

EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

APPLICATION NO. 19356/07

Lia SHIOSHVILI

Applicant

v.

RUSSIA

Respondent

**WRITTEN OBSERVATIONS
OF THIRD PARTY INTERVENER:**

ADF International

**Filed on
30 April 2015**

(a) Introduction

1. ADF International is a legal organization dedicated to protecting fundamental freedoms including the right to life, marriage and the family, and freedom of religion. In addition to holding ECOSOC consultative status with the United Nations (registered as “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization of American States, and works with the Fundamental Rights Agency of the European Union and the Organization for Security and Co-operation in Europe.
2. ADF International also works with a legal alliance of more than 2,200 lawyers dedicated to the protection of fundamental human rights through which it has been involved in over 500 cases before national and international tribunals, including the Supreme Courts of the United States of America, Argentina, Honduras, India, Mexico and Peru, as well as the European Court of Human Rights and Inter-American Court of Human Rights.
3. At a legislative level, ADF International has also provided expert testimony before several European parliaments, as well as the European Parliament and the United States Congress.
4. The present case centers on a correct interpretation of Article 3 of the European Convention on Human Rights (“the Convention”), given the ill treatment of a heavily pregnant woman. This brief argues that, in the context of an Article 3 evaluation of severity of harm, the presence of an unborn child is a relevant and important factor in assessing whether a pregnant mother suffered at the hands of the state. This much is recognized by a wealth of international and national legal provisions which afford legal recognition to the unborn child,
5. It will be argued that affording legal recognition to the unborn child is entirely compatible with the Convention and accords with a growing trend towards protecting unborn life around the world.

(b) Article 3

6. Article 3 provides that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” To succeed with a claim under Article 3, the allegations of ill-treatment “must attain a minimum level of severity.”¹ Whether a claim meets the “minimum level of severity” is determined by assessing “all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.”²
7. This totality of the circumstances analysis makes clear that “Article 3 does not refer exclusively to the infliction of physical pain but also to that of mental suffering, which is caused by creating a state of anguish and stress by means other than

¹ *Ireland v. United Kingdom*, Application no. 5310/71, 18 January 1978, § 162.

² *Id.*

bodily assault.”³ Moreover, the European Court of Human Rights (“the Court”) has recognized that Article 2, which guarantees that “Everyone’s right to life shall be protected by law,” must be read together with Article 3.⁴

8. Given this, the presence of an unborn child is a relevant and important factor in assessing whether a pregnant mother suffered the level of severity necessary to invoke Article 3.⁵ Not only is the “state of the health of the victim” particularly vulnerable because of her pregnancy, but the mother’s mental state is especially fragile in light of the presence of her unborn child—a life which is inherently valuable, as well as of worth to the mother.
9. The concern of a pregnant mother over the health of her unborn child is seriously exacerbated by the simple fact that the victim mother is incapable of knowing the state of the health of her unborn child. Unlike a born child that the mother can observe and converse with, the victim mother cannot observe or converse with her unborn child to ascertain whether the child is in good health. Accordingly, there is complete “uncertainty” over the status of her unborn child’s health simply because the child is unborn. This uncertainty seriously heightens the mental suffering of the mother when she is subjected to conduct that potentially violates Article 3 and that could also harm—and even kill—her unborn child.⁶ Thus, in light of Article 2 and the serious physical and mental effects on the victim, the existence of an unborn child must be a compelling factor in analyzing whether a pregnant mother was the victim of a violation of Article 3.
10. It is submitted that the appropriate and logically consistent way to include the value of the life of the unborn child in this evaluation is to legally recognize the child’s right to life. This is an approach favoured by a number of international instruments as well as States both within the Council of Europe region and outside. In addition, it is an approach that is consistent with the terms of the Convention and a natural evolution of this Court’s jurisprudence which has, to date, extended a degree of recognition and accepted the necessity of protections towards unborn life.

³ *Husayn (Abu Zubaydah) v. Poland* (2015), Application no. 7511/13, 24 July 2014, § 510.

⁴ *Soering v United Kingdom*, Application no. 14038/88, 7 July 1989, § 103: “The Convention is to be read as a whole and Article 3 should therefore be construed in harmony with the provisions of Article 2.”

⁵ Note that this Court has already implicitly indicated that suffering a miscarriage caused by government officials is a violation of Article 3: See *Petropoulou-Tsakiris v. Greece*, Application No. 44803/04, 6 December 2007, § 42: “In conclusion, since the evidence before it does not enable the Court to find beyond all reasonable doubt that the miscarriage suffered by the applicant was the result of the alleged ill-treatment inflicted by police officers, the Court considers that there is insufficient evidence for it to conclude that there has been a violation of Article 3 on account of the alleged torture.”

⁶ *Husayn (Abu Zubaydah)*, § 509: “The Court considers that this permanent state of anxiety caused by a complete uncertainty about his fate in the hands of the CIA . . . must have significantly exacerbated his already very intense suffering...”; *Bopayeva and others v. Russia*, Application no. 40799/06, 7 November 2013, § 94: “[T]he applicants, who are their close relatives, must be considered victims of a violation of Article 3 of the Convention on account of the distress and anguish which they have suffered, and continue to suffer, as a result of their inability to ascertain the fate of their family members.”

(c) International legal provisions affording protection to the unborn

European Court of Human Rights

11. This Court's approach to the question of what protection should be afforded to the unborn child has been a conservative one. While the Court recognizes that Article 2 of the Convention is silent as to the temporal limitations of the right to life, the protections afforded to life by this Court have become increasingly robust.
12. The jurisprudence relating to the unborn child has rapidly developed in recent years; but it was the Commission that first ruled on the subject matter acknowledging that when a woman is pregnant; her life becomes closely intertwined with that of the developing child.⁷ Furthermore it held that not every regulation protecting unborn life constitutes a violation of private life under Article 8 of the Convention.⁸ In *H. v. Norway*, the Court recognized that States are obligated to take positive measures to safeguard human life, which could include the life of the unborn child.⁹ Furthermore, in the case of *Boso v. Italy*, the Court identified the need to ensure protection of the unborn child as meriting a degree of protection.¹⁰
13. This Court's most stringent treatment of what protections should be afforded to the unborn child can be found in the *Case of Vo v. France*.¹¹ In *Vo*, the applicant was a victim of malpractice relating to several unfortunate incidents which included confusion of two patients with the same name, lack of pre-procedure examination and the poor French language skills of the applicant. As a result, Mrs. Vo was given the wrong procedure and suffered a miscarriage as a result. She and her partner brought a criminal complaint against the physician, seeking to join the charges with a civil complaint for unintentional infliction of injury.
14. The *Vo* judgment evidenced a step forward in the jurisprudence of the Court from that of the Commission relating to the life of the unborn child. Whereas *Brüggemann & Scheuten* provided that Article 8 § 1 cannot be interpreted as meaning that pregnancy and the laws relating to that unborn life are solely a matter of the private life of the mother,¹² the Court in *Vo* acknowledged that with scientific progress a growing consensus is emerging among Member States that the unborn child is part of the human race and is worthy of some level of protection.¹³
15. Life is an inalienable right belonging to all people. Article 2 therefore ranks as one of the most fundamental provisions of the Convention and also enshrines one of

⁷ *Brüggemann & Scheuten v. Germany*, no. 6959/75, Report of the former Commission, 12 July 1977 at para. 59.

⁸ *Id.* Para. 61.

⁹ *H. v. Norway*, no. 17004/90, Decision of inadmissibility of the former Commission of 19 May 1992 at 167.

¹⁰ *Boso v. Italy*, no. 50490/99, 5 September 2002.

¹¹ Application No. 53924/00, 8 July 2004.

¹² *Brüggemann & Scheuten*, *op. cit.*, at para. 61.

¹³ *Case of Vo v. France*, *op cit.*, at para. 84.

the basic values of the democratic societies making up the Council of Europe.¹⁴ Article 2 requires States to not only refrain from the intentional taking of lives, but also to take the appropriate measures to safeguard the lives of those within their jurisdiction.¹⁵ The right to life has a compelling public interest, and not just a private one (a fact clearly defined by the Convention's use of two separate articles for life (Article 2) and privacy (Article 8)). This also explains why life is universally protected by criminal law in the public law sphere; and often times also civilly in the private law sphere.¹⁶

16. The Court has never defined Article 2 so as to exclude the protection of foetal life from its scope.¹⁷ Furthermore, the permissible exceptions to Article 2, set out in paragraph 2, provide an exhaustive list in which deprivation of life can be justified where the use of force used will be no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection. The Court itself has never departed from this view except with regard to the margin of appreciation afforded to Member States where abortion is viewed as a derogation from the right to life within the meaning of their national legislation. The Court has also called for restraint with a view to unborn life within the context of bioethics¹⁸ which is also reflected in the Council of Europe's 1997 Convention on Human Rights and Biomedicine¹⁹ and the conservative jurisprudence of the Court of Justice of the European Union in this area.²⁰
17. Furthermore, the Court has respected and recognized the profound moral values associated with the right to life of the unborn child in relation to Article 2 of the Convention.²¹ It has therefore ruled, for example, that Article 8 cannot be interpreted as conferring a right to abortion.²² It has also recognized, because of the application of Article 2, that States are required to make regulations compelling hospitals to take measures to protect the life (born or unborn) of their patients.²³
18. In summary, while the jurisprudence of the Court has been purposeful in not answering the question of when life begins, it has been equally clear in recognizing that the unborn child is worthy of protection under the Convention.
19. Moreover, considering the stated aims of Article 2, it is accepted that a child immediately after birth is deserving of additional protection and remains a

¹⁴ *McCann & Others v. The United Kingdom*, Judgment of 27 September 1995, Series A, No. 324, pp. 45-46 at § 147.

¹⁵ *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports and Judgments and Decisions* 1998-III, p. 1403, § 36.

¹⁶ *Brüggemann & Scheuten*, *op. cit.*, at paras. 59 ff.

¹⁷ *Cf. Vo v. France*, *op. cit.*, separate opinion of Judge Costa at para. 11.

¹⁸ See e.g.: *S. H. and others v. Austria*, [GC], no. 57813/02, 3 November 2011.

¹⁹ CETS No. 164 see Article 1 protecting human "dignity" and Article 3 on bioethics.

²⁰ *Oliver Brüstle v. Greenpeace eV*, C-34/10 (18 October 2011).

²¹ *A., B. and C. v. Ireland*, [GC], no. 25579/05, 16 December 2010, at paras. 222-223.

²² *Id.*, at para. 214.

²³ See e.g.: *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V.

vulnerable person under the Convention at various stages post-birth. Accordingly, it would be fundamentally inconsistent for that position to be dramatically different just a day or a week before the actual birth, given the unbroken cycle of development that takes place. Extending full protection at the point of birth may appear convenient, but that seeming advantage is a wholly inadequate justification to withhold some form of Article 2 protection, the Convention's foundational right, from pregnant mothers and their unborn children.

Other international instruments protecting the life of the unborn

20. The Vienna Convention on the Law of Treaties (1969) states that: "A treaty shall be interpreted in good faith in accordance with the *ordinary meaning* to be given to the terms of the treaty *in their context* and in the light of its object and purpose."²⁴ By applying the principles laid out in the Vienna Convention, international and regional human rights treaties, as well as the Universal Declaration of Human Rights,²⁵ can be read as being consistent with protecting unborn life.
21. Article 6(1) of the International Covenant on Civil and Political Rights 1966 ("ICCPR") states that, "Every human being has the inherent right to life." In its General Comment on Article 6, the UN Human Rights Committee noted that, "[T]he right to life has been too often narrowly interpreted. The expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures."²⁶
22. Moreover, while the ICCPR allows for the death penalty to be imposed on adult men and women who merit it according to national laws, applying the death penalty to pregnant women is explicitly prohibited. Article 6(5) of the ICCPR states that, "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and *shall not be carried out on pregnant women.*"
23. As all other adult women may be subject to the death penalty, this clause *must* be read as recognizing the value of life in the mother's womb, giving the unborn a status independent from that of the mother. Indeed, there is no other way that this provision can be interpreted. As the *travaux préparatoires*²⁷ of the ICCPR explicitly state, "The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to *save the life of an innocent unborn child.*"²⁸ Similarly, the Secretary-General report of 1955 notes that the intention of the paragraph "was inspired by

²⁴ Vienna Convention, art. 31(1)). Emphasis added.

²⁵ This is not a treaty and therefore is not binding. However, it is an important statement of aspirational principle. Article 3 of the Universal Declaration states that: "Everyone has the right to life."

²⁶ Adopted 30 April 1982, HRI/GEN/1/Rev.9 (Vol. I).

²⁷ In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a "supplementary means of interpretation."

²⁸ A/3764 § 18. Report of the Third Committee to the 12th Session of the General Assembly, 5 December 1957. Emphasis added.

humanitarian considerations and by *consideration for the interests of the unborn child...*²⁹

24. The clear reference to the unborn child in the ICCPR is buttressed by several other references to the unborn in international documents. For example, the Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) states that, “the wounded and sick, as well as the infirm, and *expectant mothers*, shall be the object of particular protection and respect.”³⁰ Similarly, the Convention on the Prevention and Punishment of the Crime of Genocide (1948) defines genocide to include “imposing measures intended to *prevent births* within the group.”³¹
25. An ordinary reading of the language in the Convention on the Rights of the Child 1989 (“CRC”) also favours the protection of unborn life. According to the Vienna Convention, the preamble of a treaty provides necessary interpretive context.³² It is therefore striking that the CRC explicitly recognizes the child *before birth* as a rights-bearing person entitled to special need and protection. The preamble states that: “[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth*.”³³ This clear reference to the unborn child was reproduced *verbatim* from the Declaration of the Rights of the Child (1959). The Declaration was adopted unanimously by the then 78 Member States of the UN General Assembly in Resolution 1386 (XIV), 20 November 1959.
26. Thus, with this preambular language in mind, it is worth noting that Article 1 of the CRC defines a child as “every human being below the age of eighteen years.” It therefore defines a ceiling, but not a floor, as to who is a child. In other words, it intentionally does *not* say that the status of “child” attaches at the time of birth. Moreover, Article 6 holds that, “States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Viewed in the context of the preamble, both Articles 1 and 6 of the CRC therefore indicate recognition of, and protection for, unborn life.
27. The most explicit reference to the unborn is contained within Article 4(1) of the American Convention on Human Rights 1969, which states that, “Every person has the right to have his life respected. This right shall be protected by law and, in general, *from the moment of conception*. No one shall be arbitrarily deprived of his

²⁹ A/2929, Chapter VI, §10. Report of the Secretary-General to the 10th Session of the General Assembly, 1 July 1955. Emphasis added.

³⁰ Article 16. Emphasis added.

³¹ Article 2(d). Emphasis added. In 1948 during the Nuremberg Trials, the practice of encouraging abortions amongst Eastern Europeans was considered a crime against humanity. See *United States v. Greifelt*, US Military Tribunal Nuremberg, Judgment of 10 March 1948, §§ 102–108.

³² Article 31(2) states, “The context...shall comprise...the text, including its preamble and annexes.”

³³ Emphasis added.

life.”³⁴ While the wording of Article 4(1) appears to allow exceptions to the legal protection of the right to life of the unborn, it does not explicitly describe them. Thus, the correct interpretation of Article 4(1) has been the source of much debate.³⁵ Clearly, however, protecting the right to life from the moment of conception is the purpose and intention of the article read as a whole.

28. Therefore, given the above references within international and regional human rights treaties, there is good reason to suggest that the international legal framework can, and should, be understood as protecting unborn life.

(d) National legal provisions affording protection to the unborn

29. Turning to the national level, there are a number of States, including those within the Council of Europe region, that explicitly afford protection to unborn life. Some of these exist as longer-standing provisions whereas others are relatively new and are reflective of an emerging trend towards the legal recognition of unborn life, in harmony with international law, over recent years.

30. Looking first within the Council of Europe region, at a constitutional level, Ireland protects unborn life by recognizing the right to life of the unborn and requires laws to defend and respect that right in Article 40.3.3°. This provides that, “the State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.”

31. The significance of this provision was reinforced in the negotiations preceding the entry into force of the Treaty of Lisbon, in which the Irish government secured a legally binding decision of the Heads of State or Government of all other EU Member States. The decision stated that neither the incoming Charter of Fundamental Rights nor the Treaty “affects in any way the scope and applicability of the right to life in ... the Constitution of Ireland.”³⁶

32. Similarly, among other Council of Europe states that protect unborn life explicitly at the highest legal level, the Constitution of Hungary of 2011 contains an explicit protection for unborn life in Article 2 which reads, “Every human being shall have the right to life and human dignity; embryonic and foetal life shall be subject to protection from the moment of conception.” In Slovakia, Article 15(1) of the Constitution states that, “Everyone has the right to life. Human life is worthy of protection even prior to birth.”³⁷

³⁴ Emphasis added.

³⁵ For a discussion of the various interpretations of Article 4(1), see the *amicus curiae* brief of ADF, CFAM and AUL in the case of *Gretel Artavia Murillo et al v. Costa Rica*, Case No. 12,361 (2012), available at: <http://adfinternational.org/2012/11/28/murillo-v-costa-rica/>.

³⁶ Official Journal of the European Union, L 60/131 (2 March 2013).

³⁷ English translation available at <<http://www.slovak-republic.org/constitution/>>. The Slovak law has actually become more stringent in recent years. For example, in 2007 the Constitutional Court ruled that the exemptions in the abortion law should be viewed more restrictively (see case No.1 /2007- PL. ÚS 12/01) and in 2009 the Slovak parliament passed

33. In Germany, the Basic Law obliges the state to protect human life, including that of the unborn. This duty is grounded in Article 1(1) concerning human dignity which is “inviolable.” The right to life is more specifically addressed by Article 2(2). The formulation used is almost identical to the Convention’s phraseology and attributes the “right to life and physical integrity” to “every person.”³⁸ The German Constitutional Court has confirmed that the word “everyone” in the phrase “everyone has a right to life” referred to “every living human being” and that the right thus did extend to (living) unborn human beings.³⁹
34. Also within the Council of Europe region, Latvia has passed a Medical Treatment Law which provides that, “A doctor has a duty to protect unborn life...”⁴⁰, and in Poland legislation states that “every human being shall have an inherent right to life from the moment of conception”⁴¹ and that life shall be protected “including in the prenatal phase.”
35. The clear meaning of the language in the CRC has been outlined above, but even over and above the “upper ceiling” approach settled upon by the drafters, a number of countries went further. Among them was Germany which indicated that inclusion of the preambular paragraph in question was “a great success”, because it recognized “the right to life of the unborn child”, with Malta and Senegal also adding statements that, in their view, the CRC protected the unborn from conception.⁴²
36. Protections for unborn life can be found within legal jurisdictions far beyond the Council of Europe.
37. For example, implicit protection is found in the US Unborn Victims of Violence Act which recognizes a child in-utero as a legal victim where they are killed or injured in the course of certain federal crimes of violence. The law defines “child in utero” as “a member of the species *Homo sapiens*, at any stage of development, who is carried in the womb.”⁴³
38. However, it is the Latin American region that contains the largest number of countries with explicit protections in place for unborn life, with a number of national constitutions explicitly recognizing and protecting life from the moment of conception. For example, the Dominican Republic states that “right to life is

amendments to its abortion law requiring: (a) mandatory counseling; (b) a waiting period; and (c) mandatory parental/guardian consent for minors (see Act No. 73/1986 Coll. On Artificial Termination of Pregnancy as amended by the Act No. 419/1991 Coll.) (1986)).

³⁸ Basic law, article 2(2).

³⁹ 39 BVerfGE 1 (1975).

⁴⁰ Section 40. English translation available at

<http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumis/Medical_Treatment_Law.doc>

⁴¹ Law on Family Planning (Protection of the Human Foetus and Conditions permitting Pregnancy Termination) 1993, s.1.

⁴² See Patrick J Flood, “Does International Law Protect the Unborn Child?” *UFL Life and Learning Conference XVI* available at < <http://www.uffl.org/vol16/flood06.pdf>>.

⁴³ 18 U.S.C. § 1841

inviolable *from conception*”,⁴⁴ the Ecuadorian Constitution holds that, “The State shall recognize and guarantee life, including the care and protection *from conception*,”⁴⁵ and, the El Salvador “recognizes as a human person every person *from the moment of conception*.”⁴⁶

39. Additionally, in countries that operate a federal system of government, protections for unborn life can be found at the state or provincial level. For example, in Mexico, a large number of State constitutions explicitly protect unborn life, either from the moment of conception or the moment of fertilisation. Article 5 of the Chihuahua State Constitution, for instance, holds that: “All human beings have the right to legal protection of their life, from the moment of conception.”⁴⁷ Likewise, the majority of Argentinean Provincial Constitutions contain protections for unborn life. For example, Article 12(1) of the Buenos Aires Provincial Constitution states that every person in the Province enjoys the right to life, “from the time of conception until natural death”.⁴⁸
40. Several Latin American countries recognize the unborn without a specific reference to the moment of conception, explicitly stating that the law of the land applies for the benefit of the unborn. For example, in Chile the Constitution states that, “The law protects life that is [yet] to be born.”⁴⁹ Similarly, in Honduras, the Constitution holds that, “One who is to be born is considered born for all which favours him,”⁵⁰ and in Peru the Constitution states that, “The conceived are subjects of law in all when it favours them.”⁵¹
41. Other countries in Latin America utilize more general provisions to protect the life of the unborn. For example, the Constitutions of Colombia, Costa Rica and Nicaragua all state that “the right to life is inviolable,”⁵² and this is interpreted as being extended to the unborn.
42. Other examples can be found in national constitutions all around the world, including Africa⁵³ and Asia.⁵⁴ Thus, it is clear that the recognition and protection of

⁴⁴ Dominican Republic Constitution, Article 37. Emphasis added.

⁴⁵ Ecuador Constitution, Article 45. Emphasis added.

⁴⁶ El Salvador Constitution, Title 1, Article 1. Emphasis added.

⁴⁷ The Mexican State Constitutions that contain protections for unborn life are: Baja California, Chihuahua, Coahuila, Colima, Durango, Guanajuato, Jalisco, Morelos, Nayarit, Oaxaca, Puebla, Queretaro, Quintana Roo, San Luis Potosi, Sonora, and Yucatan

⁴⁸ The Argentinean Provincial Constitutions that contain protections for unborn life are: Buenos Aires, Catamarca, Chaco, Chubut, Cordoba, Corrientes Formosa, Rio Negro, Salta, San Juan, San Luis, Santiago de Estero, Tierra del Fuego, and Tucumán.

⁴⁹ Article 19(1).

⁵⁰ Article 67.

⁵¹ Article 2.1.

⁵² Colombia Constitution, Article 11; Costa Rica Constitution, Article 21; Nicaragua Constitution; Article 23.

⁵³ For example, Title I, Article 19 of the Constitution of Madagascar state that: “The State shall recognize every individual’s right [to] protection of his health, starting from conception.”

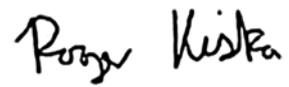
⁵⁴ For example, Article 1, section 12 of the Constitution of the Philippines states that: “The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception.”

unborn life is neither out of step with international law nor the national laws of many other countries. These provisions, the world over, are based on a shared understanding that the unborn child is a human being who, as such, has an independent claim to protection and is meritorious of official recognition and intercession.

(e) Conclusion

43. The Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the American Convention on Human Rights, and the Convention on the Rights of the Child are compatible with the growing international consensus in favour of broad protection for human life in the context of its varying stages of development. Even in the context of capital punishment, the international instruments that tolerate this *explicitly exclude pregnant women*, thereby tacitly recognizing that occasioning harm or ill treatment on a pregnant woman causes greater harm.
44. In light of this growing trend and the logical flaw in completely denying Article 2 protection to unborn children in cases where no competing claims are made, Article 3 claims involving pregnant mothers must be read in light of Article 2.
45. Therefore, in analyzing whether an Article 3 claim brought by a pregnant mother meets the minimum level of severity, the Court must consider the life of the unborn child. The presence of an unborn child places not only physical stress on the victim mother, but also psychological anxiety stemming from the mother's uncertainty as to the welfare of her unborn child. Because of the presence of another life, and the mental effects that this presence undoubtedly produces on the victim mother, the Court should extend a greater degree of protection to pregnant mothers in Article 3 cases.
46. By sending a message to Contracting States that ill treatment of pregnant women will receive heightened scrutiny, the Court will accomplish three goals consistent with the Convention aims: (1) reinforcing its stated interest in protecting all life under Article 2; (2) protecting the health of mothers who are subjected to inhumane treatment that is exacerbated by virtue of their pregnancy; and (3) protecting in particular the interests of unborn life in a logically consistent way, in harmony with international law and a clear national trend.

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