



# PREVENTING ABORTION IN EUROPE

Legal framework and social policies

SYNTHESIS

# Preventing Abortion in Europe: Guaranteeing the Social Right Not to Abort

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## Introduction

**Every year, abortion ends one fifth of the 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.

It is particularly developed among young people. In France, the proportion of young people having abortions steadily increased between 1990 and 2011: from 6.8 to **8.5%** (for young people aged 18-19) and from 23.2 to **25.6%** (for 20-24 year olds).<sup>1</sup> **The abortion rate** was respectively of **21.8% and 28.8% in 2013**.

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.<sup>2</sup> In Europe, some governments have also managed to reduce the rate of abortion<sup>3</sup> through legislative changes and awareness campaigns.<sup>4</sup> In Hungary, the abortion rate, which stood at 19.4% in 2010, dropped to 17.5% in 2012.<sup>5</sup> 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<sup>6</sup>, 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,<sup>7</sup> following the government’s decision to reimburse the cost of abortion at 100%.<sup>8</sup>

Abortion is therefore not a fatality and it is worth considering the factors getting a pregnant woman to abort and those turning her away from such a decision. Indeed, 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.<sup>9</sup> This observation questions the effectiveness of the prevention of abortions as well as the respect of the social rights of women and families.**

<sup>1</sup> M. Mazuy, L. Toulemon, É. Baril, INED, « Le nombre d’IVG est stable mais moins de femmes y ont recours », *Population*, Vol. 69, n° 3, 2014.

<sup>2</sup> Michael J. New, “Analyzing the Effects of State Legislation on the Incidence of Abortion During the 1990s”, *Center for Data Analysis Report*, 21 January 2014.

<sup>3</sup> The abortion rate is the number of abortions per 1000 women aged 15 to 49 years.

<sup>4</sup> United Nations, 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.

<sup>5</sup> United Nations, *Id.*; United Nations, Department of Economic and Social Affairs, Population Division (2013), *World Abortion Policies 2013*, (United Nations publication, Sales No. E.13.XIII.4).

<sup>6</sup> Agata Chelstowska, « Stigmatisation and commercialisation of abortion services in Poland: turning sin into gold », *Reproductive Health Matters*, 19(37), May 2011.

<sup>7</sup> Annick Vilain, « Les interruptions volontaires de grossesse en 2012 », *études et résultats*, DREES, n° 884, juin 2014.

<sup>8</sup> Caroline Piquet, « Pourquoi le nombre d’IVG a augmenté en 2013 », *Le Figaro*, 11 juillet 2014.

<sup>9</sup> According to the Institut Guttmacher, [http://www.guttmacher.org/pubs/fb\\_induced\\_abortion.html](http://www.guttmacher.org/pubs/fb_induced_abortion.html)

Yet, in the various international instruments, the States formally undertook to prevent abortion.

As Professor Nisand Israel <sup>10</sup> 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.”* An IFOP survey conducted in 2010<sup>11</sup> 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.<sup>12</sup> 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, there is a corresponding right for any woman not to be forced to abort.**

In democratic countries, the guarantee of this right is often more theoretical than real. If the general perception of abortion is often that a woman who does not want to carry her pregnancy to the end chooses to terminate it; people finding it not necessary - nor even desirable - to understand the circumstances or the reasons which lead to such a decision, abortion is in fact 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.

<sup>10</sup> I. Nisand, L. Toulemon et M. Fontanel, « Pour une meilleure prévention de l’IVG chez les mineures », *La Documentation française*, 2007, p. 3.

<sup>11</sup> Denis Peiron, « Pour les Françaises, il y a trop d’avortement », *La Croix*, 3 mars 2010.

<sup>12</sup> 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

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.*”<sup>13</sup> 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*”,<sup>14</sup> “*the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children*”<sup>15</sup> is entitled to protection by the State.

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*”.<sup>16</sup> This protection is not intended for the couple as such but for the family which “*is entitled to protection by society and the State*”<sup>17</sup> “*while it is responsible for the care and education of dependent children*”.<sup>18</sup> The recognition accorded to the couple by society through marriage is due to its contribution to the common good by founding a family, i.e. through

<sup>13</sup> Committee of Human Rights, *General Comment No. 19: Article 23 Protection of the Family*, 1990, § 5.

<sup>14</sup> 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 of 1989; Article 16 of the European Social Charter (revised) of 1996; Article 33 of the Charter of Fundamental Rights of the European Union of 1989; Article 44 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990.

<sup>15</sup> Preamble of the Convention on the Rights of the Child.

<sup>16</sup> Article 10 § 1 of the International Covenant on Economic, Social and Cultural Rights.

<sup>17</sup> Article 16 § 3 of the Universal Declaration of Human Rights and Article 23 § 1 of the International Covenant on Civil and Political Rights.

<sup>18</sup> Article 10 § 1 of the International Covenant on Economic, Social and Cultural Rights.

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 Action<sup>19</sup> 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”<sup>20</sup>, the member States of the United Nations promised to adopt new initiatives of social development<sup>21</sup> 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 at the heart of maternity. Even though abortion is recognised as a “right” in some Western countries, the decision to abort is rarely a happy one, since the recourse to this act most often occurs when the woman concerned is in a “distressing situation”; the resulting distress itself being a set of economical, sociological and cultural circumstances. **Abortion often results from a 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.** Abortion is not without risk for physical and psychological health as well as social well-being of the woman: it often only temporarily enables to address the distressing situation faced by her, and may even add to it.

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

The International Covenant on Economic, Social and Cultural Rights<sup>22</sup> 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 Action<sup>23</sup> stresses that “*Women make a great contribution to the welfare of the family and to the development of society, which is still not*

<sup>19</sup> UN Fourth World Conference on Women Report, 4-15 September 1995.

<sup>20</sup> Copenhagen A/CONF.166/9, § 26 h).

<sup>21</sup> Social Summit +5 (2000).

<sup>22</sup> United Nations, *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.

<sup>23</sup> United Nations, Report of the Fourth World Conference on Women, 4-15 September 1995.

*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, 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”*.<sup>24</sup>

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.<sup>25</sup> The obligation for the society to prevent abortions is also founded on the protection of human life. This protection begins even before birth, as acknowledged by several international texts. Since the mid-1970s, the European Court of Human Rights has also built a body of case law throughout about twenty judgments and decisions in cases related to abortion.

#### ❖ International texts

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 and his mother: *“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.”*

The International Convention on the Rights of the Child<sup>26</sup> 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

<sup>24</sup> Convention adopted by the General Assembly in Resolution 34/180 of 18 December 1979, Preamble.

<sup>25</sup> See these arguments in *Articles de San José*, <http://www.sanjosearticles.com>; The Court of Justice of the European Union recalled it in the *Oliver Brüstle v. Greenpeace e.V* case C-34/10, 18 October 2011, § 35.

<sup>26</sup> The International Convention on the Rights of the Child, 1989.



“1. States Parties recognise that every child has the inherent right to life” and that “2. States 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.<sup>27</sup>

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.”<sup>28</sup> So, the State should ensure the health of the future baby even before it is born.

All the key regional and international human rights protection instruments guarantee the right to life, without limitation and reference to birth.

The International Covenant on Civil and Political Rights<sup>29</sup> indicates that “Every human being has the inherent right to life (Article 6). The Human Rights 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.”<sup>30</sup>

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”.

#### ❖ European Court of Human Rights case law

The European Court of Human Rights has gradually taken the practise of abortion into account in the legal order of the European Convention for the Protection of Human Rights and Fundamental Freedoms whose Article 2 protects everybody’s right to life. This integration is difficult because it disrupts the economy of human rights, in accepting an irreconcilable opposition between the life of an elusive being and the undefined freedom of an adult. The Court does not exclude the “unborn child”<sup>31</sup> from the ambit of the Convention, which thus leads to the conclusion that there is no conventional right to abortion.

#### • **The “unborn child” not excluded from the ambit of the Convention**

Refusing to judge that the unborn child is not a person, the Court has never excluded him from the scope of the protection of the Convention and admits that Article 2 may apply to him to a

<sup>27</sup> See *Articles de San José*.

<sup>28</sup> Agenda 21, 1992, 6.21.

<sup>29</sup> United Nations, International Covenant on Civil and Political Rights, General Assembly, Resolution 2200 A (XXI) 16 December 1966.

<sup>30</sup> Human Rights Committee, General Comment No.6, Article 6 (right to life), 16th session, HRI / GEN / 1 / Rev.9 (Vol. I), 30 April 1982.

<sup>31</sup> As in the Court, the expression “unborn child” is used to designate the embryo and the foetus.

certain extent.<sup>32</sup>

Indeed, it is the definition of the starting point of the life of a person that affects “*the starting point of the right to life*”<sup>33</sup> protected by the Convention. The Court grants States a margin of appreciation as to the definition of the starting point of the right to life, judging “*that the question of when the right to life begins came within the States’ margin of appreciation because there was no European consensus on the scientific and legal definition of the beginning of life, so that it was impossible to answer the question whether the unborn was a ‘person’ to be protected for the purposes of Article 2*”.<sup>34</sup> But the Grand Chamber also considered that “*it may be regarded as common ground between States that the embryo/foetus belongs to the human race*” and that the “*potentiality of that being and its capacity to become a person ... require[s] protection in the name of human dignity*”.<sup>35</sup> **Therefore, for the Court, it can be “legitimate for a State to choose to consider the unborn to be such a person and to aim to protect that life”**,<sup>36</sup> as well as the State can determine the moment from which an unborn child is a *person* benefiting from the protection of the Convention.

If the Court allows the States to not give, in their nation law, a total protection *rationae temporis* to prenatal life, it does not deprive it from any protection in the conventional order: contrary to national laws which allow abortion up to a certain point, “*Article 2 of the Convention is silent as to the temporal limitations of the right to life*”<sup>37</sup> and the Court never judged that the unborn child was not a person. If the Convention had not protected prenatal life, there would be no point in recognising a margin of appreciation to the States, for every margin is necessarily referring to a pre-existing obligation. Judge Jean-Paul Costa explains: “*Had Article 2 been considered to be entirely inapplicable, there would have been no point – and this applies to the present case also – in examining the question of foetal protection and the possible violation of Article 2, or in using this reasoning to find that there had been no violation of that provision*”<sup>38</sup> Finally, considering the unborn child as but a potential person, the Court gives him a potential protection.

- **The absence of any right to abortion under the Convention**

If the potential applicability of **Article 2** to prenatal life does not oppose the practise of abortion, it is still an **obstacle to the recognition of an autonomous conventional right to abortion**. Besides, it leads to the demand, theoretical as well, of a necessity to justify the violation to the life of the unborn child and other rights and interests affected by abortion.

Along its jurisprudence, the Court detailed that **the Convention does not guarantee a right to undergo an abortion**<sup>39</sup> nor a right to practise<sup>40</sup> it, nor even a right to contribute with impunity to its being practised abroad.<sup>41</sup> Finally, the prohibition of abortion itself by a state does not

<sup>32</sup> See *Brüggemann and Scheuten v. Federal Republic of Germany*, n°6959/75, 12 July 1977, § 60, and *H. v. Norway*, n°17004/90, Dec., 19 May 1992, § 167.

<sup>33</sup> *Vo v. France*, [GC], N°53924/00, 8 July 2004, § 82.

<sup>34</sup> *A. B. C., v. Ireland*, [GC], N°25579/05, 16 December 2010, § 237.

<sup>35</sup> *Vo*, § 85.

<sup>36</sup> *A. B. C.*, § 222, confirms *Vo*.

<sup>37</sup> *Vo*, § 75.

<sup>38</sup> Jean-Paul Costa, Separate opinion under *Vo*, § 13.

<sup>39</sup> *Silva Monteiro Martins Ribeiro v. Portugal*, n°16471/02, Dec., 26 October 2004.

<sup>40</sup> *Jean-Jacques Amy v. Belgium*, n°11684/85, 5 October 1988.

<sup>41</sup> *Jerzy Tokarczyk v. Poland*, n°51792/99, Dec., 31 January 2002

violate the Convention.<sup>42</sup> As regards the autonomy of the woman, whose respect is guaranteed by article 8 relating to the protection of private life, the Court repeated, since the *A. B. and C. v. Ireland* case that “**Article 8 cannot, [...] be interpreted as conferring a right to abortion**”.<sup>43</sup>

As abortion is part of the scope of the convention, without being in itself a treaty law, its practice must be justified by the preservation of a right or an interest protected by the Convention and proportionate to “*other competing rights and freedoms, including those of the unborn*.”<sup>44</sup> An abortion that would tend to preserve no right or legitimate conventional interest of the woman could not be considered proportionate. It would be so-called abortions on demand (or convenience) which cannot find other legal grounds than the application itself. The Court has never ruled on the conventionality of convenience abortions but already held that Article 8 protecting individual autonomy does not contain a right to abortion.<sup>45</sup>

When a case is brought to the Court, it must then verify that the legal framework of abortion respects the Convention,<sup>46</sup> “*supervise whether the interference constitutes a proportionate balancing of the competing interests involved*.”<sup>47</sup> Among these interests, one can think about the mother’s rights but not exclusively: indeed, “*whenever a woman is pregnant, her private life becomes closely connected with the developing foetus*”.<sup>48</sup>

The right to life of the mother (Article 2) sometimes conflicts with that of the unborn child. The Court has not yet ruled on a case where a State would have prevented the performance of an abortion on a woman whose life was threatened because of her pregnancy. The right to respect for private and family life of the mother (Article 8), from the viewpoint of physical and moral integrity, carries weight in the balancing of the rights and interests called into question by abortion, while the Court clearly states that “*Article 8 cannot (...) be interpreted as establishing a right to abortion*”.<sup>49</sup> However, the Court held that, where domestic law permits abortion, its prohibition when requested for reasons of health and/or well-being as well as the practical difficulty in accessing a legal abortion are interferences in the right to respect for private life. The Court can thus determine the compatibility of these interferences with Article 8.<sup>50</sup> As a result of the judgement in the case *A. B. C. v. Ireland*, **the prohibition of abortion for reasons of health and/or well-being is not per se contrary to the Convention**.<sup>51</sup> Regarding the practical difficulty in accessing a legal abortion, the Court considers that once the State decides to permit abortion, even if only under exceptional circumstances, it must establish a specific legal framework and a reliable procedure allowing women to exercise effectively their national right to an abortion,<sup>52</sup> which requires clarification of the conditions for legal access to abortion.

**Other legitimate rights and interests are at stake. In addition to those of the unborn child,**

<sup>42</sup> See particularly *A. B. C. v. Ireland*, where B. and C. unsuccessfully challenged the prohibition of abortion for motive of health and well-being.

<sup>43</sup> *A., B. and C. v. Ireland*, § 214. *P. and S. v. Poland*, n° 57375/08, 30 October 2012, § 96.

<sup>44</sup> *Tysiack v. Poland*, n° 5410/03, 20 March 2007, § 106 ; *Vo*, §§ 76, 80 and 82 ; *A. B. C.*, § 213.

<sup>45</sup> *A. B. C.*, § 214 ; *P. and S.*, § 96.

<sup>46</sup> *A. B. C.*, § 249 ; *R. R. v. Poland*, n° 27617/04, 26 May 2011, § 187 ; *P. and S.*, § 99 ; *Tysiack*, § 116.

<sup>47</sup> *A. B. C.*, § 238.

<sup>48</sup> *Tysiack*, § 106 ; *Vo*, §§ 76, 80 and 82 ; *A., B. C.*, § 213.

<sup>49</sup> *A. B. C.*, § 214 ; *P. and S.*, § 96. The court also refused to consider the argument submitted by Mrs Tysiack that the fact of not being able to abort is in itself a violation of Article 8 (§ 108).

<sup>50</sup> *A., B. C.*, § 238.

<sup>51</sup> The Court held that “*the impugned prohibition in Ireland struck a fair balance between the right of the first and second applicants to respect for their private lives and the rights invoked on behalf of the unborn*” (§ 241).

<sup>52</sup> Since *Tysiack*, § 110. See also *A. B. C.*, § 245.

**the Court has identified to date the legitimate interest of the society to limit the number of abortions,<sup>53</sup> to protect morality<sup>54</sup> and to fight against eugenics.<sup>55</sup>**

The right to respect for family life of the “*potential father*”<sup>56</sup> and potential grandmother<sup>57</sup> can be affected by the abortion of their child or grandchild.

In the scope of Articles 3 and 8 of the Convention, **the Court applied, before birth, the prohibition of torture and inhuman and degrading treatments.**<sup>58</sup> The Court also recognized the obligation of the State to inform women about the risks of abortion.<sup>59</sup> One can also legitimately affirm that States have the obligation to prevent forced and coerced abortions, and selective abortions.<sup>60</sup> The Court also recognized that other rights may be affected in specific situations, such as freedom of conscience for healthcare professionals<sup>61</sup> and the autonomy and ethics of medical institutions.<sup>62</sup>

**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. 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.<sup>63</sup> The United States,<sup>64</sup> 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 inhabitants. The fertility rate from 1960 to recent years had fallen by 45%, and reached 1.58 children per woman in 2012. In 2013, the EU counted 5.1 million births against 3.5 million

<sup>53</sup> *Odièvre v. France*, GC, n°42326/98, 13 February 2003, § 45.

<sup>54</sup> *Open Door and Dublin Well Woman v. Ireland*, n°14234/88; 14235/88, 29 October 1992, § 63; *A.B.C.* § 222-227.

<sup>55</sup> *Costa and Pavan v. Italy*, n° 54270/10, 28 August 2012.

<sup>56</sup> *X. v. UK*, n° 8416/79, 13 mai 1980.

<sup>57</sup> *P. and S.*

<sup>58</sup> *Boso v. Italy*, n° 50490/99, 5 September 2002.

<sup>59</sup> *Csoma v. Romania*, n° 8759/05, 15 January 2013.

<sup>60</sup> APCE Resolution 1829 and Recommendation 1979 on sex-selective abortions of 3 October 2011.

<sup>61</sup> *Tysiac*, § 121; *R. R.*, § 206.

<sup>62</sup> *Rommelfanger v. Federal Republic of Germany*, n°12242/86, Com., Dec., 6 September 1989.

<sup>63</sup> [http://www.guttmacher.org/pubs/fb\\_IAW.pdf](http://www.guttmacher.org/pubs/fb_IAW.pdf)

<sup>64</sup> <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>



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 morals,<sup>65</sup> the society's interest in limiting the number of abortions is recognised by the European Court<sup>66</sup> as legitimately justifying restrictions on access to abortion.

## 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. With regard to Europe, in Resolution 1607 (2008), Access to Safe and Legal Abortion in Europe, the Parliamentary Assembly of the Council of Europe (PACE) *“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.”*<sup>67</sup> The Assembly concluded this Resolution 1607 (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.”*<sup>68</sup>

<sup>65</sup> *Open Door and Dublin Well Woman*, § 63; *A., B. C.* §§ 222-227.

<sup>66</sup> *Odièvre*, § 45.

<sup>67</sup> Gisela WURM, Report of the PACE, *Access to Safe and Legal Abortion in Europe*, Doc. 11537 rev. 8 April 2008, § 23.

<sup>68</sup> PACE, Resolution 1347 (2003), *Impact of the “Mexico City Policy” on the free choice of contraception in Europe*, 30 September 2003, § 6.



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*”.<sup>69</sup> 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*” (§11.1).<sup>70</sup> 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 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.

The decision to abort is naturally taken within a social, economic and cultural context. In any case, we cannot afford to ignore the existence of a real problem and remain *blasé* by lumping together all the reasons given by women for aborting into “personal reasons”.

**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.

<sup>69</sup> PACE, Resolution 1399 (2004), *European strategy for the promotion of sexual and reproductive health and rights*, 30 September 2003, § 6.

<sup>70</sup> PACE, Resolution 1399 (2004), *Id.*, § 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* 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). However, guaranteeing everyone’s moral freedom towards the sensitive and emotionally charged subject of abortion is necessary in the field of a prevention policy of abortion (C).

## 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, a prerequisite for responsibility**, the most essential aspects of which are sexual and affective responsibility (2), physiological education (3) and knowing the risks associated with abortion (4).

### 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. Promoting the widespread use of contraception as a solution to limit the number of abortions in a population may be tempting. Statistical studies should, logically, confirm such an enticing thesis, providing definitive evidence that States which developed a wide contraceptive distribution policy are those which managed to eliminate, or at least reduce, abortion. But these same studies, far from supporting this thesis, provide a qualified answer, since they show that, under certain circumstances, there may be a proportional correlation (and not inversely related) between contraception and abortion.

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.<sup>71</sup> To date, **more than a billion abortions have been performed** since its legalisation – taking into account only countries where statistics are available:<sup>72</sup> more than eight million in France, 27 million in

<sup>71</sup> United Nations, Department of Economic and Social Affairs, Population Division, *World Contraceptive Patterns*, 2013.

<sup>72</sup> *Summary of Reported Abortions Worldwide, through August 2015*, compiled by Wm. Robert Johnston, September 2015. <http://www.johnstonsarchive.net/policy/abortion/wrjp3314.html>

Vietnam and 290 million in Russia. **In 2008, 44 million abortions were performed worldwide.**<sup>73</sup>

The correlation between a high number of abortions and the wide dissemination of contraception has been confirmed in several States.

In France, the birth 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 law, 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 pregnancy.**<sup>74</sup> While, in 1975, four unplanned pregnancies in ten (41%) ended up being aborted, today six in ten are aborted (62%).

In Sweden, all measures (including free access) have been put in place to facilitate access to contraception and encourage women to use them. The contraception rate there in 2015, as assessed by the UN, was 71.3%.<sup>75</sup> However, the number of abortions in this country is particularly high and has even increased in recent years: the abortion rate rose from 17.2‰ in 1983 to 20.2‰ in 2014,<sup>76</sup> with a corresponding growth in the number of repeat abortions (32.6% to 42.9%).<sup>77</sup>

Although the United Kingdom has one of the highest contraception rates in the EU (84% in 2008/2009),<sup>78</sup> the number of abortions is considerably high (201,567 in 2014) and the abortion rate one of the highest in Western Europe (16.5‰).

**Conversely, the EU Member States who managed to limit or restrict the number of abortions are those where the use of contraception is less developed.**

In Italy and Ireland, the contraception rate among women in couples, married or not, is very much below the 72% rate in Europe<sup>79</sup> and it is interesting to underline that sex education in these two countries is less developed compared to other countries.<sup>80</sup> Italy has recorded a massive decline in the number of abortions, plummeting from 234,801 to 102,644 between 1982 and 2013 (a decrease of over 56%). Consequently, the rate of abortions is now of 7.6‰ – one of the lowest in Western Europe. Similarly, the abortion rate in Ireland has steadily declined. If it can be firstly explained by Irish legislation (only 26 abortions in 2014<sup>81</sup>), it is interesting to observe that, even if abortions carried out by the Irish in the UK are taken into account, the number of abortions remains low and has been declining, from 6,673 in 2001 to 4,402 abortions in 2010, with the abortion rate going down from 7.5‰ to 4.4‰.<sup>82</sup>

<sup>73</sup> Facts on Induced Abortion Worldwide, Guttmacher institute, January 2012.

<sup>74</sup> 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, December 2004.

<sup>75</sup> United Nations, Department of Economic and Social Affairs, Population Division, *World Contraceptive Use 2012*, 2012.

<sup>76</sup> Socialstyrelsen (Report from the Swedish Health Department, *Statistics on abortion in 2014*), September 2015.

<sup>77</sup> *Id.*

<sup>78</sup> United Nations, *World abortion policies 2013*, op. cit.

<sup>79</sup> *Id.*

<sup>80</sup> European Parliament, *Policies for Sexuality education in the European Union*, Policy department C: Citizen's right and constitutional affairs, Gender equality, 2013.

<sup>81</sup> Department of Health, *The Protection of Life During Pregnancy Act 2013*, Annual report 2014, published June 2015.

<sup>82</sup> WR. Johnston, *Historical Abortion Statistics, Ireland*, Abortion statistics and other data-Johnston's Archive, last updated 12 September 2015. Available on: [www.johnstonsarchive.net/policy/abortion/ab-ireland.html](http://www.johnstonsarchive.net/policy/abortion/ab-ireland.html)

It is observed that Belarus and Ukraine, where the use of contraceptives is less prevalent (74.4% in Belarus and 68.8% in Ukraine), the abortion rate has declined steadily, from 106‰ to 13.5‰ and from 82.6‰ to 15.1‰ respectively between 1990 and 2010.

The example of Poland is also particularly remarkable. While the contraception rate, estimated at 70.5% in 2015, remains below the average rate of Europe,<sup>83</sup> the abortion rate is extraordinarily low, i.e. 0.09‰.<sup>84</sup> Even though the 1993 law restricted access to legal abortion and, in particular, put an end to abortion for social or economic reasons, the decreased abortion rate was prior to the adoption of this law, and should be attributed to the fall of communism: it dropped from 8.8‰ to 1.2‰<sup>85</sup> between 1989 and 1992.

Thus the spread of contraception paradoxically results in amplifying the practice of abortion. Although contraception reduces fertility significantly, it does not prevent pregnancy 100%: **72% of women who had abortion in France were using contraception**, according to the General Inspection on Social Affairs.<sup>86</sup> On the individual level, the main cause of these unplanned pregnancies lies in contraceptive failure, because of the technical limitations peculiar to each of the contraceptive methods or simply because of a misuse of them. On a group of women who were the subject of a study in the United States, it was observed that in the month before conception, 54% of them used a contraceptive method (28% used condoms and 14% took the pill), and that among those who used the pill and still became pregnant before undergoing an abortion, 75.9% used it incorrectly. For those whose partner had used a condom, it broke or slipped in 41.6% of cases, and in 49.3 % of cases the failure was due to an improper use of the condom.<sup>87</sup> As noted by the rapporteur of the PACE Resolution 1607 (2008): “*Making contraception methods available, however, is not enough to prevent abortions.*”<sup>88</sup>

WHO has held that, even if all women used birth control, there would still be 5.9 million abortions worldwide.<sup>89</sup>

On the collective level, the 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 a greater control of reproduction: a set of social norms guiding the contraceptive and reproductive practices throughout the reproductive life cycle of women<sup>90</sup> fosters a contraceptive mentality. As a result, the tendency to abort varies according to the age of the woman. Before 25 years, the factors that may lead to such a decision are often linked to the desire to complete her education or the fact that she is single. However, between 25 and 34, i.e. the usual childbearing age, the decisive factors may rather depend on whether the woman thinks she has had the desired number of

<sup>83</sup> United Nations, Department of Economic and Social Affairs, Population Division (2015), *Contraceptive Prevalence 2015*, op. cit.

<sup>84</sup> W.R. Johnston, *Historical abortion statistics, Poland*, Abortion statistics and other data-Johnston's Archive, last updated 13 September 2015. Available on: <http://www.johnstonsarchive.net/policy/abortion/ab-poland.html>.

<sup>85</sup> *Id.*

<sup>86</sup> *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.

<sup>87</sup> R.K. Jones, J.E. Darroch, S.K. Henshaw, “Contraceptive Use Among U.S. Women Having Abortions in 2000-2001”, *Perspectives on Sexual and Reproductive Health*, Vol. 34, n°6, 2002, p. 294-303.

<sup>88</sup> Gisela WURM, Report of the PACE, *Access to Safe and Legal Abortion in Europe*, op. cit., § 23.

<sup>89</sup> Report to the attention of the Belgian Parliament, 2011-2012 session, *Rapport de la Commission nationale d'évaluation de la loi du 3 avril 1990 relative à l'interruption de grossesse*, 27 August 2012.

<sup>90</sup> M. Mazuy, L. Toulemon, É. Baril, INED, “Le nombre d'IVG est stable mais moins de femmes y ont recours”, op. cit.



children or not. Finally, beyond 34 years, women often consider abortion if they find it difficult to combine motherhood with their work or when they are in an unstable relationship.<sup>91</sup>

**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, even as being itself a contraceptive method in addition to all other contraceptives, 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 the youth an appropriate sex education is also a consensus and constitutes an international obligation<sup>92</sup> and a national political decision. In Europe, the PACE 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”.<sup>93</sup>*

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 (2008) that “evidence 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.<sup>94</sup> The main question that the adopted approach raises is whether we can deal with the

<sup>91</sup> N. Bajos, F. Prioux, C. Moreau, INSERM, “L’augmentation du recours répété à l’IVG en France : des enjeux contraceptifs au report de l’âge à la maternité”, *Revue d’Épidémiologie et de Santé Publique*, Vol. 61, n°4, 2013.

<sup>92</sup> United Nations, Fourth Report of the World Conference on Women, 4-15 September 1995, § 160 k.

<sup>93</sup> Recommendation 675 (1972), *Birth control and family planning in Council of Europe member States* of 18 October 1972, 6.c.

<sup>94</sup> 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* in la Villette in 2007 and 2014-2015, where a lot of school classes went. [http://www.cite-sciences.fr/fileadmin/fileadmin\\_CSI/fichiers/au-programme/expos-temporaires/zizi-](http://www.cite-sciences.fr/fileadmin/fileadmin_CSI/fichiers/au-programme/expos-temporaires/zizi-)



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.<sup>95</sup> Besides, in France today, young women have a greater number of sexual partners than older women did; this number increased from an average of 1.8 partners in 1970 to 4.4 in 2006.<sup>96</sup>

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 young girls and boys are officially educated 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, the 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.

**Some statistical studies have shown that the institution of compulsory sex education lessons, far from curbing the proliferation of early sex, has, on the contrary, encouraged it.** Indeed in France, where sex education courses were made compulsory to all levels in schools in 2001,<sup>97</sup> the proportion of young women having abortions steadily increased between 1990 and 2011: from 6.8 to 8.5% (for young people aged 18-19) and from 23.2 to 25.6% (for 20-24 year olds).<sup>98</sup> The abortion rate in these age groups was also surprisingly high in 2013: 21.8% and 28.8% respectively.<sup>99</sup> The percentage of minors who have an abortion has increased steadily, rising from 3.6 % to 6.3 % between 1990 and 2011.<sup>100</sup> Concerning Sweden, a pioneer country in terms of sex education,<sup>101</sup> the teenage pregnancy rate has increased since the mid-1990s, and reached 29% in 2010.<sup>102</sup> The consequence of this significant increase in teenage

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sexuel/\_documents/DP\_20140610.pdf ; some of the rooms where forbidden to adults.

<sup>95</sup> INED, *L'âge au premier rapport sexuel*, 2008.

<sup>96</sup> N. Bajos, M. Bozon, V. Dore, *Enquête sur le Contexte de la Sexualité en France (CSF), Premiers résultats*, ANRS, INSERM, INED, 2007, p. 27.

<sup>97</sup> European Parliament, *Policies for Sexuality education in the European Union*, op. cit.

<sup>98</sup> M. Mazuy et al., "Le nombre d'IVG est stable mais moins de femmes y ont recours", op. cit.

<sup>99</sup> DREES, « Les interruptions volontaires de grossesses en 2013 », *Etudes et Résultats*, n° 924, juillet 2015.

<sup>100</sup> M. Mazuy et al., "Le nombre d'IVG est stable mais moins de femmes y ont recours", op. cit.

<sup>101</sup> Sex education was introduced in 1942 and made compulsory in primary schools from 1955.

<sup>102</sup> Guttmacher institute, *Adolescent pregnancy and its outcomes across countries*, August 2015.

pregnancies is a high rate of abortion: 69% of these pregnancies are aborted. Thus, the abortion rate among adolescents in Sweden is one of the highest in Western Europe (including England and Wales) and represented 15.1‰ in 2014.<sup>103</sup> A similar observation can finally be drawn as regards the United Kingdom, the country in which sex education classes are mandatory since 1986, but the pregnancy rate among adolescents aged 15 to 19 years is one of the highest in Europe (47‰ in 2011). This rate naturally affects the teenage abortion rate, which is also one of the highest in Europe (20‰).<sup>104</sup>

For decades, we have been witnessing an increasing change of sexual, marital and reproductive behaviours, which do not promote parenthood, and thus, unplanned pregnancies are more likely to be aborted.<sup>105</sup> The proliferation of early sex, as a result of the institution of compulsory sex education lessons, made marital instability a standard,<sup>106</sup> even though statistics reveal the existence of a connection between family stability and the number of abortions in a society.

The weakening of couples is manifested by the decrease in the marriage rate<sup>107</sup> of the Member States of the European Union from 7.8‰ in 1965 to 4.5‰ in 2011, i.e. a decrease of almost 50%. At the same time, the divorce rate<sup>108</sup> increased from 0.8‰ to 2‰.<sup>109</sup> As a natural consequence, the proportion of children born out of wedlock in the EU States doubled in a period of twenty years to reach 40% in 2011.<sup>110</sup> Such an instability consequently increases the risk factors of abortion among several categories of the population, especially those living in poverty. Conversely, we find that, in countries where the institution of family is strong, due in particular to the prevalence of Catholic values in the population and the position kept by the institution of marriage, the number of abortions remains low or decreases. In Italy, there is a very low abortion rate (9 per 1,000 women aged 15 to 44 in 2013) and the number of abortions has decreased significantly since 1983, from a maximum of 234,800 in 1982 to 97,535 in 2014.<sup>111</sup> Ireland also has a very low abortion rate, and abortion concerns mainly single women (80%, against 14% for married women<sup>112</sup>). The same attachment to family values can be seen in Poland, a country whose marriage rate is one of the highest in the EU (4.7 marriages per 1,000 inhabitants in 2013) and, therefore, recording one of the lowest rates of birth out of wedlock (23.4%).<sup>113</sup>

Hence, sex and relationships' education must adopt another perspective that emphasises the 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.** Indeed, *“today, like yesterday, in the context of marriage, the existence of a stable relationship is one*

<sup>103</sup> Socialstyrelsen, op. cit.

<sup>104</sup> Guttmacher institute, *Adolescent Pregnancy and Its Outcomes Across Countries*, August 2015.

<sup>105</sup> N. Bajos et al., “L’augmentation du recours répété à l’IVG en France : des enjeux contraceptifs au report de l’âge à la maternité”, op. cit.

<sup>106</sup> H. Leridon, N. Bajos, C. Moreau, et al., « Pourquoi le nombre d’avortements n’a-t-il pas baissé en France depuis 30 ans », op. cit.

<sup>107</sup> Ratio between the number of civil weddings in a year and the average total population in that year.

<sup>108</sup> Ratio between the number of divorces in a year and the average total population in that year.

<sup>109</sup> European Commission, *Demography Report*, Employment, Social Affairs & Inclusion Eurostat, 2015.

<sup>110</sup> European Commission, *Being young in Europe today*, Eurostat statistical books, 2015.

<sup>111</sup> European Commission, *Demography report*, op. cit.

<sup>112</sup> Prolife Campaign, *Overview of Irish abortion*, 2011, <http://prolifecampaign.ie/main/statistics/>

<sup>113</sup> European Commission, *Demography report*, op. cit.

*of the prerequisites to committing to parenting.*”<sup>114</sup>

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),<sup>115</sup> 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%).<sup>116</sup> 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 dollars have been awarded annually to sex education programs advocating abstinence until marriage.<sup>117</sup> 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.<sup>118</sup> 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.<sup>119</sup>

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 force<sup>120</sup> but expect a good and full implementation.

### 3. Physiological Education

Sex and relationships education must be complemented by knowledge of the physiological

<sup>114</sup> N. Bajos et al., « L’augmentation du recours répété à l’IVG en France : des enjeux contraceptifs au report de l’âge à la maternité », op. cit.

<sup>115</sup> [http://www.cdc.gov/healthyyouth/data/yrbs/pdf/trends/2015\\_us\\_sexual\\_trend\\_yrbs.pdf](http://www.cdc.gov/healthyyouth/data/yrbs/pdf/trends/2015_us_sexual_trend_yrbs.pdf)

<sup>116</sup> <https://www.guttmacher.org/news-release/2014/us-teen-pregnancy-birth-and-abortion-rates-reach-historic-lows>

<sup>117</sup> <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.

<sup>118</sup> [https://www.guttmacher.org/sites/default/files/pdfs/spibs/spib\\_SE.pdf](https://www.guttmacher.org/sites/default/files/pdfs/spibs/spib_SE.pdf)

<sup>119</sup> <https://www.acpeds.org/parents/sexuality/sexual-responsibility-2/benefits-of-delaying-sexual-debut-2>

<sup>120</sup> Article L2211-2 of the French Public Health Code (Free translation from French).

dimension of reproduction. It has to do with the female cycle (a) and the process of development of the baby (b).

### a. Knowing the female cycle

Many women have very limited knowledge about their cycle, with their fertile and infertile periods.

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 environment.<sup>121</sup>

At a time when many people are trying to go back to more natural means of living and are expressing their concern about 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.

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 them.<sup>122</sup> **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 from conception, and can marvel

<sup>121</sup> 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.

<sup>122</sup> 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: « Programme designed in consultation with the 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 (...)”*.<sup>123</sup> 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 Macedonia<sup>124</sup> and in the following States in America: Arizona, Florida, Kansas, North Carolina and Texas.<sup>125</sup> 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 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 consequences:<sup>126</sup> it is not a harmless act, as some studies show.

Firstly, **abortion seems to exacerbate physical and mental health problems**. It can have several short-terms medical risks, such as allergic reactions, clotting of blood in the uterus, incomplete abortion, infections, cervical injury and injury to other organs (pelvic vessels,

<sup>123</sup> *Gonzales, Attorney General v. Carhart et al.* No. 05-380. 18 April 2007:

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=05-380>

<sup>124</sup> Pregnancy termination bill, general provisions, 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.”* See :

[http://www.womenonwaves.org/en/media/inline/2013/6/26/macedonia\\_pregnancy\\_termination\\_bill\\_may\\_2013\\_1.pdf](http://www.womenonwaves.org/en/media/inline/2013/6/26/macedonia_pregnancy_termination_bill_may_2013_1.pdf)

For Russia, several restrictions were enacted in 2011, but the obligation to perform an ultrasound is still being discussed: Sophia Kishkovsky, “Russia Enacts Law Opposing Abortion”, *New York Times*, 15 July 2011.

<sup>125</sup> Isabel Contreras, « Pas d’IVG sans avoir vu son fœtus dans huit Etats américains », *France TV Info*, 29 June 2012. The American Supreme Court however implicitly declared those laws unconstitutional for certain States: it should formally rule on at least one State which did not repeal such a law in 2016. « Pas d’échographie obligatoire avant l’avortement », *TVA Nouvelles*, 15 June 2015.

<sup>126</sup> 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, sous la dir. de Jean-Jacques Favreau, Strasbourg, 2004.



intestines, bladder and ovaries etc.), undiagnosed ectopic pregnancies, excessive bleeding.<sup>127</sup> Underage women are more likely to suffer short-term physical damages than adult women, as their body is not fully developed.<sup>128</sup> Concerning long-term risks, abortion increases the **risks of premature future births**,<sup>129</sup> abnormal implantation of the placenta<sup>130</sup> and **breast cancer**.<sup>131</sup> The risk of death for the woman (resulting from natural causes, fatal accidents, homicide, violence, late abortion) also increases in case of abortion.<sup>132</sup> Besides, comparative studies refute the perception that the **maternal mortality rate** increases when a country adopts restrictive abortion laws: this rate is **lower in countries where the recourse to abortion is strongly restricted**.<sup>133</sup>

Psychological problems under different forms often occur after an abortion. Sometimes they are not just temporary but occur over time. This risk is particularly high among women who had an abortion before the age of 25.<sup>134</sup> 42% of them suffer from depression, 39% suffer from anxiety and 27% say they have suicidal thoughts. Considering only underage girls, the rate of suicide or suicidal thoughts concerns 50% of them. More than half of women revealed experiencing emotional distress, and 16.1% experienced severe emotional distress that necessitated the therapeutic intervention of a health professional, or they said that they were

<sup>127</sup> Planned Parenthood, *In-Clinic Abortion procedures*: <https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures>. On the risks of the abortion pill: Mifepristone U.S. Postmarketing Adverse Events Summary through 04/30/2011 Available on: <http://www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/UCM263353.pdf>

<sup>128</sup> K.F. Schultz et al., "Measures to prevent cervical injury during suction curettage abortion", *The Lancet*, Vol. 321, n° 8335, 1993, p. 1182 ; R.T. Burkman et al., "Morbidity risk among young adolescents undergoing elective abortion", *Contraception*, Vol. 30, n° 2, 1984, p. 99. Quoted in the report Women's protection project, American United for Life, Washington D. C., 2013.

<sup>129</sup> A study shows that this risk increases by 37% after a first abortion and by 93% if there have been at least 2 abortions: P. Shah et al., "Induced termination of pregnancy and low birth weight and preterm birth: a systematic review and meta-analysis", *An International Journal of Obstetrics and Gynaecology*, Vol. 116, n° 11, 2009, p. 1425-1442.

<sup>130</sup> This risk increases by 30 to 50% after an abortion: C.D. Forsythe, *Abuse of Discretion: The Inside Story of Roe v. Wade*, Encounter books, New-York, 2013.

<sup>131</sup> Nowadays, 53 out of 68 studies on this subject show that breast cancer and abortion are linked: "ABC Link: Induced Abortion and Subsequent Breast Cancer", *American Association of Pro-Life Obstetricians and Gynecologists*, 2008 ; J. Lecarpentier et al., "Variation in breast cancer risk associated with factors related to pregnancies according to truncating mutation location, in the French National BRCA1 and BRCA2 mutations carrier cohort (GENEPSO)", *Breast Cancer Research*, Vol. 14:R99, 2012, p. 1-13.

<sup>132</sup> A study conducted in Denmark indicates that as result of an abortion carried out in the first 12 weeks, there is an 80% increased risk of dying in the first year and 40% in the 10 years that follow, compared to women who delivered: D. C. Reardon and P. K. Coleman, "Short and long term mortality rates associated with first pregnancy outcome: Population register based study for Denmark 1980-2004", *Med Sci Monit*, Vol. 18, n° 9, 2012.

<sup>133</sup> In 2010, the maternal mortality rate in Ireland was 1 to 2 per 100,000 births as compared to 10 deaths per 100,000 births in England and Wales (P. Carroll, *Ireland's Gain: The Demographic Impact and Consequences for the Health of Women of the Abortion Laws in Ireland and Northern Ireland since 1968*, Pension and Population Research Institute, Dec. 2011).

Cf. World Health Organisation, *World health statistics 2015*, p. 58, 62 et 66, available on : [http://apps.who.int/iris/bitstream/10665/170250/1/9789240694439\\_eng.pdf?ua=1&ua=1](http://apps.who.int/iris/bitstream/10665/170250/1/9789240694439_eng.pdf?ua=1&ua=1) ; E. Koch, J. Thorp, M. Bravo et al., "Women's Education Level, Maternal Health Facilities, Abortion Legislation and Maternal Deaths: A Natural Experiment in Chile from 1957 to 2007", *PLoS ONE*, Vol. 7, n° 5, e36613, May 4 2012.

<sup>134</sup> DM. Fergusson, J. Horwood, EM Ridder, "Abortion in young women and subsequent mental health", *J. Child Psychol. Psychiatry*, Vol. 47, n°1, 2006, p. 16-24.

unable to work due to depression.<sup>135</sup> Abortion is also an aggravating factor of suicide.<sup>136</sup>

For men, abortion is also lived as an ordeal. 35% feel pain and emptiness four months after their partner has undergone an abortion.<sup>137</sup> Implications of abortion on the relationship between the couple are real: several studies have revealed the risks of sexual dysfunctions<sup>138</sup> and of deterioration of the relationship from disputes<sup>139</sup> to break-up.<sup>140</sup>

The European Court recognised the obligation of States to inform the woman about the dangers of abortion.<sup>141</sup> 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. Currently, the provision of information falls under the general duty to inform patients of physicians.<sup>142</sup> This duty to inform is a corollary of the obligation to obtain the patient's informed consent before any intervention or treatment. The patient must receive “*simple, approximate, clear and honest*”<sup>143</sup> information allowing him 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*”.<sup>144</sup> 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*”.<sup>145</sup>

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.

<sup>135</sup> H. Soderberg, L. Janzon, NO. Slosberg, “Emotional distress following induced abortion: a study of its incidence and determinants among adoptees in Malmö”, *European Journal of Obstetrics & Gynecology and Reproductive Biology*, Vol. 79, n° 2, 1998, p. 173-178.

<sup>136</sup> C. Morgan, M. Evans, JR. Peter, “Mental health may deteriorate as a direct effect of induced abortion”, *British Medical Journal*, Vol. 314, 1997, p. 902.

<sup>137</sup> A. Kero and A. Lajos, “Reactions and reflections in men, 4 and 12 months post-abortion”, *J. Psychosom Obstet Gynaecol*, Vol. 25, n° 2, 2004, p. 135-143.

<sup>138</sup> F. Bianchi-Demicelli, E. Perrin, F. Ludicke, PG. Bianchi, D. Chatton, A. Campana, “Termination of pregnancy and women’s sexuality”, *Gynecol. Obstet. Invest.*, Vol. 53, 2002, p. 48-53 ; P. Lauzon, D. Roger-Achim, A. Achim, R. Boyer, “Emotional distress among couples involved in first trimester abortions”, *Can. Fam. Physician*, Vol. 46, 2000, p. 2033-2040.

<sup>139</sup> PK. Coleman, “Abortion and Mental health: quantitative synthesis and analysis of research published 1995-2009”, *The British Journal of Psychiatry*, Vol. 199, n° 3, 2011, p. 180-186.

<sup>140</sup> *Id.*

<sup>141</sup> *Csoma v. Romania*.

<sup>142</sup> Article L.1111-2 of the French Public Health Code.

<sup>143</sup> Ccass., Civ. 1<sup>ère</sup>, 21 février 1961, Bull. 1961, I, N° 112, p. 90. (Free translation from French)

<sup>144</sup> In the online comment of the article 35 of the Code of Ethics. (Free translation from French)

<sup>145</sup> Report 2006, p. 17. (Free translation from French)

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

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*).<sup>146</sup> 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).<sup>147</sup> The Council of Europe Convention on Preventing and Combating 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.

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.<sup>148</sup> 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*”.<sup>149</sup>

In reality, convictions for forced abortion are still uncommon.<sup>150</sup> 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*

<sup>146</sup> 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.

<sup>147</sup> UN Women, Fourth World Conference on Women, Beijing, Dec 1995 Action for Equality, Development and Peace, available on: <http://www.un.org/womenwatch/daw/beijing/platform/violence.htm#diagnosis>

<sup>148</sup> PACE Resolution 1829 (2011) Prenatal Sex Selection, 3 October 2011.

<sup>149</sup> European Parliament Resolution 2012/2712 (RSP) on the forced abortion scandal in China, 5 July 2012.

<sup>150</sup> 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*, 17 March 2015; Michael Winter, “Fla. man gets prison for abortion-pill miscarriage”, *USA TODAY*, 27 January 2014.

*qualification would be arbitrary arrest and illegal confinement accompanied by torture or barbaric acts.*<sup>151</sup> 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.<sup>152</sup>

The arrival of a child is sometimes a burden that the mother struggles to bear, particularly when she is single.<sup>153</sup> 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 with modest salaries and there is a lack of 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 pressures 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 pressures from relatives include not only the threat to stop catering to their needs or to drive 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 PACE 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”*.<sup>154</sup> These pressures are mainly familial and financial. They can also be social and medical,

<sup>151</sup> Patrick Mistretta, « Pour un droit pénal de l’avortement lisible et intelligible », *Gazette du Palais*, n° 223, 11 August 2015, p. 1.

<sup>152</sup> <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>

<sup>153</sup> Women living alone are more likely to have an abortion, compared to those living with a partner: A. Vilain, « Les femmes ayant recours à l’IVG : diversité des profils des femmes et des modalités de prise en charge », Dossier thématique « L’interruption volontaire de grossesse », *Revue française des affaires sociales*, n° 1, 2011/1, p. 116-147. In Wales and England, the number of single women among those who have recourse to abortion is 81% in 2014 against 77% in 2004: Department of Health of UK, *Abortion Statistics, England and Wales*: 2014, National statistics, June 2015.

<sup>154</sup> PACE, Resolution 1607 (2008), Access to safe and legal abortion in Europe, 16 April 2008, §§ 7.3 and 7.8.



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. Indeed, 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 give 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.

In demographic terms, this phenomenon has a very limited impact on demography in the West, since the communities that have a strong preference for boys are a minority.<sup>155</sup> On the contrary, the impact on demography becomes dramatic in Asian countries. The one-child policy in China as well as the birth reduction policy in India which resulted in hundreds of millions of abortions and sterilizations, mostly forced, made the fertility rate drop significantly, led to the ageing of the population<sup>156</sup> and to a deficit in the number of women so that every year, one million men do not find a woman when they reach the marriageable age.<sup>157</sup>

The practice of abortion on the basis of the sex of the child was internationally condemned<sup>158</sup> and prevention and sanction measures were also proposed.<sup>159</sup> In Europe, signatories to the 1997 Convention on Human Rights and Biomedicine (called *Oviedo*) undertook to ban the use of techniques of medically assisted reproduction for the sole purpose of selecting the sex of the unborn child (Article 14), echoing one of the principles formulated in 1989 by the Ad Hoc Committee of Experts on Progress in the Biomedical Sciences (CAHBI). The Committee of Ministers, the PACE and the Commissioner for Human Rights of the Council of Europe, respectively in 2002, 2011 and 2014, invited Member States to adopt national legislation prohibiting prenatal sex selection of the foetus.<sup>160</sup> In 2013, the European Parliament adopted a resolution on **gendercide**.<sup>161</sup>

Sex-selective abortion is prohibited in most countries, the difficulty being the measures to be

<sup>155</sup> Christophe Z. Guilmoto et Géraldine Duthé, “La masculinisation des naissances en Europe orientale”, INED, *Population & Sociétés*, n°506, December 2013.

<sup>156</sup> See Yves Boquet, « La démographie chinoise en mutation », *Espace, démographie et société*, 2009/3, p. 551-568, <https://eps.revues.org/3869>

<sup>157</sup> Isabelle Attané, « Vers le célibat forcé des prochaines générations, L’Asie manque de femmes », *Le Monde diplomatique*, July 2006.

<sup>158</sup> Cairo Platform of Action on Population and Development in 1994 (§§ 4.15 and 4.16), Programme of Action of Beijing Conference in 1995 (§ 115) and UN General Assembly in 1998 A/RES/52/106, 11 February 1998, §3. [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/52/106&referer=/english/&Lang=F](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/52/106&referer=/english/&Lang=F)

<sup>159</sup> See UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, “*Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children*”: E/CN.4/Sub.2/1994/10/Add.1 et Corr.1 quoted by UN Women: <http://www.endvawnow.org/fr/articles/606-preference-donnee-aux-garcons-infanticide-des-filles-avortements-pratiques-en-raison-du-sexe--du-foetus.html>

<sup>160</sup> Committee of Ministers, Recommendation Rec (2002)5 on the protection of women against violence, 30 April 2002; PACE, resolution 1829 (2011) on prenatal sex-selection; Nils Muižnieks, “Sex-selective abortions are discriminatory and should be banned”, *Le carnet des droits de l’homme*, 15 January 2014, <https://www.coe.int/fr/web/commissioner/-/sex-selective-abortions-are-discriminatory-and-should-be-bann-1>

<sup>161</sup> European Parliament Resolution 2012/2273(INI) on Gendercide: the missing women?, 8 October 2013.



implemented to effectively prevent it. It reveals a real lack of conviction of the need to act, which can be explained in several ways. On the one hand, no monitoring is possible, even in countries where sex-selective abortion is prohibited, since the woman is in the legal limit for abortion and does not have to justify her request. On the other hand, some feel a kind of discomfort to deal with this problem: traditionally very favourable to abortion which they claim as a “fundamental right” of women, they are reluctant to ban it in some cases, though they are well aware of the discrimination on the basis of sex. Those opposed to the ban also argue that access to abortion will be restricted and that it would lead to stigmatisation against Asian communities.

- *A foetus with disability*

**Eugenics is widespread in society.** It is not collective eugenics which is prohibited,<sup>162</sup> but individual eugenics ultimately decided by the pregnant woman and facilitated by the dissemination of the contraceptive mentality, i.e. the mentality of voluntary and artificial birth control. Professor Israël Nisand, during his audition by the Parliamentary Committee on Revision of Bioethics law, had asserted with no shame the current eugenics: **“Genetics today are good and the aim of the couples is only to have a healthy child. Both programs [the Nazi and ours] are eugenics, but on both extremities of the spectrum. Yes, we choose children who will live, in our country, even if you do not like it”**.<sup>163</sup> Indeed, when the foetus is identified as having a disability before his birth, it is most often eliminated.<sup>164</sup> This type of eugenic abortion is a fairly broad social consensus. However it must be noted that this kind of selection sometimes occurs even after birth, by infanticide: **73% of French neonatologists declare having administrated drugs to new-borns with the intention to kill the babies**.<sup>165</sup>

This social consensus increases the pressure on women and couples who, on the contrary, wish to keep the child. This pressure sometimes 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.<sup>166</sup> A renowned English biologist, Professor Emeritus from Oxford, affirmed that it was immoral to give birth to a child suffering from Down syndrom,<sup>167</sup> emphasising that he was only affirming what everybody thought, since 90% of foetuses 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

<sup>162</sup> I.e. the organization of a selection of persons, by the society or a group of people.

<sup>163</sup> Jean Leonetti, *Rapport de la mission d'information sur la révision des lois bioéthiques*, report n° 2235, tome 2, Assemblée nationale, 20 January 2010, p. 600.

<sup>164</sup> The Biomedicine Agency indicates that “*In the absence of a screening and prevention strategy, every year in France, between 7,500 and 8,000 children are born with severe disability linked to one or more malformations*”: Agence de biomédecine, *Rapport, État des lieux du diagnostic prénatal en France*, 2008.

<sup>165</sup> EURONIC group (2000), “End-of-life decisions in neonatal intensive care: physicians' self-reported practices in seven European countries”, *The Lancet*, Vol. 355 (9221): 2112-2118. For the same question, the result would be 47% in the Netherlands, 4% in Germany and in the United-Kingdom and 2% in Spain, Sweden and Italy.

<sup>166</sup> Beezy Marsh, « 66 babies in a year left to die after NHS abortions that go wrong », *Daily Mail*, 4 février 2008, available on: <http://www.dailymail.co.uk/health/article-512129/66-babies-year-left-die-NHS-abortions-wrong.html>; la petite fille trisomique avortée à cinq mois est née vivante et a vécu trois heures.

<sup>167</sup> Richard Dawkins: 'immoral' not to abort if foetus has Down's syndrome, *Press Association*, 21 August 2014.

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). The Universal Declaration on the Human Genome (1997), the Convention on the Rights of the Child and the Oviedo Convention contain similar provisions.

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 State Parties, declared that *“where the immediate family is unable to care for a child with disabilities, [they will] 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 once more recalls that they 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 State 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 shortcomings”*.<sup>168</sup>

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**

Research conducted in the US between 2008 and 2010 on a group of women of childbearing age<sup>169</sup> found that, in general, in the process of deciding on abortion, women take into consideration the quality of the relationship with their partner and the support they might receive from him. The nature of the relationship with their partner and the challenges they face, especially if the support or presence of the partner is lacking, are all factors that lead women to consider terminating the pregnancy. **Thus the irresponsibility of the father constitutes one of the major causes of abortion.** He can assault the woman, and order her to choose between

<sup>168</sup> Committee complaint n° 13/2002, *Autism-Europe v. France*, decision on merit, 4 November 2003, §53.

<sup>169</sup> KS. Chibber, MA. Biggs, SCM. Roberts, D. Greene Foster, “The Role of Intimate Partners in Women’s Reasons for Seeking Abortion”, *Women’s Health Issues*, Vol. 24, n°1, 2014, e131-e138.

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”***.<sup>170</sup>

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”*.<sup>171</sup> 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 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”*.<sup>172</sup>

**Ironically, the irresponsibility of men 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 pressures they are likely to undergo. The paradox is even greater in the sense that once the child is born, the

<sup>170</sup> PACE, Report. The Involvement of Men, especially Young Men, in Reproductive Health. Rapporteur: Mrs Rosmarie Zapfl-Helbling, Doc. 10207, 10 June 2004.

<sup>171</sup> PACE, Resolution 1394 (2004) on The Involvement of Men, especially Young Men, in Sexual and Reproductive Health, 7 September 2004.

<sup>172</sup> 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.”*

father has the same rights and duties as the mother.

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.<sup>173</sup>

**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.<sup>174</sup>

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

Some studies have shown that pressure from relatives on the pregnant woman in order to abort are not rare : a study conducted in France on a group of women of all ages showed that 9% of them decided to abort as a result of pressure from their family or partner.<sup>175</sup>

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. In France, 46% of teenage girls who interrupted their pregnancy made the decision with their partner or family.<sup>176</sup> 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).<sup>177</sup> In 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.

<sup>173</sup> ECHR, *Evans v. the United Kingdom*, n° 6339/50, 10 April 2007.

<sup>174</sup> Particularly: Egypt, Guinea-Bissau, Iran, Iraq, Japan, Republic of Korea, Kuwait, Malawi, Morocco, Nicaragua, Syria, Turkey, United Arab Emirates and Russia.

<sup>175</sup> C. Moreau, et al., "Contraceptive Paths of Adolescent Women Undergoing an Abortion in France", *Journal of Adolescent Health*, Vol. 50, n° 4, 2012, p. 389-394. Another study conducted in Germany on abortion patients revealed that in 40% of cases, the decision was taken based on the relationship with the partner, particularly because he put pressure on the woman (29%): W. Barnett, N. Freudenberg, R. Wille, "Partnership After Induced Abortion: A Prospective Controlled Study", *Archives of Sexual Behavior*, Vol. 21, n° 5, October 1992, p. 443-455.

<sup>176</sup> *Id.*

<sup>177</sup> These not exhaustive data were drawn from the IPPF-EU report, *Abortion legislation in Europe*, 2012.



#### 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. 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.<sup>178</sup> 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: these pressures are often invoked firstly to explain the recourse to abortion. Economic insecurity is particularly sensitive for women seeking employment. Hence, it is not surprising that unemployment appears as a factor that facilitates the decision to abort.<sup>179</sup>

International and European law provide several social rights for women, during and after pregnancy, but these rights are mostly granted 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 (...)”*.<sup>180</sup> 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:

<sup>178</sup> Hayat Gazzane, « Facebook et Apple encouragent la congélation d'ovules de leurs salariées », *Le Figaro*, 15 October 2014.

<sup>179</sup> The number of unemployed women among the population of women who have abortions is 19% in Italy (*Legge 194/78*) - dati preliminari 2013 e dati definitivi 2012, 15 ottobre 2014) and 23.7% in Sweden (Socialstyrelsen, *op. cit.*).

<sup>180</sup> 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 countries,<sup>181</sup> 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.<sup>182</sup> 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.

According to a survey conducted in France by the IFOP in 2010,<sup>183</sup> **60% of the French women were of the opinion that “society should do more to help women to avoid an abortion procedure”.**

#### 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. Moreover, it appears from the same survey<sup>184</sup> that women wish to be assisted in making a decision should they have an unplanned pregnancy. Thus, 54% mentioned “information on the material assistance” to which they are entitled, and 83% said that “details of the aids available to pregnant women and young mothers”

<sup>181</sup>See IPPE, European Network, *Abortion Legislation in Europe*, January 2009, available on : [http://www.spdc.pt/files/publicacoes/Pub\\_AbortionlegislationinEuropeIPPFEN\\_Feb2009.pdf](http://www.spdc.pt/files/publicacoes/Pub_AbortionlegislationinEuropeIPPFEN_Feb2009.pdf)

<sup>182</sup> Law n°185-XV of 24 May 2001 and Order n° 647 of 21 September 2010 from Minister of Health.

<sup>183</sup> Survey conducted by the IFOP at the request of Alliance Vita, from February 19 to 23, 2010 among a representative sample of 1,006 women aged 18 years and beyond.

<sup>184</sup> *Id.*

should feature in the official booklet of information given to pregnant women requesting an abortion. Moreover, for 67% (and up to 76% under 35 years) “It would be good to make pregnant women who may find it difficult to raise their child aware of the possibility of giving the child up for adoption after delivery.” Finally, half of the respondents mentioned the need to have “a discussion with health professionals about the consequences of that choice”.

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 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, even sometimes two forms of preliminary counselling, and it is obligatory in most cases. Sometimes, counselling is also required after abortion to help the woman not to “repeat”.<sup>185</sup>

Although legal obligation to preliminary social counselling for adult women in France was cancelled in 2001,<sup>186</sup> a ministerial circular recommends that counselling of this nature should be proposed systematically.<sup>187</sup> 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 and Italy, 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.<sup>188</sup>

### c. The Offence of Incitement to Abortion

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

<sup>185</sup> For national provisions and content of the counselling, see the report of IPPF European Network, *Abortion Legislation in Europe*, Bruxelles, 2012.

<sup>186</sup> Law on voluntary termination of pregnancy and contraception, 4 July 2001.

<sup>187</sup> Circular DGS/DHOS n° 2001-467 of 28 September 2001 on the application of the provisions of the Law of 4 July 2001 on voluntary termination of pregnancy and contraception.

<sup>188</sup> Article L. 2141-4 of the French Public Health Code.

producing abortion.<sup>189</sup> 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.<sup>190</sup> 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 offence of “incitement to abortion” also existed in French law until the Act of 4 July 2001.<sup>191</sup> Physical and psychological violence among couples is punishable by criminal law, so that violence with the aim of pushing a woman to abort should be sanctioned. Given the pressure on a lot of women, incitement to abortion should be reinstituted as a criminal offence. Based on the model of an offence of obstruction to legal abortion,<sup>192</sup> it could 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*”.

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 denounced. 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 Faroes Islands where the consent of the father is mandatory. His consent is desired in Lithuania and compulsory in Turkey<sup>193</sup> if the woman is married. Russia is also considering making the consent of the husband obligatory.<sup>194</sup>

#### e. Helping to welcome a Disabled Child

With regard to eugenic abortion, the parents should be protected from medical and social

<sup>189</sup> 18 U.S. Code § 1461 - Mailing obscene or crime-inciting matter. Available on: <https://www.law.cornell.edu/uscode/text/18/1461>

<sup>190</sup> 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.

<sup>191</sup> « Sera puni d'un emprisonnement de six mois à trois ans et d'une amende de cent francs (100 fr.) à trois mille francs (3000 fr.) quiconque : 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 fermée, 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. » Law of 31 July 1920, article 1.

<sup>192</sup> Article L. 2223-2 of the French Public Health Code.

<sup>193</sup> Law N° 2827, Sec 5-6, 24 May 1983, “Population Planning”.

<sup>194</sup> Thaddeus Baklinski, “Russian Health Ministry plans to set up pregnancy centers to lower abortion rate”, *Life Site News*, 29 January 2014.



pressures, and must be given clear information on the health of the baby, on the illness in question, the conditions of life of affected 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 survive, 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.

## C. Guaranteeing moral liberty towards abortion

Abortion is characterized by the persistence of the public debate and is the focusing point of a fundamental conflict between two radically contradictory conceptions of human nature, dignity and freedom. Where access to abortion is legal, ensuring respect for freedom of expression (1) and freedom of conscience (2) is particularly necessary to guarantee fundamental human rights. This also contributes to a prevention policy of abortion.

### 1. Guaranteeing freedom of expression

Freedom of expression constitutes “*one of the essential foundations of such a [democratic] society, one of the basic conditions for its progress and for the development of every man*”<sup>195</sup> and “*basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him*”.<sup>196</sup> Regarding abortion, it is still subject to restrictions: whether it be forbidden to promote abortion or to attempt to dissuade medical staff and women from resorting to abortion. If the first tendency was the order of the day for a long time, it is rather the second one which is prevailing today: anti-abortion speech or activities are increasingly met with criminal provisions intended to curb them. In France, “incitement not to abort” is punishable by criminal sanctions under the offence of obstruction to abortion established by the Neiertz law of 1993, and extended thereafter.

It is interesting to understand, given the current positive law, the status of freedom of expression concerning abortion – considering the many questions the courts are confronted with in this area. Some States, such as France or the United States, adopted in their legislation an offence of obstruction to abortion leading to restrict freedom of expression in that field. Besides, for over three decades, the European Court of Human Rights and the previous Commission have made their ruling on about ten cases of interference in the exercise of freedom of expression or demonstration for or against abortion.

### e. Obstruction to abortion

Since 1993 in France, successive governments and the legislator have taken steps to fight pro-life speech and activism by initiating communication and information campaigns as well as campaigns promoting abortion,<sup>197</sup> but also by creating a crime of obstruction to abortion and

<sup>195</sup> *Handyside v. the United Kingdom*, n°5493/72, 7 December 1976, § 49.

<sup>196</sup> *Leander v. Sweden*, n°9248/81, 26 March 1987, § 74.

<sup>197</sup> See the government campaign “IVG : mon corps, mon choix, mon droit” [Abortion: my body, my choice, my right] and on the website [www.ivg.gouv.fr](http://www.ivg.gouv.fr)

extending the criminalisation to obstructing “access to information” on abortion.<sup>198</sup> The wording of Article L 2223-2 of the Public Health Code can be broadly interpreted (as wished the High Council for Equality<sup>199</sup>), not only regarding its application in space, but also pertaining to acts that constitute it, since it also punishes the pursuit of “moral or psychological pressure” on the entourage of a woman who comes to seek information about abortion in an attempt to prevent her from having abortion or from getting information about abortion or about pre-abortion acts. This can undermine freedom of expression as **any information likely to be received by a pregnant woman or her relatives and construed as intended to dissuade her from aborting may constitute the crime of obstruction**. The French Court of Cassation ruled, in the judgement of 1<sup>st</sup> September 2015,<sup>200</sup> that entering the premises of the French movement for family planning (*Mouvement français pour le planning familial*) to pray and offer a medal of the Virgin Mary and baby’s slippers to a woman in the waiting room constituted psychological pressure and moral violence within the meaning of criminal law, and that the 10,000 euros fine imposed on the culprit for the offence of obstruction was justified. This “zero tolerance”<sup>201</sup> national policy against anti-abortion activists is an exception in Europe as most European countries have not adopted a specific legislation to restrict freedom of expression on abortion.

In 1994, a year after the Neiertz Act, the US Congress also passed a law against obstructing abortion i.e. the Federal Freedom of Access to Clinic Entrances Act.<sup>202</sup> But this law was written in more restrictive terms than the French legislation, as only violent actions were likely to be sanctioned. The Act subjects to both criminal and civil penalties anyone who “*by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services*”.

#### e. European Protection of Freedom of Expression and Demonstration on Abortion

It appears from the case law of the European Court of Human Rights that discourse on abortion enjoys a high degree of protection, even when it is extreme.

Although abortion is a sensitive subject, it is not forbidden to discuss it. Speech in favour of abortion is considered as freedom of expression even if abortion is prohibited under the criminal law of the country in question.<sup>203</sup> Even in countries where national legislation prevents access to abortion as a right, anti-abortion speech is not excluded from the ambit of the Convention.

The Court consistently considers that speech on abortion is of “*public interest*”,<sup>204</sup> so that it

<sup>198</sup> Law n°93-121 of 27 January 1993, Law n°2001-588 of 4 July 2001 and Law n°2014-873 of 4 August 2014 modifying article L. 2223-2 of the Public Health Code.

<sup>199</sup> HCEfh, Rapport relatif à l'accès à l'IVG Volet 1 : *Information sur l'avortement sur Internet*, Rapport n°2013-0912- HCE-008 as an anticipated answer before the committal of the Minister for the Rights of women, Mrs Najat Vallaud-Belkacem, see pp. 22-25.

<sup>200</sup> Cass. crim., 1<sup>st</sup> September 2015, n°14-87.441, F-D: JurisData n°2015-019467. See Jacques-Henri Robert, « J’veus ai apporté des chaussons », *Droit pénal* n°10, October 2015, comm. 125.

<sup>201</sup> Communiqué of Najat Vallaud-Belkacem, *Tolérance Zéro pour l’entrave à l’IVG*, 27 September 2013.

<sup>202</sup> FACE Act, 18 U. S. C. §248(a)(1).

<sup>203</sup> See *Open Door and Dublin Well Woman and Women on Waves and others v. Portugal*, n° 31276/05, 3 February 2009.

<sup>204</sup> *Annen v. Germany*, n°3690/10, 26 November 2015, § 62: “there can be no doubt as to the acute sensitivity of

enjoys the same high level of protection<sup>205</sup> as political speech.<sup>206</sup>

“There is little scope under Article 10 para. 2 of the Convention (art. 10-2) for restrictions on political speech or on debate of questions of public interest.”<sup>207</sup> The European Court seeks to ensure not only the right to express one's opinion, but also the right to choose and employ effective means to this end (right to assemble, to demonstrate in public peacefully, either in favour of or against abortion,<sup>208</sup> leafletting,<sup>209</sup> website,<sup>210</sup> even though there are other means<sup>211</sup>).

Every woman has the right to seek and receive information about pregnancy and abortion. Moreover, public authorities have the duty to inform women of the risks associated with abortion.<sup>212</sup>

Nevertheless, the conventional guarantee of the right to freedom of expression has limits enumerated in Article 10 § 2 of the Convention. National authorities must give convincing reasons to justify the need for any form of restriction.<sup>213</sup> The Court has set a precedent by ruling on the merits of several restrictions on freedom of expression on this subject: with the exception of cases affecting the reputation of abortion doctors, the Court often condemned restrictions. The mere fact that abortion is prohibited in a country is not reason enough to restrict freedom of expression with the aim of protecting morals, order and health.<sup>214</sup> But the need to preserve the reputation and rights of others justifies certain restrictions on freedom of expression on abortion.<sup>215</sup>

In all the cases brought before the Court, it accepted the conviction of activists who named abortion doctors.<sup>216</sup> This was the case until the *Annen* judgement of 2015 in which it ruled that the applicant's freedom of expression had been violated.<sup>217</sup> More generally, it is worth noting that when abortion is legal and performed in the workplace of the doctor concerned, it is difficult to admit that publicly revealing that a doctor performs abortion could be detrimental to his reputation. Concerning the reconciliation of the rights of women going into abortion clinics with the rights of persons who wait near these clinics to express opposition and target these women with their message, the Court clearly recognised and guaranteed the right to distribute leaflets in the immediate vicinity of the abortion clinic in the *Annen* judgement of 2015, contrary

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*the moral and ethical issues raised by the question of abortion or as to the importance of the public interest at stake*”. See also *D.F. v. Austria*, n°21940/93, 2 September 1994; *Annen v. Germany*, n°2373/07 and 2396/07, 30 March 2010.

<sup>205</sup> *Hoffer and Annen v. Germany*, n°397/07 and 2322/07, 13 January 2011, § 44.

<sup>206</sup> *Axel Springer AG v. Germany* (n° 2), n°48311/10, 10 July 2014, § 54.

<sup>207</sup> *Wingrove v. the United Kingdom*, n° 17419/90, 25 November 1996, § 58; *Animal Defenders International v. the United Kingdom*, n° 48876/08, [GC], 22 April 2013, § 102.

<sup>208</sup> See *Women on Waves and Others* and *Plattform arzte fur das leben v. Austria*, n°10126/82, 21 June 1988.

<sup>209</sup> *Bowman v. United Kingdom*, n°141/1996/760/961, 19 February 1998.

<sup>210</sup> *Yildirim v. Turkey*, n°3111/10, 18 December 2012, § 54.

<sup>211</sup> *Women on Waves and Others*, § 38.

<sup>212</sup> *Csoma*, § 68.

<sup>213</sup> *Handyside*, § 49; *Boldea v. Romania*, n°19997/02, 15 February 2007, § 45 ; *Wingrove*.

<sup>214</sup> *Open Door and Dublin Well Woman*, §§ 60 and 63; *Women on Waves and Others*.

<sup>215</sup> *Petrina v. Romania*, n° 78060/01, 14 October 2008. However, for an attack on a person to be considered as detrimental to the right to private life guaranteed by Article 8 of the Convention, it should reach a certain level of seriousness and violate the person's enjoyment of the right to private life: *A. v. Norway*, n°28070/06, 9 April 2009, § 64; *Axel Springer AG v. Germany* [GC], n°39954/08, 7 February 2012, § 83; *Delfi AS*, n° 64569/09, 16 June 2015, § 137.

<sup>216</sup> See *D.F. v. Austria*, n°21940/93, 2 September 1994 ; *Annen v. Germany*, n°2373/07 and 2396/07, 30 March 2010 ; *Hoffer and Annen v. Germany*, n°397/07 and 2322/07, 13 January 2011.

<sup>217</sup> *Annen v. Germany*, n°3690/10, 26 November 2015.

to its previous case law.<sup>218</sup> As for the manifestations near abortion centres, restrictions may be enforced to usual conditions to be able to ensure normal working conditions for these centres. The employer's rights are another limit to the freedom of expression: it seems an employee can be required, within the professional setting, to refrain from expressing radical ideas, once this expression directly opposes the position held by the employer and is likely to jeopardise its legitimate interests.<sup>219</sup>

**Currently, European law is a warranty for freedom of speech and manifestation as regards abortion.** Through its case law, which, step by step and case after case, narrowed and became more coherent, the European Court has reached a balanced solution refusing to sacrifice the freedom of speech and manifestation of people. It should be noted that the application of the crime of obstruction aforementioned would be consistent with European law only if it were subject to a restrictive interpretation. The case law of the Supreme Court of the United States has also changed considerably and protects freedom of expression more.<sup>220</sup>

### 1. Guaranteeing freedom of conscience

Conscience is the basis of human dignity: human beings are endowed with conscience and able to make a moral judgement. Protected in all human rights instruments, especially in Article 18 of the International Covenant on Civil and Political Rights and Article 9 of the European Convention on Human Rights, freedom of conscience is at the very core of human rights,<sup>221</sup> whose development has led to recognise objection as an integral part of freedom of conscience, that is to say the ability of human consciousness to adopt moral convictions and judge whether an action is good or evil.

The act of objection is opposing a request for realising a socially accepted or even required act which is contrary to one's convictions. Conscientious objection is both a duty, enshrined in Principle IV of the Nuremberg Principles,<sup>222</sup> and a right. Historically, it only concerned conscription, because it was the only case in which a person could legally be obliged to kill another one. Nevertheless, during the last decades, laws have been passed, which allow other exceptions to the prohibition to kill, hence putting some people, especially medical staff which have a general obligation to act in conscience in the interest of their patients,<sup>223</sup> in situations where they have to end a human life. **That is why refusing to practice abortion or euthanasia is a case of objection protected by international and European law.**

<sup>218</sup> *Van Den Dungen v. the Netherlands*, n°22838/93, 22 February 1995.

<sup>219</sup> See *X. v. R.U.*, n° 8010/77, 1<sup>st</sup> March 1979; *Rommelfanger v. Federal Republic of Germany*.

<sup>220</sup> See the evolution between the cases *Hill v. Colorado*, 530 U.S. 703 (28 June 2000) and *McCullen v. Coakley*, 573 U.S. (26 June 2014).

<sup>221</sup> See Grégor Puppink, « Objection de conscience et droits de l'homme. Essai d'analyse systématique », *Société, Droit & Religion*, n° 6, CNRS Editions, July 2016.

<sup>222</sup> "The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him"; on the duty to object, see also ECHR, *Polednova v. the Czech Republic*, n° 2615/10, 21<sup>st</sup> June 2011 and *K.-H. W. v Germany*, n°37201/97, GC, 22<sup>nd</sup> March 2001.

<sup>223</sup> It is the very basis of medical ethics, which was already part of the Hippocratic Oath, in the Vth century Before Christ. This oath obliges doctors to treat patients according to their judgment, i.e. their conscience. In the original oath, it was prohibited to doctors to give poison or abortive products to their patients, while modern versions of the oath have generally suppressed the mention on abortion.



### a. The right to conscientious objection firmly asserted

International and European law clearly reveals that the right to conscientious objection is recognised as a constituent element of freedom of conscience. In the case *Jeong et al v. Republic of Korea*<sup>224</sup>, the United Nations Human Rights Committee recalled its General Comment 22 (1993) and recognised that conscientious objection is not a mere manifestation of belief, but a constituent element of freedom of conscience. The Charter of Fundamental Rights of the European Union expressly recognises the right to conscientious objection (Article 10.2). Council of Europe standards manifest the consensus in Europe on conscientious objection. The PACE has advocated conscientious objections for decades,<sup>225</sup> especially in the medical area.<sup>226</sup> Some texts emanating from the Committee of Ministers confirm this,<sup>227</sup> as well as the European Court of Human Rights case law.

In the case of *Tysic v. Poland*,<sup>228</sup> the European Court clearly refused to limit the right to conscientious objection of medical practitioners. Considering that conscientious objection and access to abortion respectively stem from articles 9 and 8 of the Convention and conflict, the Court ruled in two other cases that it is the State's responsibility to organise hospitals so as to permit the exercise of concurring rights.<sup>229</sup>

However, an alleged *right* to abortion, with no existence in international law, cannot prevail over freedom of conscience, which is one of the most fundamental human rights.

The vast majority of European countries protect freedom of conscience of health professionals, particularly regarding abortion, either by law or by the constitution.

The ethical professional guidelines also recognise the freedom of conscience of various medical practitioners. Concerning doctors, even though the prohibition of abortion has disappeared, all the documents from the World Medical Association (WMA) insist on the fact that doctors must always follow their conscience and respect life.<sup>230</sup> it is then perfectly established that abortion

<sup>224</sup> *Jeong et al. v. Republic of Korea*, communications 1642-1741/2007, 24 March 2011, § 7.3.

<sup>225</sup> See Resolution 337 (1967) on the Right of conscientious objection, Recommendation 478 (1967) *Right of conscientious objection*, Recommendations 816 (1977), 1518 (2001) and 1742 (2006) dealing with military matters, Resolution 2036 (2015) *Tackling intolerance and discrimination in Europe with a special focus on Christians* insisting on the right to freedom of conscience, particularly in the workplace (§ 6.2.2).

<sup>226</sup> Resolution 1763 (2010) recognises for the first time the right to conscientious objection for hospitals and healthcare institutions concerning abortion, euthanasia and any act which could cause the death of a human foetus or embryo. The importance of conscientious objection in the medical area was recalled in the Resolution 1928 (2013) *Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence* (§ 9.10).

<sup>227</sup> See Recommendations R(87)8 et CM/Rec(2010)4.

<sup>228</sup> *Tysic v. Poland*: the applicant and a third party complained that “a gynaecologist could refuse to perform an abortion on grounds of conscience”, and further that “a patient could not bring a doctor to justice for refusing to perform an abortion” (§ 100).

<sup>229</sup> *R. R. v. Poland*, § 206; *P. and S. v. Poland*, § 106.

<sup>230</sup> The *Geneva declaration*, adopted by the 2nd General Assembly of the World Medical Association Geneva, September 1948 and amended in 1968, 1983, 1994, 2005 and 2006, proposes a modernised version of the oath: “I will practise my profession with conscience and dignity; The health of my patient will be my first consideration; [...] I will maintain the utmost respect for human life”

<http://www.wma.net/fr/30publications/10policies/g1/index.html>

The WMA International Code of Medical Ethics, adopted by the 3rd General Assembly of the World Medical Association, London, October 1949 and amended in 1968, 1983 and 2006 adds that “A physician shall always exercise his/her independent professional judgment and maintain the highest standards of professional conduct”

is but tolerated and that no doctor can be obliged to take part in one. Likewise, the International Federation of Gynecology and Obstetrics (FIGO) regularly recalls the right to conscientious objection of doctors.<sup>231</sup> Concerning the international definition of the midwife given by the International Confederation of Midwives (ICM), it specifies the scope of practice of the profession which resolutely aims at promoting life: abortion is not mentioned. It has very little place in the various documents of the ICM and is definitely not a constituent part of the work of midwives. Conscientious objection is stated in Section III of the International Code of Ethics for Midwives adopted by the ICM.<sup>232</sup>

### **b. Conscientious objection criticised or even denied**

While the right to conscientious objection of medical practitioners regarding abortion seems to be firmly guaranteed, some European States officially reject any right to conscientious objection: Sweden, Finland, Iceland, Czech Republic and Bulgaria. Yet a worrying tendency can be observed in other countries where unconfessed pressures and creeping discrimination are developed. For example, in France, while the refusal to take part in an abortion is, in theory, protected, public hospitals or hospitals associated to the public service “*which are allowed beds or spaces in obstetrics and gynecology or surgery services may not refuse to practice abortions*”.<sup>233</sup> In the UK, NHS job opportunities specify that candidates must be prepared to perform all the tasks facing them if they are hired, which implicitly but necessarily includes abortion. Cases of discrimination in recruitment have been reported, as in Scotland in 2000.<sup>234</sup>

In some countries, health professionals find themselves legally at odds: it is the case of pharmacists who have not always been specifically included in the scope of protection, because only the surgical abortion method existed at the beginning. Now that medical abortion is common, pharmacists may face real problems of conscience: since they must exercise their profession conscientiously and respect life, protection against forced participation in abortions should be extended to them. While some countries legally ensure that they are not forced to sell, between others, abortifacients,<sup>235</sup> they are not guaranteed such protection in France because they are not regarded as belonging to the medical profession or as paramedics, but as a category *sui generis* not covered by the conscience clause.<sup>236</sup>

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and “*always bear in mind the obligation to respect human life*”

<http://www.wma.net/en/30publications/10policies/c8/index.html>

The WMA Medical Ethics Manual (2015) lists several controversial questions, in particular abortion and states:

“*Participation in abortion was forbidden in medical codes of ethics until recently but now is tolerated under certain conditions by the medical profession in many countries*” (p. 22) and concludes that “*This is a matter of individual conviction and conscience that must be respected.*” (p. 57)

<http://www.wma.net/fr/30publications/30ethicsmanual/index.html#manual>

<sup>231</sup> FIGO Committee for the Ethical Aspects of Human Reproduction, *Ethical Issues in Obstetrics and Gynecology*, <http://www.figo.org/figo-committee-and-working-group-publications>

<sup>232</sup> Section III - c. Midwives may decide not to participate in activities for which they hold deep moral opposition; however, the emphasis on individual conscience should not deprive women of essential health services.

d. Midwives with conscientious objection to a given service request will refer the woman to another provider where such a service can be provided.

<sup>233</sup> See the French Public Health Code, articles R2212-4 and L2212-8 providing that “*private health institution may refuse that abortions are practiced in its premises*”, unless it is associated with the public service (“collective interest” or contract concession).

<sup>234</sup> BBC, 7 October 2000, “Abortion views cost job”: <http://news.bbc.co.uk/2/hi/health/961169.stm>

<sup>235</sup> In Belgium, Article 32 of the Pharmaceutical Code of Conduct.

<sup>236</sup> It must be noted that after the outcry produced by the French National Council of the Order of Pharmacists project to introduce a conscience clause in the Code of Ethics, the article concerned was not retained. See the

**The right to conscientious objection is currently criticised because it is sometimes considered as an obstacle to easy access to abortion.**

### **c. The need to guarantee conscientious objection**

Guaranteeing conscientious objection is indispensable in a modern and effective system of fundamental rights, set up to guarantee the inherent human dignity of every person.

The effect of the refusal to respect the freedom of conscience results in barring people who fully respect life from professions linked with pregnancy, which is both paradoxical and discriminatory. People with all the scientific skills and human qualities for these professions are deterred from them by the systematic discrimination they undergo. In the end, the patients, especially pregnant women, suffer the consequences of this obstinacy. Moreover, the lack of recognition of the right to conscientious objection not only worsens the shortage of midwives and deprives the medical staff of their right but also deprives some patients of midwives and doctors sharing their beliefs and the risk for these women to be pressured into abortion becomes very high. Therefore, claiming that the right to conscientious objection would jeopardise access to health services is false. On the contrary, it would guarantee a diversified access, corresponding to the diversity of patients.

Legalizing abortion is a thing, forcing individuals to perform these acts against their will is another one. Recognizing the right not to be compelled to participate does not affect the legality of such practices nor the ability to access them.

Democratic states that claim to protect and promote human rights cannot accept or even require the violation of one of the most fundamental rights, freedom of conscience, of a category of the population - namely health professionals - to satisfy the desire of another person. A very simple solution would meet the requirements of a democratic society: recognise the rights of medical staff, and organise hospitals accordingly.

## **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.



### Part III: The Duty to Prevent Abortion in Some European Countries

Europe still has a very strong legislative and political diversity. Through the three countries studied, we will be able to verify this and see which policies are working and which countries have tried to implement this prevention policy.

#### A. Italy

*Assuntina Morresi*

In Italy cases of abortion have steadily declined from 1982 to today, according to all parameters (absolute numbers and abortion ratios); at the same time, all the other data regarding attitudes about abortion show that this practice is considered “the last ratio” for Italian women. In this sense Italy is an exception in the international landscape. An analysis of the phenomenon is provided in the Minister of Health’s Annual Reports to Parliament, available from the entry into force of the Law n. 194/78 which regulates abortion services.

It must be also considered that the use of chemical contraception (oral contraceptive pill) in Italy is among the lowest in the West area and, in addition, the Italian birth rate is among the lowest in Europe.

To our opinion, the most important cause of the constant decrease of abortions, for almost forty years, is a function not only of the parallel constant declining birth rate, but also of the provisions of Law 194/78: they can only be performed in public hospitals or authorised private facilities, with no possibility of profits for the non-authorised private sector. Limiting abortions to the public sector means avoiding the market with its pressures and being able to promote prevention.

Going into details of the law 194/78, we must underline that the abortion in Italy is not “on demand”. In other words, the woman request is never enough to access to abortion services. It is necessary a certificate of a doctor, and for abortion after 90 days of pregnancy, the procedure is admitted only when the foetus has not the possibility of autonomous life outside the uterus. So, if the pregnant is in life threatening but the foetus has the possibility of an autonomous life, the doctor should induce the childbirth, trying to save their both lives (mother and son).

The law 194 regulates the exercise of the right of conscientious objection for healthcare professionals: gynaecologists, anaesthetists, nurses, midwives can refuse to perform abortions and all the acts “specifically and necessarily direct to determinate the voluntary termination of pregnancy”, but they must assist the women before and after the abortion (Art.9).

In the last years violent media campaigns have denounced the high number of conscientious objectors, accusing them of preventing timely access to legal abortion services. But numbers show that this is a fake news.

As it can be seen in the last report to the parliament, in thirty years the number of weekly procured abortions carried out nation-wide by non-objecting gynaecologists has halved: in 1983 they performed 3.3 abortions each per week (in 44 working weeks), and only 1.6 in 2014.

The number of non objecting medical practitioners is appropriate for the number of abortions performed, even at a sub-regional level: the workload required does not prevent non-objectors from engaging in other activities besides abortions and should not create problems in meeting the demand for terminations of pregnancy.

Low birth rate, low contraception use, low abortion rate: this is the specificity of Italy. It is the factual demonstration that a huge diffusion of chemical contraception in sé is not the most effective prevention of abortion. In addition, this situation confirms that in Italy abortion is not considered a means of birth control.

We hope that in future more detailed studies could be addressed in order to establish the link between the three above facts: we need a more detailed analysis from a sociological and statistical point of view about the behaviour of the Italian society connected to abortion.

But considering other western countries similar to Italy, those to whom we usually compare ourselves, like UK and France, we can observe that in Italy lacks the so called “contraceptive mentality”, that is that attitude to consider the pregnancy as a sort of sexually transmitted disease, that must be avoided at all costs.

In our country, despite the fast and progressive secularization of the society, the family, seen as a network of parental relationship, still continues to be important for the life of everyone, and is a great help to welcome a new life.

## B. Poland

*Karina Walinowicz, Olaf Szczypiński – Ordo Iuris Institute for Legal Culture*

### 1. Legal transitions of Polish anti-abortion policy – historical view

The origins of the Polish legislation on abortion are dated to the interwar period, when in 1932 the Penal Code was adopted. At that time abortion was strictly forbidden and severely punished, consequently including the penalizing of women.<sup>237</sup> The main good protected under the Criminal Code of 1932 was the life of the child.<sup>238</sup>

<sup>237</sup> According to Art. 231. "A woman who spends her fetus or lets her fetus be spent by another person is subject to the penalty of imprisonment up to 3 years." The sanction was lower in this case than against someone who commit abortion - Art. 232. "Whoever, with the agreement of a pregnant woman, spends her fetus or help her to spend it, shall be punished by imprisonment up to 5 years." At the same time art. 233: "There is no crime in art. 231 and 232 if the procedure was performed by a physician and it: a) was necessary for the health of the pregnant woman, or b) the pregnancy was the result of an offense referred to in art. 203, 204, 205 or 206 "[pedophilia, rape, abuse of dependency, incest]. Rescue of mother's life was not specified due to the existence of general norms: the necessary defense (Article 21) and the state of superior necessity (Article 22).

<sup>238</sup> See. L. Abortion. Forensic and Criminal Problems, Wrocław 1980, p. 20-21. Bogunia writes about "the child's interest".

On April 27, 1956, was adopted a completely different law *Conditions for Admissibility of Termination of Pregnancy Act*, abolishing the provisions of the Penal Code on the punishment of women, making abortion actually available without any restrictions. Jointly with the abolition of legal restrictions on abortion, there was also the exclusion of women's criminal liability for the murder on her conceived child. Automatic impunity for women was presented in the doctrine as the attainment of “socialist legal education” that was created in opposition to the legislation of “imperialist states” and the teaching of the Catholic Church.

In legal education, the most popular argument supporting this solution was presented by Helena Wolińska PhD, the military prosecutor, the initiator of court murders on Polish patriots in the Stalinist period. Wolińska left no doubt that the automatic exclusion of a woman's criminal liability for the murder of her conceived child creates a legitimate protection exclusively for the mother's health, eliminating the legal protection of the life and welfare of the conceived child. After the fall of communism and the parliamentary elections in June 1989, the issue of admissibility for termination of pregnancy first appeared in the public forum in April 1990, however, the new law was passed on January 7, 1993.

In subsequent years, several attempts were made to amend this law in order to liberalize it. The changes introduced by new law practically denied the foundations of human rights in relation to the unborn. The legislator consciously deprived a child conceived of a human status and revoked the protection of the right to life in the prenatal phase, both in civil and criminal law.

## 2. Constitutional guarantees of protection of life

The currently binding Article 4a of the Act of 7 January 1993 *on the Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion* defines the conditions which permit the abortion procedure. According to the provision of its par. 1, there are three cases when the abortion can be performed by the authorized person:

1. when the pregnancy poses a threat to the life or health of the pregnant woman;
2. when prenatal examinations or other medical conditions indicate that there is a high probability of a severe and irreversible foetal defect or incurable illness that threatens the foetus's life;
3. when there are reasons to suspect that the pregnancy is a result of an unlawful act;

The legislation in question raises some serious doubts as to its conformity to the norms laid down in the Constitution, and namely in its Article 38 and Article 30. As a matter of fact, the Constitution requires that the legislator ensures the protection of human life – as such closely related to the inherent (and hence supra-positive) nature of human dignity – at its every stage, i.e. before and after birth.

This principle is reflected in the judgment of the Constitutional Tribunal (case no. K 26/96): “The worth of the constitutionally protected legal good which is human life, including life in the prenatal stage of its development, shall not be subject to differentiation. There are no sufficiently precise and substantiated criteria to allow for its differentiation according to the developmental stage. Therefore, since its onset, human life shall become the value protected under the Constitution. This shall apply also to its prenatal stage”. Thus, based on the constitutional case-law, it becomes unquestionable that “from its onset, human life shall become the value protected under the Constitution. This shall apply also to its prenatal stage”.

Once introduced into the legal system the value differentiation of human life according to such utilitarian criteria as its quality, normativity or ability, opens the door to further exceptions. Then, usurping itself the power over life, the State could feel authorized to divest some further “useless” (from this point of view) groups of population of the protection of their lives. Upholding in the legal system of the prerequisite for waiving the absolute guarantee of the right to life in case of congenital defects causes the stigmatization of all people with disabilities.

### **Severe consequences of the abortion compromise**

Although over the last dozen or so years the provisions concerning the protection of human life have not changed significantly, in practice, more and more conceived, unborn children are being killed in Poland. This is an effect of broader interpretation of the existing exceptions to the general principle of the protection of life, including in particular the eugenic exception (so-called abortion compromise). If current legislation is preserved, it is likely that this process will soon allow mass abortion.

According to the statistics of the Ministry of Health, in 2014 - 971 legal abortion procedures were performed including 921 due to their suspected disability. In 2015 there were 1,040 induced deaths of conceived children and almost 96% of them due to a high probability of a severe and irreversible foetal defect or incurable illness that threatens the foetus's life.<sup>239</sup> According to data collected by the National Health Fund, in 2015, under Article 4b of the Act, there were 1998 abortions qualified as induction of miscarriage.<sup>240</sup>

This situation happened in other countries, including Spain, where in 1985 a law with the similar meaning as the one currently in force in Poland was adopted. In the first year of its legislation, 411 children were aborted. Although the regulations did not change, in the following year more than 16,000 people were killed, and after 25 years, more than 100,000 children have been killed every year.

This process is a result of the adoption of a defective legal design defining “conditions for the abortion of pregnancy”, which is often interpreted as establishing the right to abortion in specific situations. Therefore, in addition to the abolition of the existing abortion conditions, it is also necessary to change the legal structure of rescuing a woman's life, which should not be based on the right to abortion, but rather on the medically well-known exclusion of the unlawfulness of the act in relation to the state of higher necessity.

## **C. Slovakia**

### **Abortion in Slovakia: Law and Reality**

*Zuzana Brixova*

#### **Introduction**

Abortion on demand in Slovakia has been legal for more than 60 years. Up to 1950, all abortions were forbidden and punishable by law. It was the Slovak Penal Code adopted in 1950 introduced first, though minor, liberalisation, consisting in abandoning the culpability of abortion in cases when women's life and health were endangered, or in situation where one of

<sup>239</sup> Interpellation No 5624 on the National Health Fund statistics on the causes of abortion in Poland in 1993-2016.

<sup>240</sup> Included in the statistics as ‘M-17 procedure – induction of miscarriage’.



the parents suffered from serious hereditary illness. This change in law was the first step in the further liberalisation of abortion legislation that resulted in the current situation, i.e. induced abortion being allowed on any ground.

This summary is structured as follows. First, we will briefly comment on the attitudes of Slovak population towards abortion and whether they are reflected in the abortion behaviour. Second, we will focus on the current abortion policy. Against this background, we will comment on the relationship between the law and abortion statistic. Following that we will conclude with a brief discussion on recent trends in this area.

### The attitudes of Slovak population towards abortion

The substantial portion of Slovakian population believe that abortion should be permitted only in the very limited circumstances (60 per cent) and 11 per cent believe that induced abortion should be totally prohibited. Abortion on demand, which is legal in Slovakia now, is supported by 25 per cent of respondents only.<sup>241</sup>

While the current abortion legislation does not reflect the changing viewpoints of the Slovakian society, it is mirrored in the abortion behaviour. The statistics produced by National Health Information Center, a state-funded organization founded by the Ministry of Health of the Slovak Republic, responsible for, *inter alia*, collecting data on abortion, shows that the number of induced abortions is continually decreasing. According to the official data, in 2016 doctors performed 6,494 induced abortions that is 510 (7, 3 per cent) induced abortions less than in 2015.<sup>242</sup> If we compare the difference in the number of officially recorded induced abortions of years 2015 and 2006, the difference is indeed striking. The number of induced abortions decreased by almost 42 per cent (4, 980).<sup>243</sup>

### Current policy on abortion

Currently, the abortion is governed by Article 15 (1) of the Slovak Constitution, Act No. 73/1986 on Artificial Interruption of Pregnancy, Decree No. 74/1986, Healthcare Act No. 576/2004, the Penal Code and the decision of Slovak Constitutional Court from December 2007.<sup>244</sup> According to this decision, pregnant women have right to abort their unborn children.

Induced abortion is permitted on any ground. While Slovak law enacts a general statutory boundary for induced abortion that is 12 weeks of gestation regardless of the duration of pregnancy, induced abortion is nevertheless available even after 12 weeks if woman's life is endangered or if it is found that unborn baby's condition is "incompatible with life". Induced abortions performed in violation of respective laws are, according to the Slovak Penal Code, considered to be criminal acts.<sup>245</sup> Induced abortions that are performed without woman's consent are illegal and will be considered as a crime. In the similar vein, abetting a woman to

<sup>241</sup> P. Rábara, "Slováci a potraty: Čím starší, tým viac pro-life", *Postoj*, last updated May 26<sup>th</sup>, 2016. Available: <https://www.postoj.sk/14044/slovaci-a-potraty-cim-starsi-tym-viac-pro-life>

<sup>242</sup> National Health Information Center (NHIC), *Potraty v SR 2015*, 2016. Available: <http://www.nczisk.sk/Documents/publikacie/2015/zs1607.pdf>

<sup>243</sup> National Health Information Center (NHIC), "Potraty v SR 2015", *NCZISK*. Available: <http://www.nczisk.sk/Aktuality/Pages/Potraty-v-SR-2015.aspx>

<sup>244</sup> Decision PL. ÚS 12/01-297 of the Constitutional Court of the Slovak Republic. In this decision, the Constitutional Court *de facto* restricted the power of the Slovakian Parliament to legislate on abortion, i.e. that Slovakian Parliament, even in the unlikely event of existing political will, is prevented to enact substantial abortion restrictions.

<sup>245</sup> Article 151 of the Act No. 300/2005 (the Slovak Penal Code)

undergo an illegal abortion and assistance in induced abortion performed by pregnant woman herself is a crime.<sup>246</sup> In all these cases, complete impunity of pregnant woman is granted.<sup>247</sup>

### *Enacted safeguards and its limits*

Slovak law on abortion provides disincentives enacted with the aim of discouraging pregnant women from having an abortion that is the requirement of informed consent and mandatory waiting period. The requirement of informed consent specifies that doctor must provide woman seeking abortion with comprehensive information on abortion, both orally and in writing. This instruction must contain information on must contain information on the consequences of induced abortion, its risks, the current development stage of the unborn and the right of woman to obtain a sonographic record of the unborn, and alternatives to induced abortion.<sup>248</sup> Nevertheless, many doctors consider counselling obligation to be a mere formality and treat it accordingly.

Mandatory waiting period is applicable only when woman seeks abortion on demand, not in the case of health reasons.<sup>249</sup> This 48 hours' time period that commences when medical doctor sends a Report on Providing Information on Artificial Interruption of Pregnancy to a statistical agency National Health Information Center. In reality, the real observance of mandatory waiting period is rather illusory as some abortion providers of abortion declare on their websites that abortion at their facilities is fast and discreet<sup>250</sup> without any note on mandatory 48-hour waiting period, while others may simply date the form incorrectly, just to be formally correct.

While the safeguards described above were introduced with the aim to employ women seeking an induced abortion with means and time to make an informed decision, Slovak law also protects medical professionals from providing/assisting in abortion if this procedure violates their conscience.<sup>251</sup> The right to conscientious objection allows medical professional to refuse to participate in any procedure that violates their conscience.<sup>252</sup> Interestingly, also institutions as a whole can appeal to right to conscientious objection, though the scope if this right is limited compared to individuals.<sup>253</sup>

Therefore, the law on abortion might appear stringent on the paper, but reality proves different. Provisions that were put place in order to balance the rights of pregnant women and the rights of unborn children are often circumvented, ignored and their observance is not enforced by relevant authorities. Hence, the Slovak law on abortion neither provides sufficient protection to woman considering having an abortion (in respect of making an informed choice on abortion), nor does it enact sufficient guarantees to protect the life of the unborn.

### *The relationship between the law and statistic*

Notwithstanding the inadequacies of the law and its lack of enforcement, the fact remains that the number of induced abortions is continually decreasing. The law on abortion has naturally a significant influence on the number of induced abortions performed and every liberalisation results in increase in abortions, while enacting restrictions results in the opposite. After the

<sup>246</sup> Article 152 of the Act No. 300/2005 (the Slovak Penal Code)

<sup>247</sup> Article 153 of the Act No. 300/2005 (the Slovak Penal Code)

<sup>248</sup> Article 6b of the Healthcare Act No. 576/2004

<sup>249</sup> Article 6c of the Healthcare Act No. 576/2004

<sup>250</sup> MediKlinik, "Umelé prerušenie tehotenstva", *MediKlinik*. Available: <http://www.mediklinik.sk/sk/gynekologia-umele-prerusenie-tehotenstva>

<sup>251</sup> Article 24 (1) of the Slovak Constitution, Healthcare Act No. 576/2004 and Act No. 578/2004 on Healthcare Providers

<sup>252</sup> Act No. 578/2004 on Healthcare Providers

<sup>253</sup> Article 12 (2) and 12 (3) of the Healthcare Act No. 576/2004

legalisation of induced abortions in Slovakia, their number skyrocketed in the course of three years (24, 244 induced abortions in 1961, while in 1958 doctors performed 12, 383 induced abortions). During the communist regime, the number of induced abortions had continued to grow. After its collapse in 1989, the number of induced abortions started to decrease. This trend could not be attributed to the introduction of the more stringent laws (the change of regime did not trigger the change of the law on abortion). It is only a hypothesis but this might be the outcome of the newly gained freedom of speech that have had raised the awareness on induced abortions.

### Recent trends

Since the fall of communism, the number of induced abortions performed every year has been falling. According to official statistics, in 1989 approximately 50, 000 of induced abortions were performed, while in 2016 the number dropped to 6, 494.<sup>254</sup> Although these numbers does not provide comprehensive information on the total number of induced abortions (i.e. it does not contain information on the number of abortions caused by contraceptives, morning-after pills, abortion pills as well as the number of human embryos that died in the process of assisted reproduction as these data are not collected) the difference is striking. It is even more so, when it is realised that the drop in abortion rates cannot be explained by the increase in the use of contraception, as this figure also exhibits a continuous decrease.<sup>255</sup>

As there has not been any research conducted neither by the Ministry of Health, nor the Statistical Office of the Slovak Republic, nor the National Health Information Center or any other body that would attempt to explain this trend, we can only speculate as to the reasons of abortion decrease. First plausible explanation builds on the assertion that at least some induced abortions were recorded as spontaneous abortions as a cover-up.<sup>256</sup> It is also possible that the number of induced abortions decreased due to the higher use of morning-after pills and especially abortion pills. This is only a speculation as there are no data on the use of abortion pills, as they are illegal, although their usage is undoubtedly increasing.<sup>257</sup> Some might try to explain the decreasing induced abortion numbers by the influence of Churches and massive pro-life advocacy. This explanation has also its limits as the number of believers is continually decreasing and the Churches do not conduct any systematic pro-life activities. Yet another explanation to the apparent decrease in the rates of induced abortion may lie in increasing claims to conscientious objection invoked by physicians in reproductive health services and reproductive health centres themselves.<sup>258</sup> However, only comprehensive research on this issue will provide an insight into real reasons in the decrease of induced abortions.

### Conclusion

This short contribution attempted to provide a brief overview that allows a reader to gain the basic level of understanding of abortion reality in Slovakia. We hoped to illustrate that due to the lack of enforcement, the seemingly stringent laws on abortion are not observed in practice. Hence, the safeguards enacted by law to protect women and their unborn children are in reality

<sup>254</sup> National Health Information Center (NHIC), *Potraty v SR 2015*, 2016. Available: <http://www.nczisk.sk/Documents/publikacie/2015/zs1607.pdf>

<sup>255</sup> National Health Information Center (NHIC), *Činnosť gynekologických ambulancií v SR 2015*, 2016. Available: <http://www.nczisk.sk/Documents/publikacie/2015/sp1606.pdf>

<sup>256</sup> National Health Information Center (NHIC), *Potraty v SR 2015*, 2016. Available: <http://www.nczisk.sk/Documents/publikacie/2015/zs1607.pdf>

<sup>257</sup> See, e.g. Modrý koník, "Skúsenosti s potratovými tabletkami", *modrykonik*, Available: <https://www.modrykonik.sk/forum/choroby-a-komplikacie/skusenosti-s-potratovymi-tabletkami/>

<sup>258</sup> See, e.g. J. Krempaský, "Potraty odmieta väčšina lekárov", *SME*, last updated September 2<sup>nd</sup>, 2016 Available: <https://domov.sme.sk/c/5530004/potraty-odmieta-vacsina-lekarov.html>

toothless. We also wanted to draw your attention to the surprising trend, namely that the number of abortions is continually decreasing (together with the contraceptive use) and there are growing negative attitudes of general public towards induced abortions.





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