
ABORTION IN EUROPEAN LAW: HUMAN RIGHTS, SOCIAL RIGHTS AND THE NEW CULTURAL TREND

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This article analyses 1) whether there is a right to abortion within the European Convention on Human Rights, 2) whether abortion is a violation of social rights, and 3) whether a recent trend in Europe toward a restriction on abortion shows abortion is a social problem, and not a right or individual freedom.

Legislators and organizations hoping to better protect children and women from abortion will find here criticism of the idea of an existence of a human right to abortion, as well as a legal framework within which such legislative protections may be elaborated.

I. ABORTION IS NOT A HUMAN RIGHT

In Europe, about 30% of pregnancies end in abortion.¹ After more than thirty years of legal abortion in Europe,² abortion should be addressed in an objective manner by looking to practice, experience, and ideological implications. As a very recent example of such objectivism, Lord David Steel, the architect of Britain's liberal abortion laws, has said that he "never envisaged there would be so many abortions"³ and "[a]ll we knew was that hospitals up and down the land had patients admitted for septic, self-induced abortions and we had up to 50 women a year dying from them."⁴ Now, he warns Ireland, whose government is executing the *A, B and C* judgment,⁵ that

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¹ *Facts on Induced Abortion Worldwide*, GUTTMACHER.ORG,

http://www.guttmacher.org/pubs/fb_IAW.html#1 (last visited Sept. 29, 2014).

² See ALBIN ESER & HANS-GEORG KOCH, *ABORTION AND THE LAW* 35 n.20 (Emily Silverman trans., 2005).

³ Gemma O'Doherty, *UK Peer Warns on Suicide Clause*, IRISH NEWS, (Dec. 21, 2012),

<http://www.independent.ie/irish-news/uk-peer-warns-on-suicide-clause-28950172.html>.

⁴ *Id.*

⁵ *A, B and C v. Ireland*, 2010-VI Eur. Ct. H.R. 185, *available at*

http://www.echr.coe.int/Documents/Reports_Recueil_2010-VI.pdf.

“it would be a mistake to try and legislate for abortion in categories such as suicide or rape.”⁶ It is no longer possible to talk about abortion only in terms of progress and liberation for women. For medical practitioners and lawmakers, the realities of abortion in practice reveal a more complex issue.

The cases submitted to the European Court of Human Rights (ECHR) reflect the increasing variety and complexity of situations related to abortion. Those cases are not limited to the abstract claim of a right of access to abortion, but concern various issues such as abortions by minors, eugenic abortion, consent, and information disclosure. Complaints have arisen from those seeking to abort children who would be born with mental and physical disabilities to those who have undergone abortion procedures without having been fully informed. In one case, a father did not succeed in a complaint though his partner aborted their child without his consent; while in another case, a grandmother succeeded in a complaint brought before the Court that her daughter should have access to an abortion under satisfactory conditions.⁷

1. *Prenatal Life is Not Excluded from the Scope of Protection of the European Convention*

The Court must determine how to interpret the practice of abortion within the parameters and logic of the Convention, including its legal reasoning, internal consistency, and case law. Indeed, when the Convention was drafted, abortion was widely criminalized because it was considered a direct violation of the right to life of the unborn child. Only abortion induced in order to save the life of the mother was legal. The central question was, and still is, whether or not the unborn child is a person within the meaning of Article 2, protecting “[e]veryone’s right to life.”⁸ The Court has kept this

⁶ O’Doherty, *supra* note 3.

⁷ See e.g. *Csoma v. Romania*, App. No. 8759/05, 2013 Eur. Ct. H.R., available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115862>; *Boso v. Italy*, 2002-VII Eur. Ct. H.R. 451, available at http://www.echr.coe.int/Documents/Reports_Recueil_2002-VII.pdf; *Vo v. France*, 2004-VIII Eur. Ct. H.R. 67, available at http://www.echr.coe.int/Documents/Reports_Recueil_2004-VIII.pdf; *P. and S. v. Poland*, App. No. 57375/08, 2012 Eur. Ct. H.R., available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114098>.

⁸ *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature Nov. 4, 1950, 213 U.N.T.S. 224 (entered into force Sept. 3, 1953), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20213/v213.pdf>.

question open in order to allow the States to determine when life begins, and therefore, when legal protection should start.

On the one hand, the Court permits each State, within a “margin of appreciation” to determine “when the right to life begins.”⁹ On the other hand, the Court since *Brüggemann and Scheuten v. FRG*¹⁰ and *R. H. v. Norway*¹¹ has always refused to exclude the unborn from the scope of the Convention’s provisions by declaring the unborn is not a person within the meaning of the Convention. In *Vo v. France*, the Grand Chamber said “that it is neither desirable, nor even possible as matters stand, to answer in the abstract the question whether the unborn child is a person for the purposes of Article 2 of the Convention”¹² and added that “it may be regarded as common ground between States that the embryo/foetus belongs to the human race”¹³ and, accordingly, “require[s] protection in the name of human dignity.”¹⁴ As Judge Jean-Paul Costa explained:

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.¹⁵

Those who advocate a right to abortion defend the idea that within the Convention system, “Member States are free to determine the availability and legal status of abortion.”¹⁶ While it is true that

⁹ *Vo*, *supra* note 7, § 82. The “margin of appreciation” in the Court’s jurisprudence “refers to the latitude allowed to the member states in their observance of the Convention.” See Thomas A. O’Donnell, *The Margin of Appreciation Doctrine: Standards in the Jurisprudence of the European Court of Human Rights*, 4 HUMAN RIGHTS Q. 474, 475 (1982); see also IAN BROWNLIE, PRINCIPLES OF INTERNATIONAL LAW 549–550 (2003) (a Member State is “presumed to be best qualified to appreciate the necessities of a particular situation affecting its jurisdiction”).

¹⁰ *Brüggemann and Scheuten v. Germany*, App. No. 6959/75 (1981) 3 E.H.R.R. 244, 10 Eur. Comm’n H.R. Dec. & Rep. 100.

¹¹ *R.H. v. Norway*, App. No. 17004/90, 1992 Eur. Ct. H.R., available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-1759>.

¹² *Vo*, *supra* note 7, § 85.

¹³ *Vo*, *supra* note 7, § 84.

¹⁴ *Vo*, *supra* note 7, § 84.

¹⁵ *Vo*, *supra* note 7, § 10 (Rozakis, J., separate opinion).

¹⁶ Cristina Zampas and Jaime M. Gher, *Abortion as a Human Right—International and Regional Standards*, 8 HUMAN RIGHTS L. REV. 249, 276 (2008). In that article, the authors refer to part I, sections (b)–(f) of MAGDA KRZYZANOWSKA-MIERZEWSKA, *HOW TO USE THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN MATTERS OF REPRODUCTIVE LAW* (2004), available at http://www.astra.org.pl/pdf/publications/astra_guide.htm.

States have the freedom to prohibit abortion, the Court has said, regarding protections to the unborn child and mother, that Member States have a duty under the Convention to ban painful or forced abortions. Therefore, Member States are not totally free to determine the availability and legal status of abortion, but must balance the various legitimate interests and rights involved.

The European Court of Human Rights has issued judgments on abortion, since the landmark ruling of the Grand Chamber in *A, B and C v. Ireland* in 2010,¹⁷ where the Court has found violations of the European Convention on Human Rights in specific situations when the life or health of the pregnant woman was endangered or the pregnancy was the consequence of rape. Through its various rulings, the Court has declared that abortion is not a right under the Convention, that is, there is no right to have an abortion, as in *Martins Ribeiro v. Portugal*,¹⁸ or to practice abortion, as in *Jean-Jacques v. Belgium*.¹⁹ The prohibition of abortion *per se* by a State does not violate the Convention, following precedent from *Martins Ribeiro v. Portugal*, as well as from the case of the first two applicants, *A, B and C v. Ireland*, who unsuccessfully sued the State for its prohibition of abortion on demand.

2. *The Balance of the Conflicting Rights and Interests*

In cases that arise in States where abortion is legal, the Court has established that its legal framework must adequately balance the different legitimate interests involved. The Court has stressed that “once the state, acting within its limits of appreciation, adopts statutory regulations allowing abortion in some situations,”²⁰ “the legal framework devised for these purposes should be ‘shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention.’”²¹ This language has become the foundation for the regulation of abortion by the Court. Therefore, States are free to decide whether to allow abortion, but if a

¹⁷ *A, B and C v. Ireland*, 2010 Eur. Ct. H.R. 2032. For a list of judgments in English since 2010, see HUDOC, EUROPEAN COURT OF HUMAN RIGHTS, <http://hudoc.echr.coe.int/sites/eng>.

¹⁸ *Martins Ribeiro v. Portugal*, 2004 Eur. Ct. H.R. § 2 available at <http://hudoc.echr.coe.int/eng?i=001-67313>.

¹⁹ *Jean-Jacques v. Belgium*, App. No. 11684/85, Eur. Comm’n H.R. Dec. & Rep. (1988).

²⁰ *P. and S. v. Poland*, 2012 Eur. Ct. H.R. § 99

²¹ *P. and S. v. Poland*, § 99; see also *A, B and C* at § 249, and *R.R. v. Poland*, 2011 Eur. H.R. Ct. § 187, and *Tysi c v. Poland*, 2007 Eur. Ct. H.R. §116.

national legislature decides to legalize it, the Court can assess that legal framework by looking for whether, in a specific situation, a fair balance was struck between the various rights and interests of the parties involved. As the Grand Chamber said simply, "It is also clear . . . that the issue has always been determined by weighing up various, and sometimes conflicting, rights or freedoms."²² In synthesis, if a State decides to allow abortion, its "margin of appreciation is not unlimited"²³ regarding "how it balances the conflicting rights"²⁴ because "the Court must supervise whether the interference constitutes a proportionate balancing of the competing interests involved."²⁵ Accordingly, the necessity and proportionality of rights and interests affected by abortions must be established under the Convention.²⁶

In the Case of *Vo v. France*, Judge Jean-Paul Costa noted:

[The Court] would have had to reach the opposite conclusion had the legislation been different and not struck a fair balance between the protection of the foetus and the mother's interests. Potentially, therefore, the Court reviews compliance with Article 2 in all cases in which the "life" of the foetus is destroyed.²⁷

The Court has already identified a number of those "different legitimate interests involved"²⁸ such as the legitimate interest of society in limiting the number of abortions²⁹ and the interests of society in relation to the protection of morals.³⁰ The Court has also identified a number of rights guaranteed by the Convention that can be curtailed by an abortion in addition to the right to life of the unborn, the status of which is still not clearly defined.

The right to life of the unborn child is not the only right under the Convention affected by abortion. The Convention also protects the rights implicated by late-term abortions and sexist abortions, under

²² *Vo v. France*, 2004-VIII Eur. Ct. H.R., § 80.

²³ *A, B and C v. Ireland*, 2010 Eur. Ct. H.R., at § 238

²⁴ *Id.* at § 237

²⁵ *Id.* at § 238.

²⁶ *A, B and C v. Ireland*, 2010 Eur. Ct. H.R. 2032, § 249.; *R.R. v. Poland*, 2011 Eur. Ct. H.R. 2617/04, § 187; *P. and S. v. Poland*, § 99.

²⁷ *Vo v. France*, App. 2004 Eur. Ct. H.R. 53924/00, § 13 (Rozakis, J., separate opinion).

²⁸ *Id.* at § 249

²⁹ *Odièvre v. Fr.*, 2003 Eur. Ct. H.R. §45.

³⁰ *Open Door and Dublin Well Woman v. Ireland*, App. No. 14234/88; 14235/88, Eur. Comm'n H.R. Dec & Rep. § 63 (1992); *A, B and C*, at §§ 222-227.

articles 3 and 8 of the Convention, respectively.³¹ The Court applied article 3 prohibiting torture to the unborn in *Boso v. Italy*³² and the “right to respect for . . . family life” guaranteed by article 8 to the “potential father” in *W.P. v. the United Kingdom*³³ as well as to the potential grandmother in *P. and S. v. Poland*.³⁴ There are also other rights curtailed in specific situations, such as the freedom of conscience for health professionals³⁵ and medical institutions.³⁶ The rights of disabled persons affected by wrongful birth³⁷ and wrongful life³⁸ claims have also come before the Court. The Court, in its case law, has decided abortion should have an apparent, objective motive that outweighs various competing rights and interests, especially protections to the life and health of the pregnant woman.³⁹

3. *Abortion on Demand is Not Justified Under the Convention*

It is uncontested, even by advocates for a right to abortion, that there is no direct or indirect right to abortion on demand or abortion for socioeconomic reasons under any international or regional treaty, including the European Convention on Human Rights.⁴⁰ Abortion on demand is illegal in several European countries⁴¹ and in about seven out of ten countries in the world.⁴² When the Convention was drafted, abortion on demand was widely recognized as a crime.⁴³ It is true that the absence of a right does not create a prohibition and *vice versa*, but

³¹ Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 8, at 222.

CETS No.: 005 http://www.echr.coe.int/Documents/Convention_ENG.pdf

³² *Boso v. Italy*, App. No. 50490/99, Eur. Comm. H.R., 5 September 2002.

³³ *W.P. v. U.K.*, App. No. 8416/78, Eur. Comm’n H.R. Dec. & Rep. (1980).

³⁴ *P. and S. v. Poland*, 2012 Eur.Ct. H.R.

³⁵ *Tysi c v. Poland*, 2007 Eur.Ct. H.R. §121; *R. v. Poland* § 206.

³⁶ *Rommelfanger v. FRG*, App. No. 12242/78, Eur. Comm’n H.R. (1989).

³⁷ *K v. Latvia*, (No. 33011/08) Eur. Ct. H.R. petition for cert. filed.

<http://www.hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113323>. (last accessed September 29, 2014).

³⁸ *M. P. and Others v. Romania*, 2010 Eur. Ct. H.R. petition for cert filed.

<http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-144329>. (last accessed September 29, 2014).

³⁹ *P. and S. v. Poland*, 2012 Eur.Ct. H.R., §§ 66–70.

⁴⁰ *Zampas and Gher*, *supra* note 12, at 287.

⁴¹ *Abortion Legislation in Europe*, LIBRARY OF CONGRESS, <http://www.loc.gov/law/help/abortion-legislation/europe.php>.

⁴² *Fact Sheet: The World’s Abortion Laws in Map 2013 Update*, CENTER FOR REPRODUCTIVE RIGHTS, http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/AbortionMap_Factsheet_2013.pdf. This percentage includes as countries Hong Kong, Northern Ireland, Puerto Rico, Taiwan, and the West Bank and Gaza Strip.

⁴³ *Br ggemann and Scheuten v. Federal Republic of Germany*, 3 Eur. Ct. H.R. § 64 (1981).

such legal arguments supporting abortion on demand do not resist analysis. Applying the reasoning and case law of the Court to such claims of abortions shows that such arguments fail to find justification under the Convention.

Examining the Court's case law, it appears that the Court has never admitted that the free-will or the autonomy of the woman could, on its own, suffice to justify an abortion. Furthermore, no right to abortion logically stems from the right to personal autonomy. As stated in the cases of *A, B and C v. Ireland* and more recently in *P. and S. v. Poland*, the Grand Chamber of the Court "has held that Article 8 [guaranteeing personal autonomy] cannot be interpreted as conferring a right to abortion."⁴⁴ Therefore, while abortion on demand finds no justification under the Convention, it affects rights and interests guaranteed and recognized by the Convention. The curtailment of those rights and interests by abortion on demand is neither balanced with nor justified by *any* competing right guaranteed by the Convention. Consequently, abortion on demand violates the Convention even though it represents the vast majority of all abortions performed. These violations permitted by States are even more flagrant when one considers not only negative obligations of States under the Convention to not take life, but also their positive obligations to protect and support lives of the unborn, pregnant women, and the family generally.

The only way for the Court to conclude that abortion on demand would not violate the Convention would be to declare that the unborn child is not a person, and, in addition, to decline to offer protection for other rights and interests affected by the abortion. For that, the Court would have to push the unborn into a *legal gap*.⁴⁵

At first glance, people may think that abortion on demand is acceptable under the Convention because the Court has not yet condemned a State for permitting it. Such condemnation is unlikely to happen for practical reasons because the direct victims of abortion and the pro-life associations have not been recognized as victims.⁴⁶ Until now, only pregnant women have been able to successfully sue, as victims, for difficulty obtaining access to legal abortion, for

⁴⁴ *P. and S. v. Poland*, App. No. 57375/08, 2012 Eur. Ct. H.R., § 96.

⁴⁵ For a short explanation on "legal gaps," see John Gardner, *Concerning Permissive Sources and Gaps*, 8 OXFORD J. LEGAL STUD. 457, 457-458 (1988) (there may be a legal gap "where there is no complete answer" or in "the absence of a required answer").

⁴⁶ *Børre Arnold Knudsen v. Norway*, App. No. 11045/84, Eur. Comm'n H.R. Dec. & Rep. (1985); *X v. Austria*, App. No. 7045/75, Eur. Comm'n H.R. Dec. & Rep. (1976).

malpractice, or for physical complications as a result of abortion.⁴⁷ The Court has recognized that “a potential father” may have standing as a victim of an abortion practiced on his unborn child,⁴⁸ though no violation of a father’s rights has yet been found primarily because the contested abortion has been aimed at preserving the health of mothers and, therefore, justified after balancing the interests implicated.

Later, in *Case of P. and S. v. Poland*, the Court recognized under article 8 that “the interests and life prospects of the mother of a pregnant minor girl are also involved in the decision whether to carry the pregnancy to term or not”⁴⁹; therefore, a potential grandparent may also have *locus standi*.

II. ABORTION AS A VIOLATION OF SOCIAL RIGHTS

There is a strong societal interest in the rights of mothers and families *not to abort* as illustrated by those cases where abortion is chosen because mothers or parents are without means to rear children. States have the duty to protect life, and promote economic and social liberty; since some abortions are caused by economic constraints, socioeconomic rights are implicated. Abortions, when caused by economic and social pressures, contradict various provisions of the European Social Charter⁵⁰ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵¹ For example, Article 10 of the ICESCR states: “[S]pecial protection should be accorded to mothers during a reasonable period before and after childbirth”⁵² and “the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society.”⁵³

Similarly, an abortion practiced for economic reasons shows a State’s failure to respect “the right of everyone to an adequate standard of living.” Under Article 11 of the ICESCR, States recognize “the right of everyone to an adequate standard of living for himself

⁴⁷ *Csoma v. Romania*, App. No. 8759/05, Eur. Ct. H.R. (2013).

⁴⁸ *Boso v. Italy*, 1.

⁴⁹ *P. and S. v. Poland*, App. No. 57375/08, 2012 Eur. Ct. H.R. § 109.

⁵⁰ European Social Charter, C.E.T.S. 035, available at

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=035&CL=ENG>.

⁵¹ International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR], available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20993/v993.pdf>.

⁵² *Id.* at 7.

⁵³ *Id.*

and his family”⁵⁴ and under Part I of the European Social Charter, States recognize that “[t]he family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.”⁵⁵ Therefore, under these international agreements, States have legal and positive obligations to provide the best possible circumstances so that women are not coerced into abortions for social and economic reasons.

The State does not fulfil its obligations when abortion is the only real answer to a pregnant mother’s financial and social difficulties. A mother’s rights are violated when she is forced to abort her child as a result of financial difficulties, housing problems, or abuse by a violent partner. In these cases, not only has the right to life of the unborn child been violated but also the mother’s right to be free from the suffering and degradation of an abortion; her claim arises, in part, because the State has breached its socioeconomic obligations.

In many cases, disclosure of correct and complete information about abortion to the mother would be sufficient to inform her of options available for keeping her child or, at least, not aborting her child. The State should inform the mother of available financial, material, and moral aid, which might include houses for pregnant mothers in distress, subsidized day-care, adoption, and non-governmental organizations that cater to the needs of mothers and children. By contrast, in some countries, like Latvia⁵⁶ and France,⁵⁷ the State has renounced systematic pre-abortion consultation in favor of a general “freedom of choice” for women, which, while not explicitly, effectively deprives many women of access to information on alternatives to abortion.⁵⁸ Such legislation is likely to violate the European Social Charter.⁵⁹

⁵⁴ *Id*

⁵⁵ European Social Charter, *supra* note 49, at part I.

⁵⁶ See Latvian Sexual and Reproductive Health Law, (Jan. 29, 2004), *available at* http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Sexual_and_Reproductive_Health_Law.doc (last visited on Sept. 29, 2014).

⁵⁷ In France, such information was provided until 2001, when it was suppressed together with the preliminary consultation on the pretence that it infringed the right to abortion of the mother or would make her feel guilty.

⁵⁸ In regard to the issue of information on abortion, the Court has only established for the moment that the State may not oppose the diffusion of information favorable to abortion. See *Open Door and Dublin Well Woman v. Ir.*, App. No. 14234/88, (1992); See also *Women on Waves and others v. Portugal*, No. 31276/05, Eur. Ct. H.R. (2009).

⁵⁹ See European Social Charter, C.E.T.S. 035, *available at* <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=035&CL=ENG>.

Therefore, States should recognize a specific right of women not to choose abortion, consistent with the International Conference on Population and Development Program of Action, which has called on Governments to “take appropriate steps to help women avoid abortion, which in no case should be promoted as a method of family planning.”⁶⁰ As Gisela Wurm, rapporteur of PACE⁶¹ Resolution 1607, “Access to Safe and Legal Abortion in Europe,” recognized: “Abortion must, as far as possible, be avoided.”⁶² Unfortunately, advocates who promote “a human right to abortion,” do not advocate for “a human right not to abort.” Abortion is not a human right, whereas, the protection of maternity, family, life, dignity, and physical integrity, are recognized social and human rights.

III. A NEW CULTURAL TREND OF CHALLENGING ABORTION

In recent years, a growing number of European States are reopening the debate on abortion and reconsidering legislation that would place restrictions on abortion. To this day, most European States permit abortion on demand.⁶³ However, the number of States that impose legal restrictions on abortion during the first weeks of gestation may increase. In December 2013, the Spanish government proposed a bill that would ban abortion on demand,⁶⁴ recognizing abortion more as a social problem than as a right or an individual freedom.⁶⁵ Apart from the symbolic case of Spain—where the bill aimed to altogether remove abortion on demand—the British Parliament regularly considers the reduction of the legal time limit for abortion, with the support of the current Prime Minister,⁶⁶ as does the

⁶⁰ Programme of Action of the International Conference on Population and Development, G.A., para. 7.24, U.N. Doc. A/S-21/5/Add.1, ICPD+5, February 8-12, 1999.

⁶¹ Parliamentary Assembly of the Council of Europe.

⁶² EUR. PARL. ASS., *Access to Safe and Legal Abortion in Europe*, 15th Sess., Res. 1607 (2008), available at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/tao8/eres1607.htm>.

⁶³ *Abortion Legislation in Europe*, supra note 38, <http://www.loc.gov/law/help/abortion-legislation/europe.php>. Instead of “abortion on demand,” the authors of the government study refer to abortion “on request.”

⁶⁴ *Spain’s Plan to Reform Abortion Laws Attacked as ‘Serious Step Backwards,’* THE GUARDIAN (U.K.) (Dec. 18, 2013), <http://www.theguardian.com/world/2013/dec/18/spain-reform-abortion-fury>.

⁶⁵ Grégor Puppincq, Ph.D., *The Spanish Bill on The Protection of The Life of The Unborn Child and The Rights of The Pregnant Woman Analysis in The Light of European Law*, European Centre for Law and Justice (2014), <http://eclj.org/pdf/analysis-of-the-new-spanish-abortion-draft-bill-ECLJ.pdf>

⁶⁶ *The Abortion Debate: The Statistics*, THE GUARDIAN (U.K.) (Oct. 8, 2012), <http://www.theguardian.com/world/the-womens-blog-with-jane-martinson/2012/oct/08/abortion-debate-statistics>.

Norwegian government,⁶⁷ which beginning January 2014 completely prohibited abortion after twenty-two weeks based on figures reported by the Norwegian Institute of Public Health.⁶⁸ In general, these new laws aim to reduce the legal time limit for abortion in order to better protect unborn children and prevent abortions that lack sufficiently weighty interests.

Other efforts in European countries have shown a similar trend. In Switzerland, a public initiative referendum was introduced and voted on in February 2014 which, if passed, would have ended the public financing of abortion on demand.⁶⁹ In 2011, Hungary adopted a new Constitution⁷⁰ with provisions that protect “the life of the foetus from the moment of conception,”⁷¹ and “the family as the basis of the survival of the nation”⁷² and has since implemented policies promoting human life and adoption.⁷³ Macedonia also adopted, on June 10, 2013, a new law strongly reinforcing the protection of life after 10 weeks.⁷⁴ As for Turkey,⁷⁵ in May 2012 its government announced plans to reduce the legal time limit for abortion from ten to six or four weeks. However, this was abandoned following intense European pressure. In Poland, the question as to further limiting abortion frequently arises; in 2011, the total

⁶⁷ *Abort etter uke 22 blir forbudt*, DAGBLADET (Nor.) (Jan. 2, 2014), <http://www.dagbladet.no/2014/01/02/nyheter/politikk/innenriks/abort/31079496/>.

⁶⁸ *Id.*

⁶⁹ Susan Misicka, *Abortions to Remain Covered by Health Insurance*, SWISSINFO, (Feb. 9, 2014), http://www.swissinfo.ch/eng/voters--choice_abortions-to-remain-covered-by-health-insurance/37889424; see also, Grégor Puppincq, *Europe: The Decline of the 'Right' to Abortion*, ZENIT.ORG (Feb. 10, 2014), <http://www.zenit.org/en/articles/europe-the-decline-of-the-right-to-abortion>.

⁷⁰ Corentin Léotard, *Une remise en cause du droit à l'avortement en Hongrie?*, HULALA (Fr.) (Apr. 18, 2011), <http://www.hu-lala.org/une-remise-en-cause-du-droit-a-l-1%e2%80%99avortement-en-hongrie>.

⁷¹ THE FUNDAMENTAL LAW OF HUNGARY [CONSTITUTION] Apr. 25, 2011, art. II, available at <http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf>.

⁷² THE FUNDAMENTAL LAW OF HUNGARY [CONSTITUTION] Apr. 25, 2011, art. L, available at <http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf>.

⁷³ Stever Ertelt, *After New Constitution, Hungary Launches Pro-Life Ad Campaign*, LIFENEWS.COM (May 6, 2011), available at <http://www.lifenews.com/2011/05/06/after-new-constitution-hungary-launches-pro-life-ad-campaign>.

⁷⁴ *Le droit à l'avortement régresse en Macédoine*, LE PLANNING FAMILIAL (Fr.), June 12, 2013, <http://www.planning-familial.org/actualites/le-droit-l'avortement-regresse-en-macedoine-0010608>; see also *Macédoine : le gouvernement s'attaque au droit à l'avortement*, LE COURRIER DES BALKANS (Fr.) (June 1, 2013), <http://balkans.courriers.info/article22615.html>.

⁷⁵ *Turquie: Une Restriction de l'avortement?* LE FIGARO (May 30, 2012), <http://www.lefigaro.fr/flash-actu/2012/05/30/97001-20120530FILWWW00394-turquie-une-restriction-de-l-avortement.php>.

prohibition of abortion was only five votes short of being adopted by the Parliament.⁷⁶

The trend is also seen in the Baltic states. Currently, the Lithuanian Parliament is examining a bill removing abortion on demand following the example of the Polish legislature.⁷⁷ Supported by members of several political parties, it was approved in the parliamentary committee,⁷⁸ but publicly opposed by the Lithuanian Health Ministry.⁷⁹ The Latvian Parliament had, the previous year, reopened the issue, in particular in order to impose on women a systematic social interview prior to any abortion.

In the past decade, the Russian government⁸⁰ and some Russian health professionals⁸¹ have made efforts to reduce the number of abortions through various measures. In the Soviet Union, 4 million abortions were performed annually⁸²; since 1990, this figure has reduced to about 1.3 million, which is close to the number of annual births.⁸³

This trend is even more pronounced in the United States where only 12% of the population still believe that abortion is morally acceptable, according to a survey conducted in 2013.⁸⁴ Between 2011

⁷⁶ *Polish Parliament to Debate Two Draft Bills Regarding Access to Abortion Today*, ASTRA NETWORK, <http://www.astra.org.pl/repronews/83-polish-parliament-to-debate-two-draft-bills-regarding-access-to-abortion-today.html> (last visited Oct. 4, 2014).

⁷⁷ *Lituanie: le Parlement va débattre de l'interdiction de l'avortement*, LEPOINT (Fr.), May 28, 2013, http://www.lepoint.fr/monde/lituanie-le-parlement-va-debattre-de-l-interdiction-de-l-avortement-28-05-2013-1673014_24.php (last visited Oct. 9, 2014).

⁷⁸ *Seimas Voted In Favour of the Abortion Ban Bill*, THE LITHUANIA TRIBUNE, May 28, 2013, <http://www.lithuaniantribune.com/39499/seimas-voted-in-favour-of-the-abortion-ban-bill-201339499> (the Seimas of Lithuania, the unicameral Lithuanian parliament, "gave its initial backing to a proposed abortion ban bill after 46 MPs voted in favour, 19 were against and 25 abstained").

⁷⁹ *Lithuanian Government is Against Abortion Ban*, THE LITHUANIA TRIBUNE (Oct. 14, 2013), <http://www.lithuaniantribune.com/53577/lithuanian-government-is-against-abortion-ban-201353577>; *Health Ministry: Right to abortion is woman's reproductive right*, THE LITHUANIA TRIBUNE (Nov. 25, 2013), <http://www.lithuaniantribune.com/57772/health-ministry-right-to-abortion-is-womans-reproductive-right-201357772>.

⁸⁰ *Russia Outlaws Abortions Ads*, RT (Nov. 25, 2013), <http://rt.com/politics/russia-abortion-advertising-ban-266>.

⁸¹ *Anti-Abortion Movement Grows in Russia*, UPI NEWS TRACK (Sept. 21, 2008), upi.com/3260633.

⁸² Svetlana Smetanina, *Les femmes russes, championnes de l'avortement*, RUSSIA BEYOND THE HEADLINES (Fr.) (Mar. 29, 2013), http://fr.rbth.com/chroniques/2013/03/29/les_femmes_russes_championnes_de_lavortement_22787.html; see also Sophia Kishkovsky, *Abortion Fight Taken Up by Russian Orthodox and American Evangelicals*, STATES NEWS SERVICE (July 7, 2011), available at <https://www.pcusa.org/news/2011/7/7/abortion-fight-taken-russian-orthodox-and-american>.

⁸³ *Id.*

⁸⁴ *Omnibus Poll*, HUFFINGTON POST, http://big.assets.huffingtonpost.com/toplines_abortion_0627282013.pdf (last visited Apr. 23, 2015).

and 2013, American states have adopted 205 new restrictions on abortion, more than during the previous decade.⁸⁵ The change is as spectacular as it is profound.

This similar trend is also perceptible within European institutions, which have consistently rejected a European right to abortion. The Committee of Ministers of the Council of Europe refused to “set out such a right to abortion” in July 2013,⁸⁶ while the European Commission does not address the question,⁸⁷ presumably considering such an answer outside its “competences,”⁸⁸ even when asked directly.⁸⁹ On December 10, 2013, the European Parliament rejected a resolution urging them to make abortion a fundamental right.⁹⁰ It has likewise condemned sex-selective abortion⁹¹ and abortion policies such as exist in China.⁹² The Assembly⁹³ and the

⁸⁵ *More State Abortion Restrictions Were Enacted in 2011-2013 Than In the Entire Previous Decade*, GUTTMACHER INSTITUTE (Jan. 2, 2014), <http://www.guttmacher.org/media/inthenews/2014/01/02>.

⁸⁶ Council of Europe Committee of Ministers, Decision CM/Del/Dec(2013)1175/3.2b on Written Question No. 633 by Mr Luca Volontè: “Does the European Convention on Human Rights set out a right to abortion?” (2013), *available at* [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2013\)1175/3.2b](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2013)1175/3.2b).

⁸⁷ See European Parliament, Parliamentary Questions, Answer Given by Mr Dalli on Behalf of the Commission, OJ C 240 E, 21/08/2013 (2012), *available at* <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-002933&language=EN>.

⁸⁸ See European Parliament, Parliamentary Questions, Answer Given by Mr Borg on Behalf of the Commission, OJ C 216 E, 09/07/2014 (2013), *available at* <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-011563&language=EN>.

⁸⁹ See European Parliament, Parliamentary Questions, Question (E-002933/12) for Written Answer on Unsafe Abortions in the European Union by Sophia in 't Veld (ALDE), Antonya Parvanova (ALDE), Françoise Castex (S&D), Véronique Mathieu (PPE), Norbert Neuser (S&D), Sirpa Pietikäinen (PPE) and Jean Lambert (Verts/ALE) (Mar. 16, 2012), *available at* <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2012-002933&language=EN> (asking the Commission to agree “that it is essential to provide access to safe and legal abortion and to eliminate taboos on sexual and reproductive health in order to reduce the overall number of abortions”).

⁹⁰ Compare European Parliament, Report on Sexual and Reproductive Health and Rights and Motion for a Resolution, EUR. PARL. DOC. (COM A7-0426/2013) 17 (2013), *available at* <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0426+o+DOC+PDF+Vo//EN>, with European Parliament, Resolution of 10 December 2013 on Sexual and Reproductive Health and Rights, Texts Adopted, EUR. PARL. DOC. (COM P7_TA-PROV(2013)0548) (2013), *available at* <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0548&language=EN&ring=A7-2013-0426>.

⁹¹ See European Parliament, Resolution of 8 October 2013 on Gendercide: the Missing Women?, Texts Adopted, EUR. PARL. DOC. (COM P7_TA(2013)0400) (2013), *available at* <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2013-0400+o+DOC+PDF+Vo//EN>.

⁹² See European Parliament, Resolution of 5 July 2012 on the Forced Abortion Scandal in China, Texts Adopted, EUR. PARL. DOC. (COM P7_TA(2012)0301) (2012), *available at*

Commissioner for Human Rights⁹⁴ of the Council of Europe have done the same. The Court of Justice of the European Union in Luxembourg has recognized that “the fundamental principles safeguarding the dignity and integrity of the person” apply to the human embryo, which deserves the protection of law as it is a stage in the developmental process of the human being.⁹⁵

The European Citizens’ Initiative “One of Us”⁹⁶ is a sign that this trend enjoys the support of civil society. It has obtained the support of nearly two million people,⁹⁷ which is unprecedented support. It asks the European Union, through a mechanism of participative democracy, to no longer finance abortion and destructive embryonic research.⁹⁸ The group has recently called on the Commission and the European Parliament to follow up on their 2012 initiative.⁹⁹

CONCLUSION

Both politically and legally, European law does not recognize, much less guarantee, the right to an abortion. Furthermore, international law guarantees the right to life for every human being and encourages States “to reduce the recourse to abortion”¹⁰⁰ which “must, as far as possible, be avoided.”¹⁰¹

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2012-0301+0+DOC+PDF+Vo//EN>.

⁹³ EUR. PARL. ASS., *Prenatal Sex Selection*, 29th Sess., Res. 1829 (2011), available at

<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/ERES1829.htm>.

⁹⁴ *Sex-Selective Abortions are Discriminatory and Should Be Banned*, COMMISSIONER FOR HUMAN RIGHTS (Jan. 15, 2014), <http://www.coe.int/en/web/commissioner/-/sex-selective-abortions-are-discriminatory-and-should-be-bann-1>.

⁹⁵ Case C-34/10, *Brüstle v. Greenpeace e.V.* (Oct. 18, 2011),

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=111402&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=120905>.

⁹⁶ *Initiative Explanation*, ONE OF US, <http://www.oneofus.eu/initiative-explanation> (last accessed Apr. 27, 2015).

⁹⁷ *The One of Us Federation Launches Appeal to Experts at 5th European Parliament Week for Life*, ONE OF US (Mar. 27, 2015), <http://www.oneofus.eu/the-one-of-us-federation-launches-appeal-to-experts-at-5th-european-parliament-week-for-life>.

⁹⁸ *On January 25th, ONE OF US is Walking in Paris Against Euthanasia to Protect the Weak*, ONE OF US, <http://www.oneofus.eu/on-january-25th-one-of-us-is-walking-in-paris-against-euthanasia-to-protect-the-weak>.

⁹⁹ *The One of Us Federation Launches Appeal to Experts at 5th European Parliament Week for Life*, ONE OF US (Mar. 27, 2015), *supra* note 98.

¹⁰⁰ United Nations International Conference on Population and Development, New York, NY, September 5-13, 1994, *Program of Action* U.N. Doc. A/CONF.171/13/Rev 1 (Vol. I).

¹⁰¹ EUR. PARL. ASS., *Access to Safe and Legal Abortion in Europe*, 15th Sess., Res. 1607 (2008), *supra* note 61.

The new cultural trend favorable to the protection of life faces opposition because it goes against the dominant culture inherited from the 1960s. It is in this context that the will of some governments, like in France, to normalize abortion and to make it a fundamental right of women can be understood. But this “right,” in order to exist and to last, requires ignoring the rights of an embryo and human fetus. Yet, the progress of science and consciousness working together, slowly but surely, has led to a better understanding of the development of a human being.

Thus, the promotion of abortion as an individual right is in decline for two powerful reasons: through experience, one finds liberal legislation leads to unsatisfactory results, and through scientific reasoning, one finds that further progress prompts many more to reconsider the dignity of the human being from conception. The decline of the right to abortion is more challenging for society than its advance because it demands that we be more human, responsible, and united, in order to recognize and welcome the lives of persons at all stages of development.