



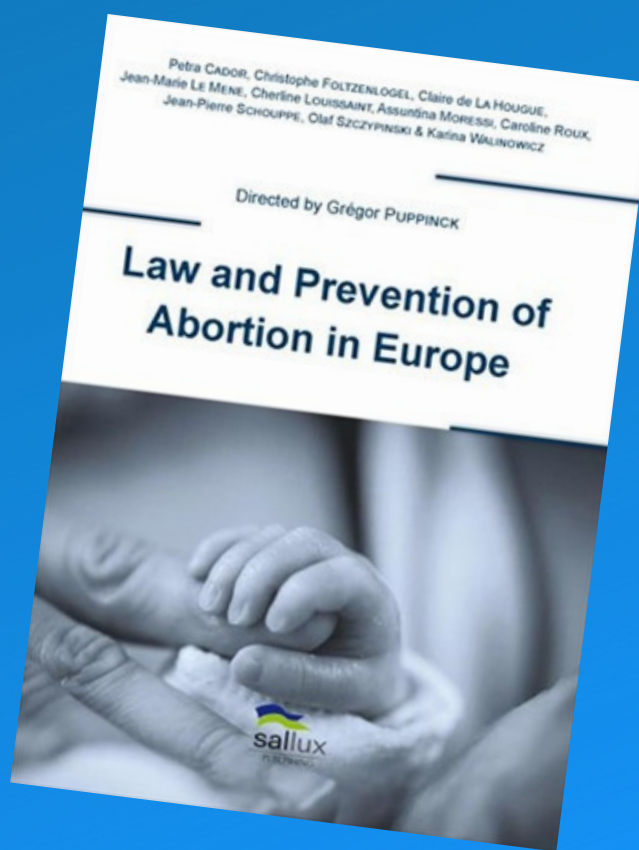
EUROPEAN CENTRE FOR LAW AND JUSTICE

The Prevention of Abortion: Guaranteeing the Social Right Not to Abort

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Introduction

Every year, abortion ends one fifth of pregnancies worldwide and one third of pregnancies in Europe, with 4.5 million voluntary abortions as against 8.5 million deliveries in the 47 member States of the Council of Europe.

Given the scale of the phenomenon, its causes, and consequences, abortion is no more a freedom than a fatality, but a social public health problem that society can and must address with a prevention policy.

The society can prevent and reduce the recourse to abortion through public policies. For example, the decline of 17.4% in the number of abortions in the United States between 1990 and 1999 was the result of legislative changes made in the majority of the federal States.¹ In Europe, some governments have also managed to reduce the rate of abortion² through legislative changes and awareness campaigns.³ In Hungary, the abortion rate, which stood at 19.4‰ in 2010, dropped to 17.5‰ in 2012.⁴ Poland provides an even more radical example of the potential effect of the law: while more than 100,000 abortions were performed there every year in the 1980s,⁵ it has now become rare. However, in France, the public consider abortion as a “right”, thus leading to an increase in its practice: the number of abortions in 2013 increased by 4.7% compared to 2012, i.e. from 207,000 to 217,000,⁶ following the government’s decision to reimburse the cost of abortion at 100%.⁷

Abortion is therefore not a fatality. The majority of abortions are driven by avoidable social and economic problems. 75% of women who have aborted claimed they were driven by either social or economic constraints.⁸ This observation questions the effectiveness of the prevention of abortions as well as the respect of the social rights of women and families. Yet, in the various international instruments, the States formally undertook to prevent abortion.

As Professor Nisand Israel ⁹ emphasises, *“Everyone can agree, whether ethically, psychologically or economically, that it is better to prevent abortions among the youth than to have them undergo abortion.”*

¹ Michael J. New, “Analyzing the Effects of State Legislation on the Incidence of Abortion During the 1990s”, *Center for Data Analysis Report*, 21 Jan. 2014.

² The abortion rate is the number of abortions per 1000 women aged 15 to 49 years.

³ UN, Department of Economic and Social Affairs, Population Division (2014). *Abortion Policies and Reproductive Health around the World* (United Nations publication, Sales No. E.14.XIII.11), Annexe 4, p. 44.

⁴ UN, ib. United Nations, Department of Economic and Social Affairs, Population Division (2013), *World Abortion Policies 2013*, (United Nations publication, Sales No. E.13.XIII.4).

⁵ Agata Chelstowska, « Stigmatisation and commercialisation of abortion services in Poland: turning sin into gold », in *Reproductive Health Matters* 19(37), May 2011.

⁶ Annick Vilain, « Les interruptions volontaires de grossesse en 2012 », *études et résultats*, DREES, n° 884, Juin 2014.

⁷ Caroline Piquet, « Pourquoi le nombre d'IVG a augmenté en 2013 », *Le Figaro*, 11 juillet 2014. Pr Nisand, who, in his department, observed a rise of 10% of abortions in women aged 20 to 30 explains such a rise as follows: “what do you think was the message? It was that pill is dangerous and abortion free”

⁸ According to the Guttmacher Institute, < http://www.guttmacher.org/pubs/fb_induced_abortion.html >

⁹ Nisand, L. Toulemon et M. Fontanel, *Pour une meilleure prévention de l'IVG chez les mineures*, La Documentation française, 2007, p. 3.

An IFOP survey conducted in 2010¹⁰ was particularly revealing of the ambivalence surrounding the perception about abortion. Although 85% of respondents were in favour of abortion, 61% felt there were too many in France and 83% said it had overwhelming psychological consequences. To prevent abortion, two key means were presented: sex education and contraception.¹¹ Yet, forty years after the legalisation of abortion, although contraception is widespread and sex education is part of the school curriculum from primary school, the number of abortions has not declined, especially among minors.

It is therefore urgent to find ways to really prevent abortion, to reduce abortion among young people, and to save women from social and economic constraint. This prevention policy must be renewed up to its premises and be expanded: like any true prevention policy, it must be based on a progress of personal responsibility.

A public policy of prevention can rely on legal principles established and will contribute to their implementation. Based on these principles, States undertook the treaty commitment to implement such a prevention policy in order to “reduce the recourse to abortion”. These principles are the protection of the family, of motherhood, and of human life. In addition to this obligation on States is a corresponding right for any woman not to be forced to abort (I).

In democratic countries, the guarantee of this right is often more theoretical than real. In fact, abortion is more often suffered than chosen by the woman or the couple. Several factors can push or coerce a woman into having an abortion. Firstly, the social and cultural circumstances that promote unwanted pregnancies and abortions. Secondly, the physical constraints related to employment or housing. Therefore, a prevention policy should target these constraints and should be based in particular on the corresponding “social rights” that the State undertook to guarantee (II).

¹⁰ Denis Peiron, « Pour les Françaises, il y a trop d'avortement », *La Croix*, 3 mars 2010, available : <http://www.la-croix.com/Actualite/France/Pour-les-Francaises-il-y-a-trop-d-avortements- NG -2010-03-04-602210>.

¹¹ Which became legal in France by the Neuwirth Act 1967 to fight against illegal abortions and reimbursed by social security since 1974.

Part I: The Basis of the Duty to Prevent Abortion and the Right not to Abort

The duty weighing on society to prevent abortion and to guarantee the right not to abort is based on three general principles (A): the duty to protect the family, the duty to protect maternity and the duty to protect human life. This duty was formalised in international and European law and is a positive obligation on States (B).

A. The Fundamental General Principles of the Obligation to Prevent Abortion

1. Protection of the family: the right to found a family

States have made several international commitments to guarantee the right to found a family. Aside from the negative obligation not to impede the right to marry and to found a family, States also have a positive obligation to support and facilitate the exercise of this fundamental right.

Article 16 of the Universal Declaration of Human Rights stipulates that “*Men and women of full age, without any limitation (...), have the right to marry and to found a family.*” Similarly, Article 12 of the European Convention on Human Rights and Fundamental Freedoms (the Convention) and Article 23, paragraph 2 of the International Covenant on Civil and Political Rights guarantee to men and women “*the right to marry and to found a family*”. The Human Rights Committee underscores that “*The right to found a family implies, in principle, the possibility to procreate and live together.*”¹² Thus, the State is supposed to protect procreation which is the means by which a family is founded. The family, as “*the natural and fundamental group unit of society,*”¹³ “*the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children*”¹⁴ is entitled to protection by the State. In the same direction, the European Social Charter guarantees to “*the family as a fundamental unit of society (...) the right to appropriate social, legal and economic protection to ensure its full development*” (Article 16). This “development” primarily concerns the procreation of children.

International law affirms that “*the widest possible protection and assistance should be accorded to the family.*”¹⁵ This protection is not intended for the couple as such but for the family which “*is entitled to protection by society and the State*”¹⁶ “*while it is responsible for the care and education of dependent children.*”¹⁷ The recognition accorded to the couple by

¹² Committee of Human Rights, General Comment No. 19: Article 23 Protection of the Family, 1990, § 5.

¹³ Article 16 § 3 of the Universal Declaration of Human Rights of 1948, Article 23 §§ 1 and 2 of the International Covenant on Civil and Political Rights of 1966, Article 10 § 1 of the International Covenant on Economic, Social and Cultural Rights of 1966, Preamble to the Convention on the Rights of the Child 1989, Article 16 of the European Social Charter (revised) of 1996, Article 33 of the Charter of Fundamental Rights of the European Union in 1989, Article 44 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990.

¹⁴ Preamble of the Convention on the Rights of the Child.

¹⁵ Article 10 § 1 of the International Covenant on Economic, Social and Cultural Rights.

¹⁶ Article 16 § 3 of the Universal Declaration of Human Rights and Article 23 § 1 of the International Covenant on Civil and Political Rights.

¹⁷ Article 10 § 1 of the International Covenant on Economic, Social and Cultural Rights.

society through marriage is due to its contribution to the common good by founding a family, i.e. through procreation and the upbringing of children.

These obligations were developed into various instruments, including the Vienna Declaration and Programme of Action adopted by World Conference on Human Rights of 1993 which reaffirmed the need to protect the family for the proper development of the child (§21). Similarly, the conferences on Population and Development in Cairo in 1994 and on Women in Beijing in 1995 recognised the need to protect the family. The Beijing Platform for Action¹⁸ states that *“The family is the basic unit of society and as such should be strengthened. It is entitled to receive comprehensive protection and support”* (§29). Similarly, five years after the World Summit for Social Development of 1995 which *“Recognize[s] the family as the basic unit of society, and acknowledge[s] that it plays a key role in social development and as such should be strengthened,”*¹⁹ the member States of the United Nations promised to adopt new initiatives of social development²⁰ to strengthen the family *“and promote appropriate actions to meet the needs of families and their individual members, particularly in the areas of economic support and provision of social service.”* The member States also acknowledged that *“greater attention should be paid to helping the family in its supporting, educating and nurturing roles, to the causes and consequences of family disintegration, and to the adoption of measures to reconcile work and family life for women and men.”*

The obligation to protect the family therefore forms a basis of the duty to prevent abortion.

2. Protection of Maternity

Abortion is a violence during maternity that most often results from a distressing situation (See the chapter on the socio-economic risk factors of abortion, and the chapter on the consequences of abortion). Often abortion results from lack of maternity protection towards the many pressures and constraints that pregnant women go through, especially when they live in a state of emotional, professional or social precarity.

The member States undertook to protect women during maternity in various aspects, by virtue of human rights, including economic and social rights.

Consequently, the International Covenant on Economic, Social and Cultural Rights²¹ stipulates in Article 10.2 that *“special protection should be accorded to mothers during a reasonable period before and after childbirth”*. The protection of maternity is an essential component of the special protection to be afforded to women in society. The Beijing Platform for Action²² stresses that *“Women make a great contribution to the welfare of the family and to the development of society, which is still not recognized or considered in its full importance. The social significance of maternity, motherhood and the role of parents in the family and in the upbringing of children should be acknowledged. The upbringing of children requires shared responsibility of parents, women and men and society as a whole. Maternity,*

¹⁸ UN, Report of the Fourth World Conference on Women, 4-15 September 1995.

¹⁹ Copenhagen A/CONF.166/9, § 26 h).

²⁰ Social Summit +5 (2000), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/S-24/2&referer=http://www.un.org/en/events/pastevents/GA_WSSD%205.shtml&Lang=E

²¹ UN, *International Covenant on Economic, Social and Cultural Rights*, adopted and opened for signature, ratification and accession by the General Assembly in its Resolution 2200 (XXI) of 16 December 1966.

²² UN, Report of the Fourth World Conference on Women, 4-15 September 1995.

motherhood, parenting and the role of women in procreation must not be a basis for discrimination nor restrict the full participation of women in society.” The specific situation of the woman, due to maternity, should therefore be recognised and protected by society. In the same way, the signatory States of the Convention on the Elimination of All Forms of Discrimination against Women recognised *“the social significance of maternity and the role of both parents in the family and in the upbringing of children, and [said they were] aware that the role of women in procreation should not be a basis for discrimination.”*²³

Finally, aside from the fact that the European Social Charter also guarantees pregnant women and their families concrete rights such as a minimum number of weeks of leave or nursing breaks, member States of the International Labour Organisation, in 2000, adopted the Convention (revised) on the protection of maternity (n°183) *“taking into account (...) the need to provide protection for pregnancy, which are the shared responsibility of government and society”* (preamble). Thus, the protection of pregnancy shall be the responsibility of individuals as well as that of the society and the State.

3. Protection of Human Life

Abortion also concerns the life of a developing human being. Science has shown that a new human life begins right from conception. Every human life is a continuum of what begins at conception and which goes through various stages until death.²⁴ The right of the woman not to abort and the obligation for the society to prevent abortions are also founded on the protection of human life. As a result, the Declaration of the Rights of the Child of 20 November 1959 recognises in its preamble 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.”* This affirmation was renewed thirty years later in the preamble of the Convention on the Rights of the Child. One of the ten principles of this Convention encourages pre-natal protection of the health of the child: *“The child shall enjoy social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care.”*

Once has to notice here that the international texts do not make a distinction between an unborn child and a born child, but only mentions “a child”. The importance of this special protection had already been mentioned in the Geneva Declaration of 1924 on the Rights of the Child.

Similarly, the “Platform for Action” adopted by the Rio de Janeiro Conference of 1992, commonly called the *Agenda 21*, stipulates that: *“Particular attention should be given to the provision of prenatal care to ensure healthy babies.”*²⁵ So, the State should ensure the health of the future baby even before it is born.

The International Convention on the Rights of the Child²⁶ of 1989 also reaffirms the need for special protection for the child before it is born. It states among other things in Article 6 that *“1. States Parties recognise that every child has the inherent right to life”* and that *“2. States*

²³ Convention Adopted by the General Assembly in Resolution 34/180 of 18 December 1979, Preamble.

²⁴ See these arguments in the *San José Articles*, <http://www.sanjosearticles.com/?lang=fr>

²⁵ Agenda 21, 1992, 6.21.

²⁶ The International Convention on the Rights of the Child, 1989.

Parties shall ensure to the maximum extent possible the survival and development of the child.” The Convention does not exclude the unborn child from the scope of application of this provision.²⁷

All the key regional and international human rights protection instruments guarantee the right to life, without limitation and reference to birth. For example, the International Covenant on Civil and Political Rights²⁸ indicates that *“Every human being has the inherent right to life (Article 6). The Committee emphasises that this right “is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation.”*²⁹

French law also recognises the value of prenatal life. Thus, Article 16 of the French Civil Code states that *“The law ensures the primacy of the person, prohibits any assault on human dignity, and guarantees respect for the human being from the beginning of life.”* Article 1 of the Veil Act guaranteed *“respect for every human being from the beginning of life,”* adding that *“This principle can only be infringed when necessary and according to the conditions defined by this Law.”*

Although the right to life is enunciated with force, the right to abortion is non-existent, and the texts do not provide any exception to the right to life susceptible to justify abortion except the respect of the right to life of the mother herself. The European Court of Human Rights has never excluded prenatal life from the scope of application of the right to life (*cf. the chapter on abortion and the European Court of Human Rights*), neither does it mention a conventional right to abortion. On the contrary, the protection of human life justifies the legal limitations to abortion and, hence, its prevention.

4. Protection from Society

It is in the interest of society to protect families, maternity and human life, even if this interest is expressed through specific instances. The society also has a direct interest in limiting and preventing abortion because abortion can threaten its balance, especially its demographic balance.

According to the Guttmacher Institut, over 40 million abortions are carried out worldwide every year. In Europe, 30 % of pregnancies are aborted.³⁰ The United States³¹, with 1.2 million abortions per year, has recorded a total of 50 million abortions since 1973, while its current population is just a little above 300 million. Thus, the number of abortions represents one sixth of the American population, without counting the children these aborted babies would have had when they would have become adults. Similarly, France has recorded eight million abortions since 1975, with an average above 200,000 abortions per year; it has an actual population of 65 million people.

On 1 January 2014, according to Eurostat, the population of the EU was 507.4 million

²⁷ See the *San José Articles*.

²⁸ UN, International Covenant on Civil and Political Rights, General Assembly, Resolution 2200 A (XXI), 16 December 1966.

²⁹ Human Rights Committee, General Comment 6, Article 6 (right to life), 16th session, HRI / GEN / 1 / Rev.9 (Vol. I), 30 April 1982.

³⁰ http://www.guttmacher.org/pubs/fb_IAW.pdf

³¹ http://www.guttmacher.org/pubs/fb_induced_abortion.html

inhabitants. The fertility rate from 1960 to recent years had fallen by 45%³², and reached 1.58 children per woman in 2012. In 2013, the EU counted 5.1 million births against 3.5 million deaths. The growth rate of the European population is one of the lowest in the world. In the near future, many member States will see their population decline due to low birth rates. Simultaneously, the EU receives a large influx of non-European immigrant population. In 2011, 68% of the increase in the EU population came from migration, with nearly a million people. In total, the foreign-born population accounted for 9.4% of the total EU population. EU countries welcome 1 to 2 million foreign nationals per year. The European population is ageing, especially the indigenous population, and this could lead to a downgrade of Europe and its importance in the world, including the relative decline of its working-age population. Such a loss of population not only has an impact on the culture, but also on the demographic balance and economic development of the country. It is one of the main causes of population ageing in Western countries, and of problems caused by this ageing in terms of cultural and economic dynamism, funding for health and pension, and renewal of the population through immigration.

Like its interest in protecting public morals³³, the society's interest in limiting the number of abortions is recognised by the European Court³⁴ as legitimately justifying restrictions on access to abortion.

States not only have a general duty to prevent the recourse to abortion, but also an explicit obligation contracted in international and European law.

B. Positive Obligation to Prevent the Recourse to Abortion

The prevention of abortion is an international commitment of the member States. During the Cairo Conference in 1994, the governments pledged to “*take appropriate measures to help women avoid abortion, which in no case should be promoted as a method of family planning*” (7.24) and to “*reduce the recourse to abortion*” (8.25). Similarly, during the Fourth Conference on Women, also called the Beijing Conference, the States strengthened their commitment made in Cairo “*to reduce the recourse to abortion*”, and affirmed that “*every attempt should be made to eliminate the need for abortion*” (§160.k).

The member States of the United Nations thus pledged to adopt abortion prevention policies. This commitment is a consensus. With regard to Europe, in Resolution 1607 (2008), Access to Safe and Legal Abortion in Europe, the Parliamentary Assembly of the Council of Europe “*reaffirms that abortion can in no circumstances be regarded as a family planning method. Abortion must, as far as possible, be avoided. All possible means compatible with women's rights must be used to reduce the number of both unwanted pregnancies and abortions*” (§ 1). In the explanatory report, the rapporteur of the Resolution underlines that “*Whatever view we hold on abortion, we can all agree that, in an ideal world, abortions would not exist (...). Our aim should thus be to avoid as many abortions as possible.*”³⁵ The Assembly concluded this

³² The lowest rates are found in Mediterranean countries and Eastern European countries. The declining birth rate is virtually a universal phenomenon within the European Union.

³³ *Open Door and Dublin Well Woman v. Ireland*, n°14234/88; 14235/88, 29 Oct. 1992, § 63; *A., B., C.* §§ 222-227.

³⁴ *Odièvre v. France*, [GC], n°42326/98, 13 Feb. 2003, § 45.

³⁵ Gisela WURM, Report of the PACE, *Access to Safe and Legal Abortion in Europe*, Doc. 11537 rev. 8 April 2008, § 23.

Resolution 1607 of 2008 by inviting all the States to “*promote a more pro-family attitude in public information campaigns and provide counselling and practical support to help women where the reason for wanting an abortion is family or financial pressure*” (§ 7.8). In the same way, in 2003, the PACE underscored that “*The goal of a successful family planning policy must be to reduce the number both of unwanted pregnancies and abortions.*”³⁶ To this end, the Assembly recommended in 2004 to the member States, to adopt a “*European strategy for the promotion of sexual and reproductive health and rights*” which concerns in particular the “*increase in teenage pregnancies*” and “*high abortion rates*”.³⁷ In this Resolution, the Assembly recommended all the States “*to work together to design a European strategy for the promotion of sexual and reproductive health and rights, and prepare, adopt and implement comprehensive national strategies for sexual and reproductive health*”.³⁸ The ability to carry a pregnancy to full term, and thus not to abort, constitutes without doubt the first right regarding sexuality and procreation: the member States had to prepare, adopt and implement national and European strategies to guarantee this right.

PART II: Implementation of the Duty to Prevent Abortion and Guarantee the Right not to Abort

The right not to abort is a negative right whose positive side cannot be limited to carrying the pregnancy to full term. It is based on the fact that abortion is violence, against the child, the woman, and the family, and that the causes of this violence are mostly social. This right basically means that every woman should be protected from the violence caused by the circumstances that often motivate them. It is not just about protecting the woman from the actual violence of abortion, but also from carrying out this violence, from the risk of being put in the situation to abort, and from the social causes of abortion.

This right functions against anything that, structurally within the society, compels the woman to abort. Affirming, as an official truth, that abortion is an individual freedom only eliminates the question of its real causes and results in making the woman guilty, since this violence will be a result of her own will, her own freedom. If abortion is just a freedom, an individual choice, then the woman is entirely responsible, completely guilty: it amounts to leaving her to her fate in the face of violence, making her both the guilty and the victim of an inextricable psychological situation, whereas this violence is largely produced structurally by the society.

Abortion, especially if it is forced, often causes psychological and sometimes physical and sexual damages and sufferings to the woman. It is a violence that concerns women in particular and can sometimes fit the definition of “*violence against women*” given by the Beijing Conference (§ 113) and the European Council Convention on Preventing and Combating Violence against Women and Domestic Violence (2011).

Affirming *the right not to abort* helps to avoid an abstract concept of abortion, which is considered as a freedom. Whereas the so-called “right to abort” is presented as a subjective, abstract right, the *right not to abort* is on the contrary a concrete right embodied in existence, since it requires considering anything that puts the woman in the situation to abort.

³⁶ PACE, Resolution 1347 (2003), *Impact of the “Mexico City Policy” on the free choice of contraception in Europe*, 30 September 2003, § 6.

³⁷ PACE, Resolution 1399 (2004), “*European strategy for the promotion of sexual and reproductive health and rights*”, 30 September 2003, § 6.

³⁸ PACE, Resolution 1399 (2004), *ibid.*, § 11.1.

Guaranteeing the right not to abort demands a positive obligation to adopt comprehensive prevention policies and is based not only on the conviction that society is capable of making efforts to support maternity, but also that men and women can adopt responsible sexual and relationship behaviours through education and a suitable environment. On the contrary, the so-called “right to abortion” appears to be an easy solution for the States, a cost-effective solution to difficult human situations caused mainly by social inadequacies.

The right of women not to abort and the society's duty to prevent abortions are correlated, but not symmetrical. The *right of women not to abort* is exercised when the woman is pregnant and opposes all the constraints that lead to abortion. This right calls primarily for protective measures (B). The *duty to prevent abortion* is broader because it also comes into play even when the woman is not pregnant. It aims mainly to empower women and, consequently, reduce the risk of an abortion. This empowerment derives principally from education (A).

A. Preventing Abortion before Pregnancy

Adopting an abortion prevention policy is the first step to ensuring the right not to abort. This prevention policy of abortion must be implemented even before the woman gets pregnant. It actually consists in preventing the conception of an unwanted child. Contraception is often wrongly described as the only abortion prevention method (1). The most reasonable way to avoid the conception of an unwanted child and abortion is education, prerequisite for responsibility (2).

1. Contraception

Hormonal contraception is generally presented as the best way to avoid unwanted pregnancies. In fact, it mostly prevents conception and causes a significant drop in the fertility rate of the world's population. However, the main purpose of contraception is not to prevent abortions, but to help regulate and reduce fertility.

In 2011, 63% of women of childbearing age worldwide use a contraceptive method. The United Nations Population Division indicates that universal access to contraception is one of the Millennium Development Goals in respect to improving reproductive health.³⁹ To date, more than a billion abortions have been performed since its legalisation – taking into account only countries where statistics are available:⁴⁰ more than eight million in France, 27 million in Vietnam and 290 million in Russia. In 2008, 44 million abortions were performed worldwide.⁴¹

In France, the contraception rate was 82% among women likely to have a child, against 52% in 1978. The number of abortions, nevertheless, remains high i.e. one fifth of all pregnancies (220,000 per year in France). When the Veil Act, liberalising abortion in France, was passed, it was expected that the recourse to abortion would diminish with the spread of modern contraception. Unplanned pregnancies have very much decreased, but the number of abortions has not fallen because women resort more often to abortion in the event of an unwanted

³⁹ UN, Department of Economic and Social Affairs, Population Division, World Contraceptive Patterns, 2013.

⁴⁰ *Summary of Reported Abortions Worldwide, through August 2015*, compiled by Wm. Robert Johnston, September 2015. <http://www.johnstonsarchive.net/policy/abortion/wrjp3314.html>

⁴¹ Facts on Induced Abortion Worldwide, Guttmacher institute, January 2012.

pregnancy.⁴² While, in 1975, four unplanned pregnancies in ten (41%) ended up being aborted, today six in ten are aborted (62%). This increase in the abortion rate of unplanned pregnancies is the direct result of social and cultural factors, including a change in mentality in favour of greater control of reproduction (see the chapter on *the socio-economic risk factors of abortion*).

Although contraception reduces fertility significantly, it does not prevent pregnancy 100%. Indeed, 72% of women who had abortion in France were using contraception, according to the General Inspection on Social Affairs.⁴³ The main cause of these unplanned pregnancies lies in contraceptive failure. As noted by the rapporteur of the PACE Resolution 1607: “*Making contraception methods available, however, is not enough to prevent abortions.*”⁴⁴ Contraception gives a false sense of security based on technology rather than on personal responsibility, and opens the door to abortion in case of failure.

Contraception is dis-empowering in nature as it aims to avoid facing the consequences of one's actions, that is to say, the child conceived during the relationship. It is the same with abortion on demand when it is intended to erase the unwanted consequence of a sexual relationship. Abortion appears as the complement of contraception in the guarantee of “sexual freedom”, which is confused with “sexual irresponsibility”. It is often this irresponsibility which ultimately leads to abortion; and therefore what this prevention policy must seek to correct.

2. Sex and Relationships' Education

The need to give children an appropriate sex education is also a consensus and constitutes an international obligation⁴⁵ and a national political decision.⁴⁶ In Europe, the Parliamentary Assembly of the Council of Europe recommended on several occasions such policies. In Recommendation 675 (1972), Birth control and family planning in Council of Europe member States, of 18 October 1972, the PACE invites all governments “*to ensure that young people are provided with suitable sex education, subject to respect for parents' rights and, inter alia, to promote premarriage courses*”.⁴⁷

In 2004, by its Resolution 1399, the Assembly recommended that the issues of “*sexual and reproductive health information and education, especially for children and adolescents*” should be addressed as part of strategies to promote sexual and reproductive health and rights (§ 11.1.a). More recently, the Assembly indicated in Resolution 1607 of 2008 that “*evidence*

⁴² H. Leridon, N. Bajos, C. Moreau, et al., Pourquoi le nombre d'avortements n'a-t-il pas baissé en France depuis 30 ans ?, *Population & Société*, n° 407, décembre 2004.

⁴³ Inspection générale des affaires sociales (IGAS), Les politiques de prévention des grossesses non désirées et de prise en charge des IVG, 2009 <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/104000047.pdf> ; Etude COCON, Unité INSERM-INED, U 569, 2000.

⁴⁴ Gisela WURM, Report of the PACE, *Access to Safe and Legal Abortion in Europe*, Doc. 11537 rev. 8 April 2008, § 23.

⁴⁵ UN, Report of the Fourth World Conference on Women, 4-15 September 1995, § 160 k.

⁴⁶ For example: Haut conseil de la population et de la famille, I. Nisand, L. Toulemon, M. Fontanel, *Pour une meilleure prévention de l'IVG chez les mineures*, La Documentation française, 2006 ; IGAS, C. Aubin, D. Jourdain Menninger, L. Chambaud, *Evaluation des politiques de prévention des grossesses non désirées et de prise en charge des interruptions volontaires de grossesse suite à la loi du 4 juillet 2001*, La Documentation française, 2009, available: <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/104000047.pdf>

⁴⁷ Recommendation 675 (1972), *Birth control and family planning in Council of Europe member States* of 18 October 1972, 6.c.

shows that appropriate sexual and reproductive health and rights strategies and policies, including compulsory age-appropriate, gender-sensitive sex and relationships education for young people, result in less recourse to abortion. This type of education should include teaching on self-esteem, healthy relationships, the freedom to delay sexual activity, avoiding peer pressure, contraceptive advice, and considering consequences and responsibilities” (§5). This “sex and relationships education” for young people, must be “age-appropriate and gender-sensitive” and must aim “to avoid unwanted pregnancies (and therefore abortions)” (§ 7.7).

However, it has been noticed that the rate of abortion and pregnancy among young people is not decreasing but tends to even increase in France, just as high-risk sexual activities are on the rise. Hence, it seems necessary to examine sexual and relationships education policies that have been in place for 40 years.

The approach was mainly hygienist, technicist, and described sexual practices in a very blunt way.⁴⁸ The main question that the adopted approach raises is whether we can deal with the consequences without tackling the causes. That is to say, if we can combat abortion without aiming at reducing sexual intercourse among teenagers and people who are not in the position to bear the consequences of their actions. According to the French National Institute of Demographic Studies (INED), the average age of first sexual intercourse in 1960 was 18.5 years for men and 20.5 years for women; today, it is 17 years.⁴⁹

A host of other factors have, for several decades, trivialised and encouraged sexual activities among teenagers. Sex education incites young people to have sex, since details of sexual practice and contraceptive methods are officially presented to young girls and boys during lessons in college; it becomes normal to start having sexual intercourse at that age. Sex is trivialised and the sense of responsibility is reduced to the use of contraception and condoms. Sex education focused on information and risk prevention has the paradoxical effect of encouraging young people to experiment or even abuse it, thus increasing among young people the practice of sex, unwanted pregnancies and ultimately abortions.

This perception of sex dissociates sexuality from the body of the person. It diminishes people's level of emotion, responsibility and respect for sexuality. Sexuality, source of life, becomes linked to death through HIV and abortion. Such sex education confines young people to a childish and irresponsible understanding of sexuality which consists of having a blooming sexuality; the opposite of an education that is aimed at helping young people to become responsible adults. Incitement to have sex anyhow carries devastating consequences for young girls: because they can use contraceptives and also abort, boys do not understand why they refuse their sexual advances. The other side of contraception and abortion is that it makes men irresponsible: men see it as an easy way to take advantage of women and deny their responsibilities.

Hence, sex and relationships' education must adopt another perspective that emphasises the

⁴⁸ See for example the resource pack of Ségolène Royal in 2000, designed with Family Planning, (Sabine Chevallier, « Education sexuelle à l'école, la mallette de Ségolène », *Famille Chrétienne*, n° 1189, 28 October 2000, <http://www.famillechretienne.fr/famille-education/sexualite/education-sexuelle-au-college-la-mallette-de-segolene-32918>) or the exhibition *Zizi sexuel* à la Villette en 2007 et 2014-2015, where a lot of school classes went. http://www.cite-sciences.fr/fileadmin/fileadmin_CSI/fichiers/au-programme/expos-temporaires/zizi-sexuel/_documents/DP_20140610.pdf ; some of the rooms where forbidden to adults.

⁴⁹ INED, *L'âge au premier rapport sexuel*, 2008.

importance of sex, teaching that responsibility is not about putting on a condom or taking contraception, but knowing that sex involves the whole being and can give life that is why it must only be practiced in a solid relationship. Sex should not be trivialised, devalued or mocked. On the contrary, its greatness must be emphasised to justify why it must be reserved for a solid relationship that constitutes a commitment for the future.

As recommended by the PACE in 1974, parents, and by extension family associations, should take part in this education because of their experience and their first responsibility as parents in bringing up their children.

To this end, several initiatives have been taken, particularly in the United States, to encourage abstinence among young people until a lasting relationship has been established. This constitutes a solid responsibility education as well as a complete prevention against sexually transmitted diseases and unwanted pregnancies, and ultimately against abortion. In the United States, the promotion of abstinence resulted in a simultaneous decrease in the level of sexualisation of the youth and the number of abortions as well as in teen births. While according to the Youth Risk Behaviour Survey only 41.4% of students admit to having had sex in 2015 (compared to 57% in 1991)⁵⁰, the Guttmacher Institute reveals a drastic 44% decrease in the number of births among this age group (whereas in 1991 there were 61.8 births per 1,000 girls, this figure fell to 34.4 in 2010), accompanied by a decrease of 66% in the abortion rate since 1988 (43.5% to 14.7%)⁵¹. The juxtaposition of these figures invalidates the hypothesis that increased access to abortion would lead to the decline in births, since abortion also saw a sharp decline. Since 1998, 50 million dollars⁵² have been awarded annually to sex education programs advocating abstinence until marriage⁵³. Currently, 37 States require that abstinence be at least proposed in sex education and 27 States require it to be taught with emphasis on HIV.⁵⁴ It must be concluded that not only is abstinence practicable, but that it is a coherent education which reduces the “accidents” that some believed can only be eluded through the artificial control of sexuality. This makes sense only if one clearly distinguishes the *prevention* from *contraception*: while contraception restrains the consequences once the act has been accomplished, abstinence is strictly preventive because it eliminates the risk of pregnancy and also helps teach people to be responsible, avoiding a materialist view of sexuality; it awakens the awareness of the value of the relationship, also helping to remedy the current emotional disorders in Youth.⁵⁵

In France, the Veil Act raised in Article 1 that “*education to responsibility, welcoming the child in society and family policy are national obligations*”. These provisions are still in force⁵⁶ but expect a good and full implementation.

3. Physiological Education

⁵⁰ http://www.cdc.gov/healthyyouth/data/yrbs/pdf/trends/2015_us_sexual_trend_yrbs.pdf

⁵¹ <https://www.guttmacher.org/news-release/2014/us-teen-pregnancy-birth-and-abortion-rates-reach-historic-lows>

⁵² It is unfortunate that President Obama's decision to stop giving subsidies to States providing abstinence lessons on the ground that they are not realistic was not informed by such changes.

⁵³ <http://abcnews.go.com/Health/story?id=117935&page=1>. See also: Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Title IX, sec. 912.

⁵⁴ https://www.guttmacher.org/sites/default/files/pdfs/spibs/spib_SE.pdf

⁵⁵ <https://www.acpeds.org/parents/sexuality/sexual-responsibility-2/benefits-of-delaying-sexual-debut-2>

⁵⁶ Article L2211-2 of the French Public Health Code (Free translation from French).

Sex and relationships education must be complemented by knowledge of the physiological dimension of reproduction. It has to do with the female cycle and the process of development of the baby.

a. Knowing the female cycle

Many women have very limited knowledge about their cycle, with their fertile and infertile periods. At a time when many people are trying to go back to more natural means of living and are expressing their concern about the ecology, it is paradoxical to see a large proportion of women using hormonal contraception. An education given in school and also by the social and medical services, will help them know that it is not necessary to take chemical products to avoid pregnancy. Encouraging a more responsible and cautious practice of sexuality would have an impact on the number of unwanted pregnancies and on how they are welcomed and hence on the number of abortions.

From the beginning of puberty, it is important to teach adolescents the physical changes they will go through as well as the female cycle by explaining both the fertile and infertile periods. Boys and girls should be separated to facilitate dialogue. It is only when the female cycle is well known to students, and the girls have learned to identify their body changes that it is useful to explain the chemical and other contraceptive methods, specifically in explaining the act, its effect on cycle and a potential pregnancy (contraceptive effect, that is the prevention of ovulation, or abortifacient effect, that is the prevention of the implantation of a fertilised egg), as well as the long-term effects on health and the environment⁵⁷. The Cairo Conference called on States to “*enhance research on natural methods for regulation of fertility, looking for more effective procedures to detect the moment of ovulation during the menstrual cycle and after childbirth*” (§12.18).

Today, the natural methods for regulating fertility have become as reliable as the others, without any side effect either on the person or on the environment. However, these methods are not given much support although they would cost much less to the State. Sex education programmes do not mention them⁵⁸. They have been ignored with the excuse that they are too demanding: women are said not to be able to observe how their own bodies function and couples to abstain from sex during fertile periods.

This reveals the poor consideration of women and couples. This method is not really supported by pharmaceutical groups either, which obviously have a stake in encouraging the use of artificial contraception. The method of observing the cycle is completely free once it has been assimilated by the woman.

b. Knowing the development process of the child

The prevention of abortion can also be achieved by the understanding of the development of the baby in the uterus, from conception. This education should start right after primary school. The child will thus be aware of the fact that life is a continuum of conception, and can marvel

⁵⁷ For example, the presence of a large quantity of hormones in water, not destroyed during the treatment of the water, which acts as an endocrine disruptor.

⁵⁸ We can see the roles that some NGOs play in the preparation of sex education programmes or tools proposed. Thus, the kit distributed to all colleges through the initiative of Ségolène Royal in 2000 indicated that: « Programme designed in consultation with Mouvement français pour le Planning familial ».

at this development.

A good information for a woman who plans to have an abortion consists in making her aware of the gravity of the act and its potential consequences. Concerning the reality of undergoing an abortion, the United States Supreme Court judged that: « *The State has an interest in ensuring so grave a choice is well informed. It is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know (...)* ». ⁵⁹ Several countries have incorporated ultrasound scan into the process of deciding on abortion to help the mother to see the baby, or hear its heartbeat. This is done particularly in Macedonia⁶⁰ and in the following States in America: Arizona, Florida, Kansas, North Carolina and Texas.⁶¹ This condition attached to abortion may seem cruel for the mother, but it enables her to make a well informed decision and encourages a lot of women to choose to keep their babies. The ultrasound scan makes the woman aware of the fact that she is carrying a unique life, and can also help the father become conscious of the reality of the baby. In fact, when the medical professionals know that an abortion is planned, very often the image of the baby is not shown to the mother during the ultrasound scan and the sound is muted. Even though this is done with the intention of protecting the mother, this process, which is based on dissimulation, does not really respect her. In order not to make the mother feel guilty, we make her irresponsible. Denying the reality by hiding the images and talking about a cluster of cells is a lie that, even though it helps in the speck of the moment to make an easy decision, will bring about suffering in the future.

An education that truly treats female cycle and the development of the child on the one hand, and the relational dimension of sexuality on the other hand would help women and couples to be more responsible and more humane. In addition, they should also be aware of the risks associated to abortion.

4. Knowing the risks associated to abortion

It is important to make people aware of what abortion entails and its potential consequences⁶² (*Cf The Medical and Relational Consequences of Abortion*). The European Court recognised the obligation of States to inform the woman about the dangers of abortion.⁶³ Considering the magnitude of this phenomenon in our society, this information can conveniently be incorporated into sex education lessons. Sensitising people about the possible consequences of abortion, rather than hiding them, will contribute to its prevention.

⁵⁹ GONZALES, ATTORNEY GENERAL v. CARHART *et al.* No. 05-380. April 18, 2007² <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=05-380>

⁶⁰ Loi sur l'avortement, dispositions générales, article 6 : "(...) *The pregnant woman, along with the request from Paragraph 1 of this Article, has to submit the findings from an ultrasonographic examination, as well as medical and any other required documentation stipulated in Article 9 Paragraph 3 of this Law*". Available: http://www.womenonwaves.org/en/media/inline/2013/6/26/macedonia_pregnancy_termination_bill_may_20_13_1.pdf. For Russia, several restrictions were enacted in 2011, but the obligation to perform an ultrasound is still being discussed. Cf. Sophia Kishkovsky, Russia Enacts Law Opposing Abortion, *New York Times*, 15 July 2011.

⁶¹ Isabel Contreras, « Pas d'IVG sans avoir vu son fœtus dans huit Etats américains », *France TV Info*, 29 juin 2012. However, the American Supreme Court implicitly declared these laws unconstitutional for some of these States. It had to decide formally on at least one State not having repealed it in 2016. « Pas d'échographie obligatoire avant l'avortement », *TVA Nouvelles*, 15 juin 2015.

⁶² Félix Galeyrand, *Contribution à la prise en charge psychologique des I.V.G.: pour un état des lieux à Strasbourg en 2004*, Thèse de médecine, dir. Jean-Jacques Favreau, Strasbourg, 2004.

⁶³ *Csoma v. Romania*, n° 8759/05, 15 January 2013.

Currently, the provision of information falls under the general duty to inform patients of physicians⁶⁴, this duty to inform is a corollary of the obligation to obtain the patient's informed consent before any action or treatment. The patient must receive “*simple, approximate, clear and honest*”⁶⁵ information allowing her to make an informed decision. The obligation to inform has important consequences in the field of medical liability. As noted by the *Conseil national de l'ordre des médecins*: “*Good information is a prerequisite to informed consent*”.⁶⁶ Although abortion is not a cure or a preventive measure, it is nevertheless carried out in the medical setting, and hence, these provisions should apply.

Good information can help to better prevent abortion. It is necessary to warn women that this act is not trivial. Since the hospital plays a central role in the performance of abortion, it should also play the same role in its prevention. As proposed by Professor Israël Nisand, “*all abortion centres in France could undertake their own preventive actions on which they would be evaluated. This sole incentive measure would have a considerable effect on the entire medical profession*”.⁶⁷

The prevention of abortion, as described above, is educational: it aims primarily to help women and men to adopt a responsible and conscious sexuality, to know their bodies, the development of their child, and the practice and consequences of abortion. But abortion is not only caused by ignorance, irresponsibility or contraceptive failure: it may be forced or coerced through external factors. It is therefore necessary to ensure the “right not to abort”.

B. Guaranteeing the “right not to abort” (during pregnancy)

The prevention of abortion involves helping pregnant women to resist all forms of pressure that tend to force (1), or compel (2), them to abort.

1. The fight against forced abortions

Forced abortion was considered a crime against humanity at the Nuremberg trials. Ten Nazi leaders were sentenced for having “*encouraged and imposed abortions*” (*Encouraging and compelling abortions*).⁶⁸ The World Conference on Women, held in Beijing, describes “*forced sterilisation and forced abortion, coercive/forced use of contraceptives*” as “*acts of violence against women*” (§ 115).⁶⁹ The *Council of Europe Convention on Preventing and Combating*

⁶⁴ L'article L.1111-2 du code de la santé publique dispose en particulier à cet égard que « *Toute personne a le droit d'être informée sur son état de santé. Cette information porte sur les différentes investigations, traitements ou actions de prévention qui sont proposés, leur utilité, leur urgence éventuelle, leurs conséquences, les risques fréquents ou graves normalement prévisibles qu'ils comportent ainsi que sur les autres solutions possibles et sur les conséquences prévisibles en cas de refus* » (Free translation from French).

⁶⁵ Ccass., Civ. 1^{ère}, 21 février 1961, Bull. 1961, I, N° 112, p. 90 (Free translation from French).

⁶⁶ In the online commentary of article 35 of the Code of Ethics (Free translation from French).

⁶⁷ Report 2006, p. 17 (Free translation from French).

⁶⁸ J. Hunt, St Joseph University, Philadelphia, “*Abortion and the Nuremberg Prosecutors, a Deeper Analysis*” in: Koterski, Joseph W., ed. *Life and Learning VII: Proceedings of the Seventh University Faculty for Life Conference*. Washington, DC: University Faculty for Life; 1998: 198-209.

⁶⁹ UN Women, the fourth World Conference on Women, Beijing, Dec 1995 Action for Equality, Development

Violence against Women and Domestic Violence (called the Istanbul Convention) of 11 May 2011, requires States Parties to criminalise abortions and forced sterilisation (Article 39) which are described as “performing an abortion on a woman without her prior and informed consent” and “performing surgery which has the purpose or effect of terminating a woman’s capacity to naturally reproduce without her prior and informed consent or understanding of the procedure”. Abortion is forced if there is no “prior and informed consent”, which brings us back to the issue of the quality of information provided to women and couples. The Convention specifies, with regard to sterilisation, “or without her understanding of the procedure”. Formally informing the woman is not enough; the woman should clearly understand the procedure that will be performed on her. Thus, the European Court ruled that making an illiterate woman sign an agreement for immediate sterilisation during labour does not constitute an informed consent; such sterilisation therefore constitutes an inhuman or a degrading treatment and a violation of the right of women to respect for their private and family life.⁷⁰ By its Recommendation (2002)/5 on the protection of women against violence, the Committee of Ministers also recommended that member States should “prohibit enforced sterilisation or abortion, contraception imposed by coercion or force”. In 2011, PACE also asked member States to “criminalise” the practice of forced abortions.⁷¹ Similarly, in 2012 the European Parliament adopted a resolution that “condemns the practice of forced abortions and sterilisations globally, especially in the context of the one-child policy”.⁷²

In reality, convictions for forced abortion are still uncommon.⁷³ According to an author, “the classification of abortion without the woman’s consent is not realistic and has proven to be criminally unnecessary on the grounds that such action would involve virtually kidnapping of a woman and performing the abortion procedure against her will. In such event, the qualification would be arbitrary arrest and illegal confinement accompanied by torture or barbaric acts.”⁷⁴

This is a restrictive concept of forced abortion, because it is the absence of prior and informed consent that characterises it. Can we say that a woman who undergoes an abortion under the threat of her parents, employer or spouse, gave an informed consent? It is the same for a young woman who aborts in fear, without knowing or understanding the *in utero* development of her child, or a woman who aborts under pressure from society or medical professionals, without having been informed about assistance or prospects for her disabled child. The difference between forced and coerced abortion is very thin if not null.

2. The fight against coerced abortions

According to the Guttmacher Institute, three quarters of women who have abortions in the US do it for social or financial reasons.⁷⁵ The arrival of a child is sometimes a burden that the

and Peace, available on: <http://www.un.org/womenwatch/daw/beijing/platform/violence.htm#diagnosis>

⁷⁰ See especially ECHR, *V.C. v. Slovakia*, n°18968/07, 8 November 2011.

⁷¹ PACE Resolution 1829 (2011), *Prenatal Sex Selection*, October 3, 2011.

⁷² European Parliament Resolution 2012/2712(RSP), 5 July 2012.

⁷³ Several cases have however occurred “Cheb Mami sentenced to five years in prison for attempted forced abortion,” *Le Monde*, 3 July 2009; “Norway: Six years in prison for a man who made his ex undergo abortion without her knowledge, *20 Minutes*, March 17, 2015; Michael Winter, “Fla. man gets prison for abortion-pill miscarriage”, *USA TODAY*, 27 Jan 2014.

⁷⁴ Patrick Mistretta, « Pour un droit pénal de l’avortement lisible et intelligible », *Gazette du Palais*, n° 223, 11 août 2015, p. 1.

⁷⁵ An American family planning research institute founded in 1968. It has 106 employees. “The reasons women give for having an abortion underscore their understanding of the responsibilities of parenthood and family life.

mother struggles to bear. Despite the prohibition of discrimination during unemployment, it is almost impossible for a visibly pregnant woman to find a job. Pregnancy during a trial period or a fixed term contract is likely to result in non-renewal of the contract. In France, parental leave is reserved for women who have paid eight trimesters to the pension scheme – something that excludes many young women. Child care expenses are very high for people who earn modest salaries and there are no vacancies in day nurseries. For women facing serious difficulties, it is possible to find accommodation if you are alone. But who will receive a woman who has no income but has a baby?

The pressure may also be social or emotional. It is not uncommon for the father to feel unprepared to have a child and therefore compel his partner to abort. Many parents concerned about the future of their daughter push them or even coerce them into getting rid of the baby. The pressure from relatives include not only the threat to stop catering to their needs or chasing them out of the house, but also physical violence. Yet, the Platform for Action of the Beijing Conference on Women declared that it is the “human rights” of women “*to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence*” (§ 96).

What social response must be adopted towards these constraints? The Parliamentary Assembly of the Council of Europe invites the States to “*allow women freedom of choice and offer the conditions for a free and enlightened choice without specifically promoting abortion*” and, as mentioned earlier, to “*promote a more pro-family attitude in public information campaigns and provide counselling and practical support to help women where the reason for wanting an abortion is family or financial pressure*”⁷⁶. These pressures are mainly familial and financial. They can also be social and medical, especially when the child is female or has a disability.

a. Medical and Social Pressures

- ***If the foetus is female***

An example of abortion due to social pressure, influenced by culture, is the one that targets female foetuses. In effect, an increasing number of women, including in Europe, terminate their pregnancies because the child is female. This is often under the pressure of their partner or the coercion of societal norms that gives little value to girls. This prenatal selection by abortion is very easy since the sex of the baby can be known during a period when abortion can still be performed upon request in many countries.

This practice was condemned, but its prohibition is difficult to implement (See the chapter on *Abortion on the Basis of the Sex of the Child*).

- ***A foetus with disability***

When the foetus is identified as having a disability before its birth, it is most often eliminated. This type of eugenic abortion is a fairly broad social consensus. This increases the pressure on

Three-fourths of women cite concern for or responsibility to other individuals; three-fourths say they cannot afford a child; three-fourths say that having a baby would interfere with work, school or the ability to care for dependents; and half say they do not want to be a single parent or are having problems with their husband or partner.” http://www.guttmacher.org/pubs/fb_induced_abortion.html

⁷⁶ PACE, Resolution 1607 of 2008, §§ 7.3 and 7.8.

women and couples who, on the contrary, wish to keep the child.

This pressure comes from medical professionals, relatives and, on a larger scale, society. Thus, a mother claimed having undergone so much pressure from the hospital staff, and because she already had a disabled son and knew how society treated these children, she did not have the strength to withstand the pressure.⁷⁷ A renowned English biologist, Professor Emeritus from Oxford, affirmed that it was immoral to give birth to a child suffering from Down syndrome⁷⁸, emphasising that he was only affirming what everybody thought, since 90% of fetuses diagnosed with trisomy are aborted. Couples expressed the difficulty to find a medical team willing to assist them during the pregnancy and birth of a child condemned to an early death.

People should systematically be informed about the possibility to keep the child, even one with little chance of living, and assistance should be offered (as it is done in some hospitals).

Today, the protection of the right to life accorded to children in the uterus varies depending on their state of health, since a disabled child can be eliminated during a longer period than a healthy child. This discrimination based on the state of health is contrary to the prohibition of discrimination against persons with disabilities and the recognition of their right to life established specifically by the Convention on the Rights of Persons with Disabilities. In this Convention, the States Parties, after having recognised that *“all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law”* (Article 5), *“reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others”* (Article 10).

Beyond this discrimination in the enjoyment of the right to life, the ability of the family to avoid aborting a disabled child depends to a large extent on how the child will be welcomed by society. Here also, the Convention on the Rights of Persons with Disabilities provides a commendable measure: there, the States Parties, having recognised that *“where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting”* (Article 23-5). The preamble also recalls that States Parties are *“Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities”*.

In Europe, the European Committee for Social Rights, in the case *Autism v. France*, recalled that States Parties must *“be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for other persons affected including, especially their families on whom falls the heaviest burden in the event of institutional*

⁷⁷ Beezy Marsh, « 66 babies in a year left to die after NHS abortions that go wrong », *Daily Mail*, 4 février 2008, available: <http://www.dailymail.co.uk/health/article-512129/66-babies-year-left-die-NHS-abortion-wrong.html> ; *la petite fille trisomique avortée à cinq mois est née vivante et a vécu trois heures.*

⁷⁸ Richard Dawkins: 'immoral' not to abort if foetus has Down's syndrome, *Press Association*, 21 August 2014, available: <http://www.theguardian.com/science/2014/aug/21/richard-dawkins-immoral-not-to-abort-a-downs-syndrome-foetus>

shortcomings".⁷⁹

The prevention of eugenic abortions on the basis of the health of the child depends on the development of health care and the consent of the society to better welcome disabled children and assist their families.

b. Pressure from, and irresponsibility of the father

The irresponsibility of the father constitutes one of the major causes of abortion (*cf* the chapter on *The Risk Factors of Abortion*). He can assault the woman, and order her to choose between him and the baby, or simply say that he does not want the child just to make the woman feel incapable of raising the child alone. This irresponsibility is a violation of the rights of the woman to equality and justice in the relationship between men and women. This is why the PACE stated that *"In no case, should a woman be coerced by a man into having an abortion against her will. Men should also be encouraged to take an interest in their child once born, and, if appropriate, to participate in its upbringing"*.⁸⁰

In another resolution on the *"European Strategy on the Promotion of Sexual and Reproductive Rights"*, (Resolution 1399 (2004)), the PACE called upon member States *"to take all appropriate measures to ensure equality between men and women in all aspects of life"* (§ 11.2). This equality must also focus on responsibility towards pregnancy.

During the Cairo conference on Population and Development, the States undertook to pay particular attention to *"stronger legal enforcement of male parental financial responsibilities"* (§ 5.4). In the same direction, the Platform for Action of the Beijing Conference on Women specifically declared that *"Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences"* (§ 96).

On this basis, the PACE adopted on 7 September 2004 a resolution aimed at increasing the *"involvement of men, especially young men, in sexual and reproductive health"*.⁸¹ The Assembly specifically condemned the fact that *"As women are the ones who become pregnant, they have, all too often, been made to deal alone with the potential consequences of being sexually active – be it decisions on contraception or even abortion, or bearing and rearing children. Many men, especially those in stable relationships, do take on their share of responsibility (...). However, (...) some men – especially young men – shirk their responsibilities"*. As a result, the Assembly calls upon all governments to particularly *"put into place special awareness-raising programmes to encourage men – especially young men – to take responsibility for their sexual behaviour, (...)"* (5.1). This involvement should not be limited to using contraceptives and promoting hygiene, but also focus on responsibility regarding sex itself and pregnancy.

The Convention on the Rights of the Child of 1989 stipulates in Article 18 that *"States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the*

⁷⁹ Committee complaint n° 13/2002, *Autism-Europe v. France*, decision on merit, 4 November 2003, § 53.

⁸⁰ PACE, Report. *The Involvement of Men, especially Young Men, in Reproductive Health*. Rapporteur: Mrs Rosmarie Zapfl-Helbling, Doc. 10207, 10 June 2004.

⁸¹ Resolution 1394 (2004), *The Involvement of Men, especially Young Men, in Sexual and Reproductive Health*, 7 September 2004.

*case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern”.*⁸²

The irresponsibility of men is a major cause of abortion. Ironically, such irresponsibility is encouraged by the fact that men are not involved in the abortion procedure and are even very often excluded from it. This exclusion makes the father irresponsible and does not completely protect women from possible pressure they are likely to undergo. The paradox is even greater in the sense that once the child is born, the father has the same rights and duties as the mother. Some fathers have already opposed to the abortion of their child and have referred the case to the national Courts and the European Court. The Court did not prevent the abortion, but nevertheless acknowledged that the “*potential father's*”⁸³ right to respect for his family life was “*so closely affected by the termination of his wife's pregnancy that he could claim to be a victim, (...), of the incriminated legislation as applied in the present case* (See the chapter on *abortion and the ECHR*). An abortion performed against the will of the father is, according to the Court, a forced abortion.

The paradox is even more glaring with regard to medically assisted reproduction. Several countries, including France and the UK, require the agreement of both parents for any decision on the fate of the frozen embryos. The European Court held that a man could, on the grounds of the right to respect for his private life, revoke his consent to the implantation of the embryo in the uterus of the mother.⁸⁴

It is paradoxical to require a greater responsibility from the father concerning the pregnancy and yet to exclude him from the decision to abort. Some countries require the consent of the husband when the abortion is to be performed on a married woman.⁸⁵

c. Pressure from the family, especially from parents in event of teenage pregnancy

When the pregnant woman is a minor, parental influence can be ambivalent: either to push their daughter to abort or in rare cases, to help her go through the pregnancy. Parents are primarily responsible for their children, as stated in Article 18 of the Convention on the Rights of the Child: they must give their consent for abortion to be carried out on their underage daughter. But it is necessary to verify that they do not force their daughter to resort to such an act. Parental consent is required in most European countries. It is often required for minors under 18 years (Armenia, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Italy, Greece, Slovakia, Turkey), or only up to 16 years (Albania, Iceland, Latvia, Moldova, Republic Czech, Portugal, Serbia) or 15 years (Russia) and even 14 years (Georgia). Some countries have a median position which consists in informing the parents (in Croatia, for minors under 16 years, and the Czech Republic, for those over 16 years) or consulting them (Norway).⁸⁶ In

⁸² See Article 27-2 of the same convention which stipulates that: “*The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.*”

⁸³ *Giampiero BOSO v. Italy*, n° 50490/99, 5 September 2002 ; see also *X. v. the United Kingdom*, n° 8416/79, Dec. of Commission, 13 May 1980.

⁸⁴ ECHR, *Evans v. the United Kingdom*, n° 6339/50, 10 April 2007.

⁸⁵ Particularly: Egypt, Guinea-Bissau, Iran, Iraq, Japan, Republic of Korea, Kuwait, Malawi, Morocco, Nicaragua, Syria, Turkey, United Arab Emirates and Russia.

⁸⁶ These not exhaustive data were drawn from the IPPF-EU report, *Abortion legislation in Europe*, published in 2012.

France, parental consent is no longer necessary since the Act of July 4, 2001; the girl may be accompanied by an adult of her choice.

If the young woman does not want an abortion, she should be supported in her decision and if necessary accommodated in a suitable maternity centre. The maximum must be done to help her to pursue her studies.

d. Pressure from the employer

For an employer, the pregnancy of an employee is a source of difficulty. Hence, it is common for employers or superiors to make their employees or applicant understand that pregnancy would not be allowed or pressurise them not to become pregnant or to even abort. This kind of pressure in the professional setting should not be underestimated. The prohibition of dismissal on the basis of pregnancy or maternity leave and the obligation to grant paid maternity leave, reaffirmed in the Convention on the Elimination of all forms of Discrimination against Women, are still not enough to avoid these pressures. Late 2014, Google and Facebook announced that they were going to include part of the fee for freezing ovules in the health coverage of their employees.⁸⁷ The aim was not hidden: these companies wanted to help their female employees to concentrate on their carrier and to delay as much as possible their pregnancies. Through such an initiative, the employer puts pressure on his female employees to delay their maternity.

e. Material Pressure (Unemployment, Housing, Financial)

Lastly, several forms of material pressure related particularly to job, housing and financial insecurities can push a woman to abort. International and European law provide several social rights for women, during and after pregnancy, but these rights are mostly accorded to women who already have a job. It is the case of Convention n°183 on the protection of maternity adopted by the International Labour Organisation, revised in 2000, and of recommendation R 191, 2000 on the protection of maternity that completes it.

The protection of pregnant women against discrimination in employment, even though it is sometimes provided for by the texts, remains on paper. Furthermore, access to employment for a single mother and the combination of work and raising a child constitutes a major obstacle in pursuing a pregnancy. The State, however, has the duty to support and pay *“Particular attention (...) to needy single parents, especially those who are responsible wholly or in part for the support of children (...), through ensuring payment of at least minimum wages and allowances (...)”*.⁸⁸ Aside the usual measures in relation to maternity leave, the States undertook, by the Convention on the Elimination of all forms of Discrimination against Women, to *“encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities”* (article 11.2.c).

In 1972, the PACE, in its recommendation on *Birth Control and Family Planning*, called on all member governments to adopt a series of measures, which are still in force:

⁸⁷ Hayat Gazzane, « Facebook et Apple encouragent la congélation d'ovules de leurs salariées », *Le Figaro*, 15 October 2014.

⁸⁸ Programme of Action of the Cairo Conference, 94, §5.4.

“a. increase in family allowances and perhaps payment of an allowance to mothers remaining at home, especially in the case of families at the lower end of the income scale ;

b. strengthening of mother and child protection services ;

c. improvement of low-cost housing programmes ;

d. establishment of crèches and day-nurseries ;

e. improvement of labour legislation relating to mothers who go out to work ;

f. no penalty should be imposed on any woman regarding her employment and prospects in the event of her becoming pregnant ;

g. encouragement of adoption of children, in particular by implementing the European Convention on adoption ;

h. legal non-discrimination against unmarried mothers and children born out of wedlock.”

A government that fails to offer assistance and a serious alternative to a pregnant woman in distress is not fulfilling its obligations under the economic and social rights guaranteed under international and European instruments. An example of such failure is given by the Moldovan legislation, which, like other countries⁸⁹, provides for abortion up to the child's threshold of viability (22 weeks) for social reasons, in the event of lack of financial resources or housing, addiction to drugs or alcohol, or domestic violence.⁹⁰ Does society help women or does it add to their misery by offering such an abortion?

3. Minimum Positive Obligations that Guarantee the “Right not to Abort”

Some states have managed to reduce the abortion rate, while it stagnates or increases in other States. This reflects the influence of public prevention policies and proves that abortion is not a fatality that cannot be reduced. These measures, which help women not to abort, could usefully be recognised and guaranteed in respect of social rights.

a. The preliminary interview

Providing good and complete information to the woman is key. This information must not only focus on abortion and its dangers but also on assistance available to keep and raise the child, and on ways to withstand pressure from relatives and work.

The information cannot be given without first establishing the obligation to counselling. Because abortion is primarily a result of social causes counselling must be both medical and social. It is only through such counselling that cases of forced and coerced abortions can be

⁸⁹ See IPPF, European Network, *Abortion Legislation in Europe*, January 2009, available on : http://www.spdc.pt/files/publicacoes/Pub_AbortionlegislationinEuropeIPPFEN_Feb2009.pdf

⁹⁰ Law n°185-XV of 24 May 2001 and Order n° 647 of 21 September 2010 of the Minister for Health.

identified, and the appropriate solution in terms of protection measures, social assistance, and alternatives to abortion (adoption, birth under X) implemented. Medical professionals and social workers must be trained in the prevention of abortion and, in particular, in the detection of cases of coerced abortions and to guide the women. Most European countries provide such counselling and it is obligatory in most cases: Albania, Germany, Armenia, Cyprus, Estonia, Finland, Georgia, Hungary, Italy, Iceland, Latvia, Lithuania, Macedonia, Czech Republic, Norway, Netherlands, Portugal, Slovakia, Switzerland (the list is non-exhaustive). Sometimes, counselling is also required after abortion to help the woman not to “repeat” (Albania, Czech Republic and Iceland). Some countries provide two forms of preliminary counselling. The form and content of the counselling vary. It could be done with a social worker or a doctor; sometimes the partner is required to be present (Armenia and Finland). Concerning the content of the counselling, it often focuses on contraception methods, and less commonly on alternatives to abortion such as adoption and anonymous birth as well as social benefits (Belgium, Italy, Lithuania, Norway, Slovakia and Switzerland). Practical description of the act of abortion (Estonia, Lithuania and Norway) or information on the moral questions raised by abortion can also be given (Lithuania).⁹¹

Although legal obligation to preliminary social counselling for adult women in France was cancelled in 2001⁹², a ministerial circular recommends that counselling of this nature should be proposed systematically.⁹³ When the counselling takes place, doctors should inform the woman about the medical and surgical methods of terminating a pregnancy and the possible dangers and side effects. They give a “manual” whose content is determined by the administration. Today, this manual does not contain information on alternatives to abortion.

b. The Cooling-off period

The information is almost useless without a cooling-off period. Good information together with a cooling-off period can help avoid abortions. The news of an unplanned pregnancy can cause panic. A cooling-off period is essential to assimilate the news. Such a period exists in several European countries: 7 days in Albania, 6 days in Belgium, 5 days in the Netherlands, 3 days in Georgia, Hungary, Latvia and Portugal, and 2 days in Slovakia. In France, the cooling-off period was cancelled by the 2016-41 law of 26 January 2016.

By contrast, national laws generally impose a cooling-off period for all decisions on the fate of frozen embryos concerning medically assisted procreation; it is three months in France.⁹⁴

c. The Offence of Incitement to Abortion

In order to better combat coerced abortion, some countries specifically made inciting to abort a criminal offence.

Physical and psychological violence among couples is punishable by criminal law and hence,

⁹¹ References to national provisions were taken from the report of IPPF European Network, *Abortion Legislation in Europe*, Bruxelles, 2012.

⁹² Law of 4 July 2001 on voluntary termination of pregnancy and contraception.

⁹³ Circular DGS/DHOS n° 2001-467 of 28 September 2001 on the implementation of the provisions of the Act of 4 July 2001 on voluntary termination of pregnancy and contraception.

⁹⁴ Article L2141-4 of the French Public Health Code.

violence with the aim of pushing a woman to abort. Incitement to abort should be reinstituted as a criminal offence. An offence considered as an obstruction to legal abortion⁹⁵, can be defined as the pursuit of “*Moral and psychological pressure, threats or intimidation to force a woman to perform an abortion, for any reason whatsoever*”.

In several countries of western and southern Africa, including Cameroon, Chad and Ivory Coast, incitement to abortion through the sale, distribution or publication of information is a criminal offence.⁹⁶ The offence of “incitement to abortion” also existed in French law until the Act of 4 July 2001.⁹⁷ Section 186 of New Zealand Penal Code and Article 228 of the Nigerian Criminal Code also spells out criminal sanctions for people seeking “by any means whatsoever” to cause the loss of the child of a pregnant woman.

The American Federal Criminal Code is clear and precise in Article 1461 that prohibits posting contraceptives as well as “*every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing*” for producing abortion.⁹⁸

The existence of the offence of incitement to abortion allows women to better protect themselves by initiating or threatening to initiate criminal proceedings. During psychological and social counselling, the existence of such pressure should systematically be investigated and condemned. Assistance and protection measures for female victims of these kinds of pressure should be anticipated, just as it is done in the protection of female victims of domestic violence.

d. Making the Father Aware of his Responsibility

The father can also be made more responsible, for example, by establishing the principle of disclosure and consent of the father, except in specific circumstances. Brought to share the moral responsibility of the act, the father might change his mind and decide to assume his paternity. Some countries demand that the father be informed, or even consent to the abortion. This is the case in Faroe Islands where the consent of the father is mandatory. His consent is desired in Lithuania and compulsory in Turkey⁹⁹ if the woman is married. Russia is also considering making the consent of the husband obligatory.¹⁰⁰

⁹⁵ Article L2223-2 of the French Public Health Code.

⁹⁶ International Planned Parenthood Federation (IPPF), *La Conférence de Cotonou : Élimination des barrières juridiques à la santé sexuelle et reproductive en Afrique francophone*, 1997, pp. 9, 15, 22 & 23.

⁹⁷ Is liable to six months' to three years' imprisonment and a 100Fr. to 3000Fr. fine, anyone who, by speech in public places or meetings, or by sale, sale offering, offer, even not publicly, or by exhibition, display or distribution on *Soit par des discours proférés dans des lieux ou réunions publics : Soit par la vente, la mise en vente ou l'offre, même non publique ou par l'exposition, l'affichage ou la distribution sur la voie publique ou dans les lieux publics, ou par la distribution à domicile, la remise sous bande ou sous enveloppe fermée ou non ferme, à la poste, ou à tout agent de distribution ou de transport, de livres, d'écrits, d'imprimés, d'annonces, d'affiches, dessins, images et emblèmes : Soit par la publicité de cabinets médicaux, ou soi-disant médicaux - Aura provoqué au crime d'avortement alors même que cette provocation n'aura pas été suivie d'effet.* » Act of 31 July 1920, article 1.

⁹⁸ 18 U.S. Code § 1461 - Mailing obscene or crime-inciting matter Article accessible à l'adresse suivante : <https://www.law.cornell.edu/uscode/text/18/1461>

⁹⁹ Law N° 2827, Sec 5-6, 24 May 1983, “Population Planning”.

¹⁰⁰ Thaddeus Baklinski, “Russian Health Ministry plans to set up pregnancy centers to lower abortion rate”, *Life Site News*, 29 January 2014.

e. Helping to welcome a Disabled Child

With regard to eugenic abortion, the parents should be protected from medical and social pressures, and must be given clear information on the health of the baby, on the illness in question, the living conditions of infected people, and the consequences for their relatives as well as specific assistance available. Meetings with the families of disabled or sick children or with associations should be organised for them to share their experiences, including their difficulties and happy moments. Assuming the child will not survive¹⁰¹, keeping the child should be proposed since it will enable the parents to spend some precious moments with their living baby, who can be given palliative care if necessary.

Conclusion

To a very large extent, the frequency of abortion depends on political choices.

It depends firstly on the fundamental political choices that shape the social models of sexuality, maternity and family. With regard to these, the prevention of abortion will increase as freedom is less confused with irresponsibility. In other words, responsibility is a prerequisite for prevention.

The prevention of abortion also depends fundamentally on the recognition that society gives, by law, to humans before birth. If the law considers prenatal individual life as insignificant, it will be futile to expect people to renounce abortion.

The prevention of abortion, lastly, depends on the society's ability to empower women and couples to resist pressures that lead to abortion. This can be achieved by a set of measures that specifically focus on each type of pressure.

Not only does the society have the power, but also the mandatory duty to reduce the recourse to abortion; it is a question of political will for the common good.

* * *

¹⁰¹ Despite the very pessimistic diagnosis that the child would not live, there are instances where the child unexpectedly survives. This was the case of a baby suffering from Patau syndrome born near Paris, France, in the spring of 2015. Even though the doctors predicted he would live for just some few hours, one year on, he is out of hospital and very much alive.