK4CKh5Oqy>

## **Practices that Violate Fundamental Human Rights**

**All children born alive, in their capacity as human beings, are entitled to human rights and must benefit from every protection of these rights,** like every other person. Questioning this principle jeopardises the very system of human rights protection. Not helping certain newborns or leaving them to die without care simply because they are unwanted is inhuman; it is a violation of their dignity and of their most fundamental human rights.

Killing infants or leaving them to die alone in agony<sup>20</sup> constitutes infanticide aggravated by torture. These practices manifestly constitute blatant violations of universal human rights, notably the Convention on the Rights of the Child which declares 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"* and by which the States agreed to respect and guarantee the rights of children *"without discrimination of any kind"* particularly *"birth"* (Article 2).

Killing infants or leaving them to die without care is also a blatant violation of the European Convention on Human Rights, in particular their right to life (Article 2) and constitutes inhuman treatment (forbidden by Article 3 of the ECHR). Moreover, it is also discrimination in relation to the access of healthcare services<sup>21</sup> founded on the circumstances of their birth<sup>22</sup> (contrary to Article 14 of the ECHR).

On the other hand, according to the European Social Charter, children have the right to special protection against physical and moral hazards to which they are exposed as well as appropriate social, legal and economic protection, and everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

All premature children must have the same right to life and access to health services without discrimination. All care and medical aid possible must be offered, whatever the conditions of their birth. Even in the case

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<sup>20</sup> Numerous studies show that not only newborns, even premature babies and also foetuses feel pain, at least as much, if not more than adults. However, human foetal pain is not always taken into account (see the recommendations of the Royal College of Obstetricians *Foetal Awareness 2010* <http://www.rcog.org.uk/files/rcog-corp/RCOGFoetalAwarenessWPR0610.pdf> which denies this pain) even though the foetal suffering of animals is recognised (Directive 2010/63/EU, September 22nd 2010 relating to the protection of animals used for scientific reasons which affirms that animal foetuses can *"express pain, suffering, distress and lasting harm."*)

<sup>21</sup> See in particular the Convention on the Rights of the Child 1989, Article 24: *"States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."*

<sup>22</sup> Article 14 of the ECHR: *"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as (...) birth or other status."*

where these infants cannot survive, they must be taken care of up until the moment of their death.

In its declaration on January 15<sup>th</sup> 2014, entitled "*Sex-selective abortions are discriminatory and should be banned*", the Commissioner for Human Rights recalled the case law of the ECtHR<sup>23</sup> according to which: "*Member States, within their wide margin of appreciation, should find ways to put in place laws, policies and practices that allow the different legitimate interests involved to be taken into account. In the vast majority of Council of Europe member States, where abortion is legal, this includes an adequate framework that reconciles the possibility to have an abortion with the fight against discrimination.*" Numerous States in Europe (notably **Estonia, Finland, Germany, Norway, Russia** or even **Ukraine**) take into account, as a legitimate interest, the threshold of viability of ban abortion after 22 weeks of amenorrhoea. These restrictions on abortion can be equally encouraged as they significantly improve the protection of human rights.

### **Practices That Must Be Condemned**

**It is urgent to reveal the existence of these inhumane practices in order to publicly condemn them and bring them to an end.**

We call on the Parliamentary Assembly of the Council of Europe because these obvious and structural violations of human rights cannot be treated by any other than the Council of Europe. In effect, the victims, the infants, evidently have no ability to address the ECtHR. Their parents, who could represent them, never decide to appeal because *they* decided to abort the child.

On November 20<sup>th</sup> 2014, the Commissioner for Human Rights refused to examine the problem of children born alive after an abortion, somehow considering that it did not fall within his mandate.

The Committee of Ministers of the Council of Europe has not managed to resolve this situation. On July 9<sup>th</sup> 2014, the Committee declared that "*owing to a lack of consensus, it has not been possible to adopt a reply to Written Question No. 655 by Mr Pintado*" posed on January 31<sup>st</sup> 2014. The question was the following: "*What specific steps will the Committee of Ministers take in order to guarantee that fetuses who survive abortions are not deprived of the medical treatment that they are entitled to – as*

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<sup>23</sup> Nils Muiznieks, Commissioner for Human Rights at the Council of Europe, declaration on sex-selective abortions. This declaration summarises the following principle of the jurisprudence of the ECtHR according to which: "*once the State, acting within its limits of appreciation, adopts statutory regulations allowing abortion...[t]he legal framework devised for the purposes of the determination of the conditions for lawful abortion should be "shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention"*". (*P. and S. v. Poland*, n°57375/08, October 30<sup>th</sup> 2012 §99; see also *A., B. and C. v. Ireland*, n° 25579/05, December 16<sup>th</sup> 2010, §249; and *R. R. v. Poland*, n°27617/04 May 26<sup>th</sup> 2011, §187).



*human persons born alive – according to the European Convention on Human Rights?”* The Committee of Ministers could not respond because certain governments do not wish to reaffirm these fundamental human rights. This failure is a shame on the Council of Europe, because it manifests its implicit consent to infanticide.

The Council of Europe cannot renounce the guarantee of fundamental rights to all human beings. A premature baby, even born during an attempted late term abortion, is a human being.

Therefore only the Parliamentary Assembly can act for the protection of these newborn infants, and it must do so, otherwise the purpose “*of safeguarding and realising the ideals and principles which are their common heritage*” in particular by “*the maintenance and further realisation of human rights and fundamental freedoms*” will be in vain.

**Consequently, we ask the Parliamentary Assembly of the Council of Europe:**

- 1. To investigate and report on the situation of children born alive during their abortion.**
- 2. To reaffirm that all human beings born alive have the same right to life guaranteed by Article 2 of the European Convention on Human Rights, and that all human beings must benefit from appropriate and necessary health care<sup>24</sup>, without discrimination based on the circumstances of their birth, in accordance with Articles 3, 8 and 14 of the ECHR. <sup>25</sup>**
- 3. To recommend to Member States to take into account the threshold of viability of human foetuses in their legislation on termination of pregnancy.**

We wish to assure you, Madam President, Members of the Parliamentary Assembly, of our highest consideration.

Patrick Grégor PUPPINCK

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

<sup>25</sup> Article 14 of the Convention: “*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as [...] birth or other status.*”

***International Catholic Child Bureau***, created in 1948. BICE is an international catholic network of organisations engaged in the promotion and protection of the children's rights and of their dignity. This French non-profit association is present in 66 countries on 4 different continents through its member organisations and its partners.

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

***Federation of Catholic Family Associations in Europe*** (FAFCE) was founded in 1997. It is recognised by the Council of Europe as a Non Governmental Organisation with a participatory status. The General secretariat is based in Brussels. FAFCE works with both the institutions of the European Union and the Council of Europe. FAFCE ensures a political representation for family interests from a catholic perspective, on the basis of the Catholic Church's Social and Family teaching as well as of the testimony of faith and experiential knowledge of Christians in Church and in society. FAFCE is an umbrella organisation that serves as a European liaison platform for exchange of experiences of pastoral care of the family and family policy issues for its members. Our member associations provide important catholic expertise and contacts on the national and local levels. FAFCE is the only European family organisation that explicitly refers to the social teaching of the Catholic Church.

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

**The list of individual signatories of the Petition is located in the annex.**