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BRIEF OVERVIEW OF THE BOOK

DROIT ET PRÉVENTION DE L'AVORTEMENT EN EUROPE

LES FACTEURS DE RISQUES DE L'AVORTEMENT
LES CONSÉQUENCES MÉDICALES ET SOCIALES DE L'AVORTEMENT
LA PRÉVENTION DE L'AVORTEMENT : GARANTIR LE « DROIT DE NE PAS AVORTER »
LA DÉCONSTRUCTION DE LA LOI VEIL
L'AVORTEMENT ET LA COUR EUROPÉENNE DES DROITS DE L'HOMME
LES ENFANTS SURVIVANT À L'AVORTEMENT ET LES INFANTICIDES NÉONATALS
L'AVORTEMENT EN RAISON DU SEXE DE L'ENFANT
LA LIBERTÉ D'EXPRESSION EN MATIÈRE D'AVORTEMENT
LA LIBERTÉ DE CONSCIENCE FACE À L'AVORTEMENT

LIBRE PROPOS

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General Presentation

This Book, available in French only, will be published in English in a few months.

Forty years and more than eight million abortions after the Veil law (legalising abortion) was passed, the subject is still a highly sensitive one.

One must be brave to write and to publish about abortion, and one needs an independent mind to comprehend this subject without prejudice. That is why I would like to thank the publisher of this text, who I have no doubt will be rewarded. There is worth in daring to go on those paths that fashionable care urges us to avoid. There is also a deep interest in analysing this subject through new ways.

With fairness and humanity have we lead this research beyond the straight limits of the doxa, hoping we would find along this research some approaches allowing more human answers to the causes and consequences of abortion. The aim of this book is to give the conceptual and legal bases to a policy of prevention of abortion. It is not a book of appeal which would opposed, once more, a "right to abortion" of the mother to a "right to life" of the child. For the last forty years, nothing good emerged from these dramatic dialectics between personal freedom and human dignity. Freedom and dignity are often but words, if not slogans, wrapping up and hiding human realities without fully understanding them. Yet, neither abortion nor the child are abstract concepts; they are always human realities twice incarnate, made of flesh and blood, and often of a lot of sufferings.

This book wants to be realistic and aims at giving the basis of legal developments on an in-depth factual study of causes and consequences of abortion, written in the light of numerous recent scientific researches. These causes and consequences incite to consider abortion not as an abstract freedom but much more as a social and public health problem, requiring a prevention policy. Such a policy was in fact what Simone Veil wanted when she refused any right to abortion and wanted only to tolerate it as the last solution, then a lesser evil. It is also and still how international and European laws consider it, both of them offering a strong legal support to a prevention policy, and even to a "right not to abort".
Against Mrs. Veils' declared intention, abortion slowly became not only *tolerated* but a *freedom*. This change of perspective had deep implications for the whole society and disrupted the legal order further than on the question of birth regulation and the question of the situation of women, this change also affects other rights and principles, such as the prohibition of sexual and genetic discriminations, the rights to life, to freedom of conscience, and also to freedom of speech and manifestation. All these aspects are chapters of this book.

The question of the "right to life" of the child is examined throughout this book without being part of a specific chapter, for it is first a scientific and ontological question. In this regard, the authors recognize that every individual life starts from conception, grows and continue until death, and that settling a threshold above which or beyond which a human being would not yet be or would not anymore be human, is necessarily arbitrary.

For practical reasons, and to allow a better reading of this book, this general presentation sums up every one of its chapters.

Chapter I: "The Risk Factors of Abortion"

The study on "the risk factors of abortion" shows that emotional instability, social precarity and the splitting up of families are major social causes of the 220 000 abortions declared every year in France. Half of the French women declare that the "*material situation*" constitutes the "*main influence pushing a woman to choose abortion*"[1]. What is more surprising and paradoxically visible, is that the spreading of contraception does not reduce abortion beyond the limit of failing rate of contraception, for *72% of women who abort in France use contraception*[2]. Thus, if there are actually less unplanned pregnancies in ratio of the number of sexual intercourse because of contraception, a wider number of them ends in an abortion (four out of ten in 1975, six out of ten nowadays[3]), which explains this still high rate of abortions. Another visible and informative paradox is that the number of pregnancies and abortions of underage girls is higher in countries in which sex-education is the most widely to be found, such as France, Belgium and Sweden. On the contrary, the rate of abortions was divided by two in Italy while contraception is not widely developed there and that sex-education is non-compulsory. The study of these risk factors and the comparison country by country show that abortion is conditioned by cultural and socio-economic factors. It is not a purely free act, but mainly a reality depending on those circumstances.

Chapter II: "Medical and Relational Effects of Abortion"

This chapter establishes the fact, were it needed, that abortion is not a harmless act, even from the sole point of view of the woman and the couple. It is a risk factor for women's health, even more when they are underage. There is an 80% higher risk of death for women who aborted compared to women who gave birth. This high risk is due, particularly, to higher risks of psychological disorders, with a rate of suicide multiplied by 6.5 in women who aborted compared to women who gave birth. The same risks apply to developing addictions to alcohol or drugs. In women who had an abortion before the age of 25, the risk of psychological disorders is particularly high: 42% have a nervous breakdown, 39% suffer from anxiety and 27% say they have suicidal thoughts. As for underage women, the rate of suicide or suicidal thoughts is up to 50% of them. Abortion also affects men: 40% of them suffer from a strong psychological distress because of the abortion. It also affects couples: 22% of relationships end after an abortion. Beyond these information, abortion also has consequences for the whole society, mainly demographic consequences. This truth, that is often hidden, is very real: 83% of French women say that "*abortion leaves psychological marks that are hard to live with for women*"[4].

People often say that legalization of abortion would reduce the rate of maternal death. Indeed, an abortion is less dangerous when it occurs in a medical environment. Yet comparative studies between countries with the same level of development show that, the rate of maternal death is lower in countries which highly restrain abortion. For example, in 2010, the rate of maternal

[1] Poll ordered by the association Alliance Vita, taken from 19 to 23 Feb 2010 by a representative sample of 1006 women aged 18 or more.
[2] 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

[3] *H. Leridon, N. Bajos, C. Moreau, et al.*, « Pourquoi le nombre d'avortements n'a-t-il pas baissé en France depuis 30 ans ? », *Population & Société,* n° 407, décembre 2004.
[4] Poll ordered by the association Alliance Vita, op. cit.

death in Ireland was 1 to 2 for 100 000 birth, whereas it was of 10 for 100 000 birth in England and Wales[5].

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

Studies on causes and consequences of abortion show that this phenomenon is a social and public health problem. As such, it calls for a policy aiming at its prevention is the same way. The object of the chapter on "The Prevention of Abortion: Guaranteeing the Social Right Not to Abort" is to identify the legal grounds and the methods of a prevention policy. It is based on the analysis that 75% of the women who aborted say they were lead to it by social or financial pressures[6]. This analysis blames the efficiency of the policy of prevention of abortion, which should, in principle, give an appropriate answer to the causes of this phenomenon. Yet one must say that the first cause of abortion is not pregnancy, but the context in which it happens. A woman does not abort because of her pregnancy (it is only its "triggering" factor), but because of specific circumstances, for the same woman, in other circumstances, may not have aborted. Abortion is hence largely the result of a conditioning, the society being partly responsible for it.

This chapter first recalls the legal bases of the duty of prevention and of the "right not to abort" and describes, particularly, general obligations to protect families, motherhood and human life. Hence, for example, States recognise that a "Special protection should be accorded to mothers during a reasonable period before and after childbirth."[7] More precisely, States committed to reducing the number of abortions. During the International Conference on Population and Development in 1994, called *Cairo Conference*[8], the governments committed to "*Governments should take appropriate steps 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). This chapter then exposes what could be the efficient forms of guarantee the "right not to abort", in the form of bonds aiming at preventing abortion which are oppressive on society. A policy of prevention of abortion must answer social and economic "unplanned pregnancies" and abortions: families' frailty, economic precarity, limited homes, working difficulties and constraints, etc.

Yet, most of these causes should, in principle, answer the different "social rights" that the States committed to guarantying. Hence the *European Social Charter* and the *International Covenant on Economic, Social and Cultural Rights* guarantee between others right to housing, family protection, motherhood protection, protection of life before birth, conciliation of family life and working life, etc.

Prevention first starts with a better sexual and affective, as well as physiological education, which informs truly about the feminine cycle and the development of the child, about the relational dimension of sexuality, as well as about the concrete truth of abortion and its consequences. Such an education would help women and couples to act in a more responsible and human way. The guarantee of the "right not to abort" must be assured by prevention not only of

[5] 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.

[6] According to the Guttmacher Institute http://www.guttmacher.org/pubs/fb_induced_abortion.html

[7] International Covenant on Economic, Social and Cultural Rights, art. 10.2

[8] International Conference on Population and Development (ICPD) in Cairo, Egypt 5–13 September 1994

irresponsible sexual behaviours and "unplanned pregnancies" they produce, but also of abortions, even when the woman is already pregnant. This policy implies not only an adequate education but also a determined fight against forced and coerced abortions. If education can significantly contribute to prevention when pregnancy or abortion are due to immaturity, ignorance or irresponsibility, it can do nothing against another cause: when women are forced or coerced into having an abortion. Indeed, "forced" abortions are clearly prohibited and even qualified as crimes against humanity since the Nuremberg trials. But what about "coerced" abortions? The difference between forcing and coercing is often very thin. Yet the decision to have an abortion is often the result of a coercion which can have different forms: social and medical pressure; pressure and irresponsibility from the father; pressure by the family, especially with underage girls; pressure by the employer and every form of material pressure (unemployment, housing problems and financial problems). These constraints directly lean on the freedom of the women and of the couples; they hinder the "*fundamental freedoms*" of women, a right recognised in the Beijing Conference, 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*"[9] These constraints also oppose the call for States by the Parliamentary Assembly of the Council of Europe to "allow women freedom of choice and offer the conditions for a free and enlightened choice without specifically promoting abortion" and 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."[10]

One may rely on social rights to establish a more ambitious policy of prevention of abortion. Indeed, every time a woman has an abortion for an economic or social reason, it means a violation of her rights and of those of her couple. Society cannot be satisfied with bringing up abortion as the sole answer to women's difficulties. Yet several European countries have managed to reduce the number of abortions, and their experience should allow to identify and generalise the correct practises they implemented.

Nevertheless, an authentic and efficient prevention policy based on social rights supposes the conviction that every human life has a value and that every adult has an equal right to building a family, whatever his/her social condition. In other words, it requires to abandon the idea that abortion would have the social virtue of limiting the size of poor families. A prevention policy also implies to abandon the idea of promoting abortion as a freedom or as a fundamental right.

Chapter IV: "The Deconstruction of the Veil Law"

Mrs. Simone Veil never opposed decriminalisation and prevention of abortion. As she said in her speech in the French National Assembly (*Assemblée Nationale*), to her, prevention was a priority and abortion must "*stay the exception, the ultimate solution to desperate situations*" She added that if her law "*admitted the possibility of abortion, it is to control it and, as much as possible, to prevent women from resorting to it.*"[11]The Veil law allowed abortion in the exceptional cases when the women, after having been informed of available assistance and having taken a cooling-off period, reckoned that abortion was the sole solution in her distress situation.

[9] United Nations Fourth World Conference on Women, 4–15 September 1995

[10] PACE, Resolution 1607, in 2008, §§ 7.3 and 7.8

[11] *JO 27 November 1974 p. 7000*

Yet all the measures that were planned or maintained by the Veil law have been suppressed one after the other, which resulted in abortion going from "tolerated evil" to "freedom". The chapter about "The Deconstruction of the Veil Law" opposes the original intention of Simone Veil with the later laws which progressively suppressed these restrictive dispositions. It is the case for example with the non-refund of abortion, for MRS. Veil said that "society tolerates [abortion] but it will neither refund it nor encourage it."[12] Nowadays, the cost of abortion is better refund than that of pregnancy. Likewise, the crime of incitement to abortion was suppressed in the 4 July 2001 law, and replaced by an opposed crime, the crime of obstruction to abortion[13]. The proceeding of medical and psycho-social appointment was made optional for women of-age. About the eight-days cooling-off period, it was reduced in 1979 and suppressed in 2016. Moreover, while, in the 1975 law, abortions could only be performed by doctors in hospitals, this disposition was suppressed as well as a means to increase the availability of medical abortions. As for the conscientious objection, which could be invoked by every member of the medical staff, it was reduced, the law now obliging heads of staff[14] and hospitals, be they public or associated to the public service[15], to organise abortion services. For its part, the reference to the "distress situation" of the woman as a condition to aborting was suppressed by the law of 4 August 2016[16], for the very existence of such a condition, even if it were mainly theoretical, showed that abortion was considered a toleration, not a freedom.

Finally, in a resolution of 24 November 2014, celebrating the 40th anniversary of the Veil law, abortion has been proclaimed a "*fundamental right*", and even more, a "*universal right*", and was presented as a "*necessary condition for the building up of real equality between women and men and of a society of progress*"[17]. In contrast, in her speech to the Assemblée Nationale, Mrs. Veil declared that her law "create[d] no right to abortion"[18] and that abortion "always [was] a tragedy and always [would be] a tragedy"[19] that had to be "avoided at all cost"[20]. Were it to be given today, such a speech would sound retrograde to numerous people who still reclaim of Simone Veil.

Chapter V: "Abortion and the European Convention of Human Rights"

While abortion was the object, when the Convention was adopted, of a largely criminal repression, nowadays the situation is quite the opposite. Following the evolution of morals, the European Court and the former Commission have somehow progressively included this practice in the legal order of the Convention. This inclusion was difficult, for it necessarily resulted in disrupting the structure of human rights. Indeed, it implied and accepted the fact that one could balance the life of a very young person with the will of an adult, and even sacrifice it. Since the mid-1970s, the instances of Strasbourg have built a jurisprudential corpus on abortion, through about twenty judgements and decisions. The aim of the chapter on "Abortion and the European Convention of Human Rights" is

[12] *JO 27 November 1974 p. 7001.*

[13] Loi **n° 93-121, 27 January 1993.**

[14] *Article 8, law of 4 July 2001.*

[15] Article L. 2212-8 states that "a private health facilities can refuse abortions to take place on its premises" except when the facility is associated to the public services ("collective interest" or concession contract)

[16] Law n° 2014-873 of 4 July 2014 on Real Equality between Women and Men http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029330832&categorieLien=id

[17] Assemblée Nationale, *Résolution réaffirmant le droit fondamental à l'interruption volontaire de grossesse en France et en Europe* ; 26 November 2014.

[18] *JO 27 novembre 1974 p. 7001*

[19] Id. p. 7000

[20] Id. p. 7001

to pull out from this corpus the legal scheme of abortion in the context of the Convention and to rationally criticise it. This legal scheme is necessarily conditioned by the status of its *object*, which happens to be also a *subject*, namely the *unborn child,*[21] and the Court built up its reasoning on such a consideration. One can note through its jurisprudence that, as far as the Court is concerned and as in most of the national laws, abortion, so far, still follows a tolerance policy and one of exception to the right to life. This tolerance is legally based on the *petitio principii* that it would be impossible, and even more not desirable, to know whether the unborn child is a person in the scope of the Convention. As it is based on such impossibility, the Court tolerates the legalisation of abortion by the States. Nevertheless, the Court has always refused to explicitly exclude the unborn child from the ambit of the Convention and to judge that this unborn child be not a person. As long as it will be so, it will be impossible to claim a right to abortion in the scope of the Convention, and every abortion performed will, in theory, have to be justified by the rights and interests guaranteed by the Convention and proportionate to "conflicting rights and interests including those of the unborn child"[22].

Chapter VI: "Children Surviving Abortion and Neonatal Infanticides in Europe"

The chapter on "Children Surviving Abortion and Neonatal Infanticides in Europe" reveals a tragic, and largely hidden reality, namely the fact that some children can, in some cases, survive late abortions and be left to die alone or euthanized. This reality is cruel, it also shows that the right to life is not always guaranteed from birth.

To be born alive during an abortion is nothing exceptional, for such an event can happen as early as 16 weeks of amenorrhea, sometimes even before that, and that the more a pregnancy is forward, the higher the probability for the foetus to be born alive. Thus, at 20 weeks, a child can live several hours, sometimes even more than a day, without any help. This study takes an inventory of hundreds of cases in Europe and in America. Faced with the difficulty of finding information about such cases, this chapter gathers testimonies of doctors and midwives. According to these testimonies, new-borns are killed or abandoned to death by a lethal injection, suffocation, drowning, or absence of care. According to a study published in *The Lancet*[23], 73% of French doctors in neonatology declared they had already euthanized new-borns, while infanticide is prohibited and criminally sanctioned everywhere in Europe. This study not only denounces these practises, but also invites to better take care of these situations.

Chapter VII: "Sex-selective abortion"

Legalisation of abortion, associated with the development of medical techniques, allowed an always higher number of parents to know earlier and earlier the sex of the child and to decide to have an abortion when said sex did not suit them. This prenatal selection is mainly done towards girls.
Sex-selective abortions is very developed in Asia, for the pressure on couples to reduce the number of births increases the selection and elimination of girls. While, previously,

[21] According to the use in Court, the expression unborn child is used to mention the embryo and the foetus.
[22] ECHR, *Tysiac vs Pologne*, § 106; *Vo vs France*, §§ 76, 80 et 82 ; *A., B. C vs Irlande.*, § 213.

[23] EURONIC study group, "End-of-life decisions in neonatal intensive care: physicians' self-reported practices in seven European countries", *The Lancet*, Vol. 355 (9221): 2112 – 2118, 17 June 2000, http://www.thelancet.com/journals/lancet/issue/vol355no9221/PIIS0140-6736%2800%29X0195-X

families had children until they had the number of boys they desired, nowadays they need to have one or more boys within a less numerous family. Sex-selective abortion of girls, or "feminicide", is hence the result of policies of demographic control and family planning in a cultural context which is in favour of boys. In Asia, the demographic and social consequences of such a phenomenon are becoming disastrous. Indeed, because of the prenatal selection, India and China together miss 60 million women.[24] In China, one million men arrive every year to the age of marriage but cannot find a spouse. It results in frustration and isolation which in turn result in violence, with a deep increase of gang rapes.

In Europe, sex-selective abortion is increasing as well. It is legal in Sweden and tolerated de facto in many other countries, particularly in the United Kingdom. While this phenomenon is still mainly limited at the moment to immigrated populations, it will probably, like in the United States, spread to the whole population. Indeed, the development of reproductive technology and of the culture of a "right to a child" help the increase of supply and demand in the technics to choose the sex of the child. This choice can be made through the selection of the sperm, the in vitro fertilisation with a selection of the embryos before the implantation, or through abortion. Ever since 2011 it has been technically possible to know the sex of the child, at a very small cost, with a blood test of the mother, as soon as nine weeks of amenorrhea, namely when abortion is still legal and with no motive to be explained in most countries. This phenomenon of selection of children is thus certainly going to increase in industrialised countries, as a new aspect of denaturation of procreation.

Since the 1990s, international and European institutions have firmly condemned this practise, going as far as defining it as a "crime and a severe violation of human rights"[25] and "*Female infanticide and female foeticide should be openly condemned by all Governments as a flagrant violation of the basic right to life of the girl-child.*" Yet, in the absence of true political will, these condemnations stayed purely words and were not met, neither in Europe, where a questioning of abortion was feared, nor in Asia, probably because of the general will to contain the demographic growth, for the suppression of girls offers the advantage of highly reducing the demographic growth without affecting the quality of the workers.

Chapter VIII: "Freedom of Expression and Demonstration on Abortion"

While the condition to accept an abortion, namely "a distress situation", was abolished with the law of 4 July 2014, women who think about having an abortion are often in a situation of particular frailness and vulnerability. This is because of this vulnerability that Simone Veil had maintained the crime of incitement to abortion[26]. Yet this crime was suppressed in the 4 July 2001 law because of the double motive that it constituted a "threat for the action of structures and associations guiding women in their abortion process" and that "such measures are shocking for they suggest that abortion is reprehensible, or at the very last barely tolerated"[27] such a fate awaited the crime of propaganda or advertisement for abortion facilities and

[24] « La Chine, pays le plus masculin du monde » https://www.ined.fr/fr/tout-savoir-population/memos-demo/focus/la-chine/

[25] European Parliament resolution of 8 October 2013 on Gendercide: the missing women? (2012/2273(INI))

[26] Law of 31 July 1920 reprehending incitement to abortion and anticonception propaganda. JORF 1st August 1920, p. 3666.

[27] Sénat (French Senate), Information Report n° 200 (2000-2001) by Mrs. Odette TERRADE, in the name of the delegation for the rights of women, brought the 24 January 2001.

means. On the contrary, a crime of "obstruction to abortion" was created by the Neiertz law in 1993, this time to protect women against people and speech aiming at convincing them not to abort.

This chapter, dedicated to freedom of speech, confronts the French exception of "obstruction crime" to the European guarantee of freedom of speech as regards abortion. The European Court indeed ruled out in a dozen cases[28] questioning restrictions to freedom of speech or demonstrations regarding abortion. The Court also pointed out there "can be no doubt as to the acute sensitivity of the moral and ethical issues raised by the question of abortion or as to the importance of the public interest at stake"[29] As a subject of public interest; the speech on abortion receives a very high protection[30], about as high as for political speech[31]. Implementing these principles, the European Court recently condemned Germany for forbidding a man to hand out "pro-life" flyers in the neighbourhood of an abortion clinic, even though the flyers associated abortion and Nazism. Recently the Supreme Court in the United States also guaranteed freedom of speech on abortion, judging that such a freedom includes the right to talk to pregnant women in the vicinity of abortion clinics to offer them help and information and to try to convince them not to abort.[32]

From then on, the implementation of the crime of obstruction could be conform to the European norms only through a restrictive reading, even though the definition of this crime allows a wide reading. In the current form of the jurisprudence of Strasbourg, it could not be used to repress criticism of abortion and the people who do it, except in ignoring the provisions of the Convention. Equally, speech trying to convince directly women and their relatives not to abort should escape the ambit of this law. On the contrary, it could include acts aiming excessively at restraining access to abortion clinics and to their operations.

Chapters IX to XI: "Freedom of Conscience against Abortion"

Even if freedom of conscience against abortion (i.e. the right to conscientious objection) is still firmly guaranteed, it is nevertheless currently the target of criticism, for conscientious objection is sometimes regarded as an obstacle to an eased access to abortion. Hence the right to abortion would be opposed to the right to conscientious objection. The study of conscientious objection against abortion is developed in three chapters, the first one showing the French law on the subject, the second one showing the European and international law, and the third one is about

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[28] Cases in which the petitioners were for abortion: *Rommelfanger vs Federal Republic af Germany*, n° 12242/86, decision of the Court 6 Sept. 1989; *Open Door and Dublin Well Woman vs Ireland*, n° 14234/88; 14235/88, judgement of 29 October 1992; *Women on Waves and others vs Portugal*, n° 31276/05, judgement of 3 February 2009. Cases in which the petitioners were agasint abortion : *Plattform arzte fur das leben vs Autria*, n° 10126/82, decision of the Commission of 17 October 1985; *D.F. vs Autria*, n° 21940/93, decision of the Commission of 2 September 1994; *Van Den Dungen vs The Netherlands*, n° 22838/93, decision of the Commission of 22 February 1995; *Bowman vs United Kingdom*, n° 141/1996/760/961, judgment of 19 February 1998 ; *Pichon and Sajous vs France*, n° 49853/99, decision of 2 October 2001; *Annen vs Germany*, n° 2373/07 and 2396/07, decision of 30 March 2010; *Hoffer and Annen vs Germany*, n°s 397/07 and 2322/07, judgment of 13 January 2011; *Annen vs Germany*, n° 3690/10, judgment of 26 November 2015.

[29] § 62: "The Court also points out that the applicant's campaign contributed to a highly controversial debate of public interest. There can be no doubt as to the acute sensitivity of the moral and ethical issues raised by the question of abortion or as to the importance of the public interest at stake (see *A, B and C v. Ireland* [GC], no. 25579/05, § 233)."

[30] *Hoffer and Annen vs Germany*, n°s 397/07 et 2322/07, 13 January 2011, § 44 ;

[31] *Axel Springer AG c. Allemagne* (n° 2), n° 48311/10, 10 July 2014, § 54;

[32] USSC, *McCullen v. Coakley*, (573 U.S. ___ (2014), 26 June 2014.

the possibility for institutions to refuse abortions in their facilities.

In the French law, conscientious objection is part of the more general ambit of medical right. It can lean on freedom of prescription acknowledge to doctors in the interest of the patients, as well as on the freedom of the doctors, as "professionals" to refuse to act for a motive, either technical or as a precaution, or for other varied causes such as tiredness, lack of availability or of competence in the required specialisation. But there really is conscientious objection only when the doctor invokes his professional raison d'être –namely, save human lives– against the request of a medical act detrimental to integrity, dignity and life of a person, and hence justifies his refusal.

In European and international law, the right to conscientious objection is clearly not disputed, but, on the contrary, recognised as a constitutive part of individual freedom of conscience. Hence the right to conscientious objection differs from the access to abortion for it is a fundamental right guaranteed by human rights, whereas access to abortion is, if ever, but a positive law guaranteed by the national legislation. The right to conscientious objection hence has a higher value than a right to abortion potentially created by a national law. As a result, the State must organise health services in such a way that, be it its will, access to abortion be offered without harming conscientious objection.

As for the possibility for institutions to refuse abortions in their facilities, it is also often disputed, on the reasonable ground that institutions do not have a personal conscience and hence cannot invoke conscientious objection. It does not mean that an institution is deprived of protection: it can, under the freedom of association combined to freedom of religion, which both have a collective dimension, refuse to take part in the achievement of acts contrary to its ethos. This right is guaranteed by the "right to autonomy" of institutions based on moral or religious convictions.[33]

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What happened during these forty years to make abortion, which was previously tolerated as a lesser evil, a fundamental right in France, and even to pretend it is universal? No revolution happened, but the continuation of the same groundswell which had already allowed the Veil law: the progressive erosion of the conscience of the value of prenatal life and the correlative affirmation of personal will. But this double move is actually a single one: the increasing superiority of the *will* on the *being* in a culture losing its metaphysical intelligence, namely the understanding of identity and of the value of the being in itself. Hence the reversal of perspective which happened between 1974 and 2014 is but apparent: it results in a surrender of the rests of metaphysics which still gave prenatal human life a bit of dignity.

Yet, according to the materialistic point of view, prenatal human lives are not worth as such, they are masses of matter in a still precocious stage of progressive individualisation, which will continue after birth. Still deprived of conscience and free-will, these human lives have value only thanks to and according to the will of adults (generally the mother) who are responsible for them. Their lives will be valuable proportionally to the project the adults will have for them.

Nowadays, ignoring the inherent dignity of every prenatal human life, the speech on abortion is often reduced to the unilateral affirmation of personal will, as shown by the expression "a child, if I want, when I want" and the slogans of the government campaign in 2015 "my body is mine", "abortion, my body, my choice, my right"[34]

[33] ECHR *Fernandez-Martinez vs Espagne*, GC, n° 56030/07, 12 June 2014, § 127.

[34] Slogan of the first national action program to ease access to abortion, January 2015.

or even "sexuality, contraception, abortion, a right, my choice, our freedom"[35] This campaign do not aim at preventing abortion, but on the contrary at developing it, as if abortion were not an evil to avoid, but indeed a blessing to possess. What is the aim of this? What are the public interests in promoting abortion?

Promoting abortion as a freedom expresses a fundamental philosophical choice which would be a vital condition to a "society of progress" as proclaimed by the resolution of the National Assembly in 2014. Indeed, the fact of claiming that abortion is a freedom, which legitimises the superiority of the will on the being, goes further, by what is at stake, than the question of birth regulation. The legal and massive practise of abortion changes the relation of our society to human life: it desacralizes life and denatures procreation, for it supposedly would free man from its superstition towards nature. Abortion opens the way to rational control of human life, considered as a material; hence humanity increases its ability to create itself, making it more a "master and owner of nature" in the outcome of the Cartesian project.

By breaking, through abortion, the icon of respect of life, society reaches a new "freedom": scientific liberty which leads to controlling procreation and life, but also sexual freedom which is eased by contraception, but guaranteed by abortion. Then no more scientific and sexual "freedoms" without abortion.
Abortion also has a social effect, result of multitude of personal decisions. It condemns those who use it to materialism and forbids them, to avoid suffering, to think that the human being has a spiritual soul. This "condemnation", which is also a "liberation" for the opposite point of view, is not without effects on society, where abortion affects one third of women. Finally, because it allows a higher decrease of posterity for the poorest women, abortion would keep the social virtue of regulating misery at its source. Well before feminism, materialism and Malthusianism have worked to liberalise abortion.

Indeed, from the point of view of progressive thinking, the liberalisation of abortion is a decisive turning point for humanity. But this ideology, entirely focused on its ideals of freedom and progress, does not answer human frailness, very real sufferings lived day after day by women and their relatives. There are two levels of perception of abortion: the one of ideology, trying to change society; and the one, painful, of social reality, which is concrete, personal and not at all relieved by the abstract considerations on human progress and on freedom.

Asserting that abortion is a right and freedom not only disrupts the relation of society with human life, but also the legal order. The fundamental freedoms and rights are constitutive of the human person, and the State, while making sure they are applied, but recognises and respects them. Hence the State cannot create a fundamental right or freedom, such as the right to freedom of speech or freedom of association, if this right is not already part of the human nature. In fact, the fundamental rights protect the free practise of capacities through which a person can accomplish himself as a human being: thinking, creating, expressing himself, associating, praying, getting married and building a family, all are capacities through which every person becomes more human. Stating that abortion would be the exercise of a fundamental right implies to consider abortion as a means of personal accomplishment, or of humanisation. It is probably what Nathalie Bajos (member of the High Council for Equality) meant when

[35] Slogan of the 2008 campaign of the family planning and the Regional Council of Île-de-France (Paris region)
http://www.lefigaro.fr/actualites/2008/01/19/01001-20080119ARTFIG00146-polemique-autour-d-une-campagne-sur-l-avortement-.php

she stated that abortion can be for women "one of the founding events of their adult life"

The change of perspective consisting in considering abortion not anymore as a tolerated evil but as a right and a freedom allows to impose a unilateral solution to the conflict between abortion and the right to life. This change disrupts the legal order and provokes a series of contradictions and nonsense, because stating a freedom tends to impose it on competing realities.

Thus, making abortion access the status of freedom makes any policy of prevention absurd: exercising a right cannot be refused. Another effect is that if abortion is a fundamental right, then the life of the foetus of embryo cannot have a value, for a fundamental right is supposed to be absolute. Its limitations are only external, linked to the circumstances of its exercise, and not inherent to its object. Yet, as the embryo and the foetus are the very object of abortion (just as thoughts are the very object of freedom of speech), there can be a right to abortion only if the embryo and the foetus have no rights for themselves. Not recognising rights to the unborn child leads to all sorts of contradictions. Why limit the exercise of a fundamental right only to the first twelve weeks of pregnancy? If abortion is a fundamental right, a blessing in itself, why allow the medical staff to refuse to take part in it for moral reasons? These moral reasons can only be evil. Not accepting to do something good that someone has the right to have done is evil, but allowing conscientious objection reminds that abortion was generally introduced as a lesser evil. Moreover, if abortion is a blessing, nay a fundamental right, why should it be accepted that other people may try to dissuade women from having one? Even more, why prohibit sex-selective abortions, or abortions because of any characteristic of the child?

Thus, writing down abortion as a fundamental right, and not anymore as a tolerated lesser evil, brings consequences which largely exceed the sole question of the respect of the life of the unborn child, for it is a true disruption of the resulting law. *In fine*, women are not helped in their problems by the proclamation of this new freedom, and the rights and freedoms of third parties are affected.

Women's situation can get better, and the law get its coherence back, only by reintroducing the question of abortion in the prospect of concrete prevention, as opposed to abstract freedom.

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