

Conquering the Right to Abortion

The French Journey on Women's Access to Abortion

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CONTENTS

INTRODUCTION	3
1. FRANCE, A COUNTRY EMBRACING A CONTINUOUS LIBERALISATION OF MEDICAL TERMINATION OF PREGNANCY	4
1.1.3 The early 1970s: A Decade Filled with Concrete Actions	6
1.1.4 The legalisation of abortion : the Veil law	9
1.2 THE PROGRESSIVE EVOLUTION OF THE GENERAL CONDITIONS FOR ACCESS TO ABORTION	9
2. AN UNENDING LEGISLATIVE PROCESS FOR THE CONSTITUTIONALISATION OF ABORTION RIGHTS	11
2.1 THE NUMEROUS PARLIAMENTARY INITIATIVES IN FAVOUR OF CONSTITUTIONALISING ABORTION	11
2.2 THE FINAL AND HISTORIC VOTE TO MAKE ABORTION A CONSTITUTIONAL FREEDOM	12
3. FRANCE, FIRST COUNTRY TO CONSTITUTIONALISE ABORTION: BALANCING PROGRESS AND DISAPPOINTMENTS	13
3.1 THE IMPORTANCE OF CONSTITUTIONALISING	13
3.2 THE DISAPPOINTING CHOICE OF PHRASING BEHIND THE FIRST-WORLD CONSTITUTIONALISATION OF ABORTION	15
3.1.1 We have constitutionalised a freedom and not a right	15
3.1.2 We have constitutionalised a gender-based freedom	16
3.1.3 We have constitutionalised the right of the legislator to determine the conditions under which the freedom to abort is exercised	17
CONCLUSION	18

INTRODUCTION

"Never forget that it only takes a political, economic, or religious crisis for women's rights to be called into question. These rights can never be taken for granted. You must remain vigilant throughout your life" (de Beauvoir, 1949).

This famous French quote from Simone de Beauvoir from 1949 still resonates strongly with feminist activist movements today. Unfortunately, even though de Beauvoir is a feminist figure of the previous century, her powerful words remain relevant in today's society to drive the fight for women's rights. Women's rights remain at risk in societies across the globe, particularly sexual and reproductive rights. Nonetheless, statistics indicate that six out of every ten unintended pregnancies result in induced abortions, with around 45 percent of these procedures being categorised as unsafe, primarily happening in the Global South (WHO, 2021). In Latin America, 97 percent of women live in a state where access to abortion is legally restricted. In sub-Saharan Africa, nearly 6.2 million unsafe abortions are performed each year, resulting in at least 15,000 deaths. In Europe, women are sometimes forced to listen to the foetus's heartbeat before seeking an abortion (FIDH, 2022). These statistics alone highlight the necessity of adequate abortion care, especially when viewing them in light of an endless list of women's rights violations. So much so that abortion remains one of the leading causes of death in the 21st century (FIDH, 2022).

**Abortion
unsafe
worldwide
45%**

6/10



Six out of 10 unintended pregnancies end in induced abortion.

It is now clear that feminist progress faces extensive backlash, and the right to abortion has not been spared. Among the decisions that have shaken the world, the reversal of the precedent established in *Roe v. Wade's* case is often the first to be mentioned. Many U.S. States have since banned medical termination of pregnancy or restricted access to it. Argentina, which legalised abortion in 2020, may also face renewed scrutiny over abortion rights under its current president, Javier Milei, who has pledged to hold a referendum to determine whether abortion will remain legal. However, the Americas are not the only places where the right to abortion is set aside. As previously noted, the same concerning changes are happening across Europe, even after an 80-year trend of liberalisation of abortion laws.

These concerning events may mark the beginning of a new wave of regressive legal frameworks for abortion rights. In reaction to these events, the label "fundamental right" seems to be on everyone's lips. However, the right to abortion, often regarded as fundamental, is currently not recognised as such by the law.

According to Etienne Picard, a French professor of public law, fundamental rights can be described as a set of rights so essential to the human being that they would naturally demand respect and recognition. They are rights that prevail over other rights in a judicial order. This idea of a naturally binding and universally applicable group of rights is enticing. However, some States have weaponized fundamental rights to justify their continued violation of women's sexual and reproductive rights.

Yet this is not the case of France, which on March 8th, 2024, became the first country in the world to codify the freedom to abortion in its Constitution. To gain insight into France's progress regarding women's access to abortion, this report will explore the history of the liberalisation of medically terminated pregnancies (Chapter 1). Subsequently, it will review the very long legislative efforts towards constitutionalising abortion rights (Chapter 2). Finally, it will delve into the significance of constitutionalising human rights and assess France's efforts in this regard (Chapter 3).

1. FRANCE, A COUNTRY EMBRACING A CONTINUOUS LIBERALISATION OF MEDICAL TERMINATION OF PREGNANCY

France, a country with a reputation for being the homeland of human rights, has taken an unprecedented step in defending and protecting the right to access abortion services. However, as has been recognised by Simone Veil, a pioneer of abortion decriminalisation in France, "We, women, have come a long way". This is particularly pertinent when considering that a document forming the foundation of the French legislative framework, the Declaration of the Rights of Man and of the Citizen of 1789, was already written in a non-inclusive way. Olympe de Gouge, a revolutionary French writer, wrote, "Woman is born free and remains equal to man in rights," echoing the first article of that Declaration. De Gouge further satirises the Declaration's choice of the desirably impersonal form *Homme* (which refers to the impersonal 'Man', in English) by replacing it with *hommes*, clearly hinting that men (or, rather, males) are the actual subject of the supposedly all-encompassing term Man (*Homme*). Upon reflection, it seems that this word was already a linguistic sleight of hand, reflecting the male monopolisation of the legislative domain. Like a revealing slip of the tongue in a world defined by men, for men, and at the expense of women. So much so that human rights have long been associated with the masculine gender rather than with humanity.

While it may often be said that France sets the example in matters of human rights, it is important to remember the long and difficult fight for the legalisation of freely secure

abortion in France. In the following chapter, this report will evaluate the history of France's battle for abortion rights. Following this, it will take a closer look at the evolution of the general conditions for access to abortion in France.

1.1 HISTORY OF FRANCE'S BATTLE FOR ABORTION RIGHTS

The fight for abortion rights in France was marked by different eras, starting with the first half of the 20th century, and the criminalisation in all circumstances of abortion. The second era began in the late sixties, with the start of women's emancipation regarding reproductive and sexual rights. Following this, this report will outline the concrete actions taken to obtain the right to access abortion in the seventies. Finally, this resulted in the decriminalisation of abortion in France in 1975.

1.1.1 Early 20th Century: Transitioning Abortion from Sin to Crime

While Russia became the first country to legalise abortion in 1920, France seems to have chosen a different path by adopting a law aimed at punishing provocation to abortion and anti-conception propaganda. This law was adopted on July 31st, 1920, and strove to encourage natality after World War I (Sud Ouest, 2023). With this law, abortion and contraception methods, already considered sinful, were both criminalised and medical personnel risked forced labour if they committed it. The representation of abortion as a sin was understandable given that Catholics constituted the majority of the population during that period. Moreover, the term used to describe the medical personnel involved in abortion work further illustrated this way of thinking, since abortionists in France have long been referred to as *faiseurs d'anges* meaning 'angel makers'. With the Church being at the centre of French society, life was mainly considered as something sacred, that could only be taken away by God. Abortion or contraception was thus considered immoral and contrary to religious beliefs (Global History Dialogues, 2020).

Abortion had been prohibited and criminalised at least since the 1556 Edit of Henry II. This Edit remained in force until the French Revolution before being resumed by Article 317 of the 1810 Penal Code. On March 27th, 1923, the French Penal Code again codified abortion as a crime, seeking to better prosecute both the aborted women and the abortionists (Sud Ouest, 2023).

During the 20th century, the natalist obsessions of the French and Italian governments supported racist and eugenic policies and used abortion as a tool of propaganda for authoritarian regimes. During World War II, the Vichy government decided to reinforce the repression of abortion with a law implemented on February 15th, 1942. Abortion was then considered a "crime against the state, punishable by death penalty" (Sud Ouest, 2023). By that time, the guillotine was used to punish abortionists. For instance, Marie-Louise Giraud was guillotined on July 30th, 1942, for performing 27 abortions. And one year later, Desiré Pioge was executed by the same means for assisting three women in having abortions. Thankfully, this law will have been abrogated by the end of the war. However, abortion will continue to be considered an offence until 1975 (Sud Ouest, 2023).

1.1.2 Late 1960s: Commencement of Women's Emancipation in Sexual and Reproductive Rights

It was not until after World War II that women managed to make their voices heard, turning feminism and neo-Malthusianism¹ into rallying cries (Cova, 2022). The latter half of the 20th century they witnessed demands for women's emancipation and birth control, without necessarily constraining sexuality. Amidst this revolutionary whirlwind, the discovery of the contraceptive pill reshaped maternity. Various countries started to authorise therapeutic abortion in the 1930s, such as Poland, Denmark and Mexico. The discovery of the oestrogen-progestin hormones then became a subject in French public debates. Should we allow women to control their fertility? Should they be able to choose whether they want or do not want to have kids? (Sud Ouest, 2023).

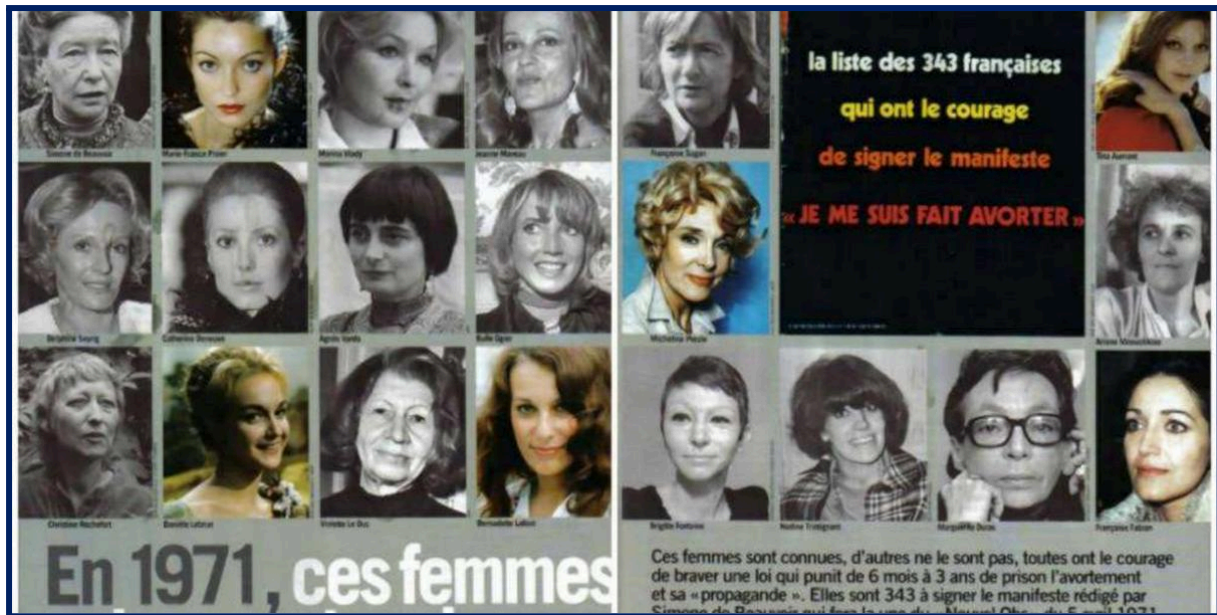
As an answer to those controversial questions, the Neuwirth law of 1967 was adopted, replacing the law on provocation to abortion and anti-contraception propaganda of 1920. This new law marked a milestone in the recognition of women's sexual and reproductive rights, as it legalised the contraceptive pill in France (Global History Dialogues, 2020). It also marked the initial stride towards the decriminalisation of abortion, laying the groundwork for women's autonomy over their bodies and the complex issue of life. For countless women, it symbolised the first significant move towards asserting full control over their bodies, paving the way for the inevitable progression towards securing access to abortion. (Global History Dialogues, 2020)

1.1.3 The Early 1970s: A Decade Filled with Concrete Actions

During the 1970s, many feminist movements began to take shape, finally daring to raise their voices. In the early seventies, American feminists led the way in medically developing the Karman method, which provided a new and safer alternative for completing abortion. This abortion method that used aspiration of the foetus was then adopted in England and the United States, enabling non-physicians to carry out the procedure. This groundbreaking method was introduced in France and significantly reduced the number of deaths resulting from clandestine abortions. This also played a significant role in compelling the French government to enact legislation to govern this practice (Sud-Ouest, 2023).

In 1971, a milestone in the French fight for legalised abortion was the *Manifeste des 343 salopes*, meaning 'Manifesto of the 343 Sluts', which listed the names of 343 women proudly claiming that they had had an abortion.

¹ Néo-malthusianism : doctrine that advocates for birth control without restricting sexuality for social purposes.



@ Nouvel Observateur, 1971 april 5, “*Manifesto of the 343 Sluts*”

<https://www.sudouest.fr/societe/le-droit-a-l-avortement-et-son-histoire-un-tres-long-combat-11440980.php>

After this Manifesto was published in the *Nouvel Observateur* newspaper on April 5th, 1971, the women who listed their names risked facing serious legal consequences. In this article, authored by the renowned Simone de Beauvoir, they pointed out, “I declare that I am one of them. I declare that I had an abortion. Just as we demand free access to contraceptives, we demand free abortion”, even though abortion was not legal at the time (Amnesty International, 2024). Through this manifesto, women tried to raise public awareness of abortions in France. Public demonstrations followed the publication of this Manifesto, showing how many women were in favour of the legalisation of abortion (Global History Dialogues, 2020).

Following those historic demonstrations, Gisèle Halimi and Simone de Beauvoir founded the Choisir movement (in English, ‘Choose’). This feminist movement advocated for the decriminalisation of abortion and gained momentum during an emblematic trial. In 1972, a lawyer named Gisèle Halimi, defended five people, one young girl, Marie-Claire Chevalier, who had had an abortion, and four adult women, who had helped her perform the abortion. The young girl was arrested, after being denounced by her rapist, for the abortion she underwent after being raped. It is important to remember that in France, in 1972, abortion was still an offence, but rape was not a crime.

During this trial, numerous notable figures took the stand, including the renowned feminist Simone de Beauvoir, actresses like Francois Fabian and Delphine Seyrig, politicians such as Michel Rocard, and scientists like Jean Rostand, Jacques Monod, and Francois Jacob. This legal proceeding evolved into a highly politicised event, serving as a platform to advocate for the legalisation of abortion. It sparked a peaceful protest in the streets of Paris, with demonstrators chanting “Free Marie-Claire” and “We’ve all aborted.” A significant

security presence was deployed, and clashes with the police ensued (Global History Dialogues, 2020).

Marie-Claire was acquitted by the court, while her mother was convicted and fined 500 francs. Despite filing an appeal, the case was never addressed by the court, resulting in no formal conviction. What is historic about this case is that it marked the first instance where the law of 1920 was not applied. It also signalled, from a legal standpoint, a shift in society's mentality towards granting women more freedom over their bodies and greater control over their fertility (Global History Dialogues, 2020).



Gisèle Halimi with Marie-Claire Chevalier and her mother behind her. November 22nd, 1972. © Getty / On the left, Gisèle Halimi. On the right, Marie-Claire Chevalier. In the middle, is the mother of Marie Claire Chevalier.

Keystone-France. <https://globalhistorydialogues.org/projects/abortion-in-france/>

On February 5th, 1973, prompted by the Health Information Group, 331 doctors published a manifesto in *Le Nouvel Observateur* and *Le Monde*, admitting that they had performed abortions and advocating for abortion rights. This declaration sparked widespread public debate. The signatories called for an amendment to the 1920 law, advocating for the legalisation of abortion as a standard medical procedure covered by social security (Amnesty International, 2024). The doctors supporting this initiative did not hesitate to express their support to that movement out loud, generating sharp criticism. At the Tribune, Joelle Bruner, a biologist doctor declared: "We do not seek to impose our opinion on everyone. Being in favour of abortion rights means that each person can decide based on their own convictions, based on their own situation." (Archives INA, 1973).

1.1.4 The legalisation of abortion : the Veil law

On June 28th, 1974, a significant milestone was achieved when the National Assembly voted on Simone Veil's legislation, which fully legalised contraception. Under this law, social security covered the costs of contraceptive pills, and minors were granted the right to confidentiality. At the same time, the Minister of Health under Valéry Giscard d'Estaing sought to push boundaries by advocating for the legalisation of abortion. When Simone Veil introduced her bill to authorise medical termination of pregnancy to the National Assembly in November 1974, the ensuing debates were highly contentious and tumultuous (Sud Ouest, 2023).

On November 24th, 1974, Simone Veil, now Minister of Health, faced the deputies in the National Assembly. At the Tribune of the French Hemicycle, she declared: "No woman resorts to abortion lightly. Just listen to women. It's always a tragedy and it will always remain a tragedy." After all the protests and scandals around the abortion topic, the stakes were high: to convince the French legislative body to legalise abortion (Archives INA, 1974).

Despite facing an Assembly predominantly composed of men, her words Minister left a lasting impression and gained unanimous support. A few months later, on January 17th, 1975, the law known as the Veil Law decriminalised abortion, allowing women to undergo the procedure within a ten-week timeframe. (Veil Law, 1975).

1.2 THE PROGRESSIVE EVOLUTION OF THE GENERAL CONDITIONS FOR ACCESS TO ABORTION

Initially, the Veil law was adopted on an experimental basis for a period of five years, meaning it wasn't until 1979 that decriminalisation was accepted. This advancement was a historic moment for women who had spent a long time advocating for their rights. Subsequently, France offered women the security of a medically assisted procedure partially reimbursed by the social security system. Thus, in 1982, a law came to the aid of financially distressed women, making abortion a procedure covered by the State. Thirty years later, social security would cover it entirely (Rousset, G. 2022).

In 2001, a new milestone was reached with the extension of the legal timeframe for medical termination of pregnancy. The law of July 4th, 2001, extended the timeframe from ten to twelve weeks of pregnancy and eliminated the requirement for parental consent for minors. At such a time, the proliferation of advancements in abortion was already promising, especially when considering that some neighbouring countries had not even decriminalised the practice yet (Rousset, 2022).

In 2014, the requirement for a woman to be distressed was removed. Since the 1975 law, this condition of distress, which relied on the woman's personal circumstances, conditioned access to abortion care. The notion of "distress" was replaced by a much less

infantilising formula for women, enabling women to get an abortion if they simply, "did not wish to continue their pregnancy." While debates surrounded this rewriting of the law, which some considered futile, the majority defended the importance of such symbolism, as neighbouring Spain was at the same time considering a project to withdraw this right from women. With this new law, it was no longer possible for establishments providing abortion services to impose the presentation of a justification on women (Rousset, 2022).

Continuing with such measures, in 2016, the mandatory reflection period imposed on adult women was abolished. This mandatory reflection period had been set at seven days by the 1975 law and represented a real ordeal for women. This period came after the first medical consultation, after the woman had been informed of the physical and psychological risks naturally associated with such a procedure. In addition to representing a barrier to accessing abortion for women who sought it urgently around the 12th week, it represented a delay that sought to make women feel guilty and infantilised them by asking them to think twice about it. Many considered this period unnecessary since reflection begins upon the discovery of the pregnancy, not on the day of seeking care (Rousset, 2022).

That same year, midwives were authorised to perform medication-induced abortion procedures, and in 2020 and 2022, surgical procedures, with the exception of medically induced abortions, were also authorised. Alongside the increasing number of healthcare professionals authorised to perform abortions, the list of places where medical termination of pregnancy could be performed expanded, ranging from medical facilities to patients' homes through teleconsultation during the COVID crisis. With these developments, the general conditions laid down favoured women's access to safe, fast, and free abortion (Rousset, 2022).

Recently, the law of March 2nd, 2022, extended the limit for medication-induced abortions to seven weeks of amenorrhea, originally limited to five weeks. As for surgical abortion, the timeframe was also extended to fourteen weeks of pregnancy. Such a modification was prompted by figures showing that "every year, 3,000 to 5,000 women travel abroad for abortions due to exceeding legal deadlines in France," as well as the influence of other European countries with much more lenient deadlines. Furthermore, the remaining two-day reflection period imposed on non-emancipated minor women was removed (Rousset, 2022)

Faced with the enumeration of all the measures taken by France to ensure women's access to abortion, constitutionalisation appears as a logical next step. But what does this new stage imply?

2. AN UNENDING LEGISLATIVE PROCESS FOR THE CONSTITUTIONALISATION OF ABORTION RIGHTS

In this subsequent section, this report will delve into the extensive legislative journey toward the constitutionalisation of abortion. It will provide a concise overview of the parliamentary endeavours for the constitution, followed by the outcome of this protracted process.

2.1 THE NUMEROUS PARLIAMENTARY INITIATIVES IN FAVOUR OF CONSTITUTIONALISING ABORTION

In France, the idea of constitutionalising the right to abortion is not purely circumstantial. As early as 2019, a constitutional bill aiming to guarantee the constitutionality of the right to abortion was presented. Rejected by the presidential majority, it was never put on the agenda (Assemblée nationale, 2019).

Even today, abortion remains a divisive subject among jurists. The total of nine legislative proposals regarding the inscription of a right to abortion deposited since 2022 bear witness to the divergences that persist around the question (Senat, 2024).

In the Senate, four initiatives were presented:

1. On June 27th, 2022, the Socialist Ecologist and Republican group, led by Laurence Rossignol, introduced the first constitutional bill aimed at incorporating into the Preamble of October 27th, 1946, the provision that, "The law guarantees equal access to contraception and voluntary termination of pregnancy."
2. On the same day, Éliane Assassi and senators from the communist group presented another constitutional bill seeking to include in Article 34 of the Constitution the, "implementation of the right to medical termination of pregnancy."
3. Subsequently, on August 2nd, 2022, the Ecologist - Solidarity and Territories group, led by Mélanie Vogel, proposed adding to Article 1 of the Constitution the provision that, "the law ensures decisional autonomy in reproductive matters as well as access to healthcare and services. Everyone has the right to an adequate contraception and to universal, unconditional, and free access to medical termination of pregnancy, within a period not less than fourteen weeks of gestation."

Additionally, the same authors submitted another constitutional bill aiming to create a new Article 66-2, stating that, "No one can infringe on the right to medical termination of pregnancy and contraception. The law guarantees to anyone who requests it free and effective access to these rights." This text was rejected by the Senate on October 19th, 2022. (Sénat, 2024)

In the National Assembly, five initiatives were presented:

1. On June 30th, 2022, the Renaissance group, led by Aurore Bergé, proposed a constitutional bill creating a new Article 66-2 stating that, "No one can be deprived of the right to voluntary termination of pregnancy."
2. A bill submitted on July 6th, 2022, by Mathilde Panot and several deputies of the New Ecological and Social Popular Union also proposed the idea of a new Article 66-2, ensuring that, "No one can impede the fundamental right to medical termination of pregnancy."
3. On October 7th, 2022, the same authors presented another text proposing, again to the same new Article 66-2, the formulation: "No one can infringe on the right to medical termination of pregnancy and contraception. The law guarantees free and effective access to these rights to anyone who requests it." This bill underwent parliamentary review and was adopted with revised wording by both the National Assembly and the Senate.
4. On October 17th of the same year, Aurore Bergé and members of the Renaissance group suggested the wording: "No one can be deprived of the right to medical termination of pregnancy." However, this proposal did not proceed further.
5. Finally, on October 20th, 2022, Cécile Untermaier and members of the Socialist and Affiliated group submitted a text proposing to integrate into Article 1 of the Constitution that "The law guarantees equal access to voluntary termination of pregnancy as well as contraception, respecting personal autonomy." (Sénat, 2024)

Finally, on December 12th, 2023, the Government introduced a constitutional bill concerning the freedom to resort to voluntary termination of pregnancy. The last project was presented as a compromise between the initiatives of the Senate and the National Assembly and phrased in the following way: "The law determines the conditions under which the freedom of women to voluntarily terminate a pregnancy, which is guaranteed".

2.2 THE FINAL AND HISTORIC VOTE TO MAKE ABORTION A CONSTITUTIONAL FREEDOM

On March 4th, 2024 the French Parliament overwhelmingly voted to integrate the freedom to abortion into the French Constitution, with 780 votes in favour of this unprecedented decision of constitutionality, prompting a standing ovation rarely seen in the French Hemicycle. While the media report on the 18-month-long legislative process, the idea of constitutionalising the freedom to abortion is not solely circumstantial to the setbacks in Poland and the United States. France, ahead of its time, had been mobilising to incorporate abortion into the French legislative framework for several years. From now on, **Article 34 of the Constitution** includes a paragraph written as follows: **"The law determines the conditions under which the freedom of women to voluntarily terminate a pregnancy, which is guaranteed"**.



After being approved by the Congress on Monday, March 4th, 2024, the constitutional revision is sealed by the Keeper of the Seals. © Emmanuel Dunand, March 8th, 2024, via AFP, at https://www.lemonde.fr/societe/live/2024/03/04/en-direct-l-inscription-de-l-ivg-dans-la-constitution-definitivement-adoptee-par-le-parlement_6220034_3224.html

3. FRANCE, FIRST COUNTRY TO CONSTITUTIONALISE ABORTION: BALANCING PROGRESS AND DISAPPOINTMENTS

In the final chapter, this report will elucidate the significance of incorporating the expectation of this groundbreaking initiative into constitutional law. Subsequently, we will scrutinise the constitutionalisation of abortion in France and illustrate how, from a legal standpoint, the reality falls short of expectations.

3.1 THE IMPORTANCE OF CONSTITUTIONALISING

All rights are certainly not fundamental, but many can become so once a society largely considers them necessary. This fundamentality will often be invoked, especially by civil society, in order to grant certain forgotten rights the effect of the prevalence of fundamental rights. Fundamental rights belong to an extraordinary category that surpasses all others for two primary reasons. First, because no norm exhausts fundamentality. Second, fundamentality is not exhausted by any formal norm. Fundamentalism often rhymes with the supreme norm. Therefore, it is most often at the heart of national constitutions and

conventions serving human rights that fundamental rights will be found. The supremacy of these two types of norms will ensure that these essential rights benefit from the highest protection.

The natural connection between fundamental rights and supreme norms today makes constitutionalisation and conventionalisation the preferred mechanisms of fundamentality. In other words, the fundamentality of rights such as abortion will, most of the time, be achieved by their integration into a national constitution or an international or regional convention. One of those paths, which could guarantee respect for a right to abortion for women, has recently been taken by France.

Constitutionalising is important, and for several reasons :

01

It increases the protection of rights and freedom.

In fact, enriching fundamental rights in the Constitution makes it much more difficult for future governments to restrict or abolish these rights without formal constitutional procedure. If a law restricts the exercise of a right enshrined in the Constitution, there will be increased scrutiny of these restrictions. While a law can be repealed by another law, if the right is enshrined in the Constitution, anything indirectly or directly infringing upon it must be solidly justified.

02

Constitutionalising a right or a freedom provides a more stable and continuous framework for governance

As the Constitution is regarded as the supreme law of a construct, the process to change it is more rarely opened and provides a higher level of protection than the simple changes of a law.

03

The constitutionalisation establishes a clear limit between government power and ensuring the separation of power

The constitutionalisation establishes a clear limit between government power and ensuring the separation of power.

04

Constitutionalising provides more accountability to a simple right.

The Constitution usually gathers the most important rights and rules of a country, meaning that a right will be more respected if included in the Constitution. In a well-designed Constitution, the principles of democratic governance are the heart of the Constitution. This gives more power and

symbolism to a right.

05

Incorporating rights in the Constitution, grants protection against exceptional regimes

In the specific case of France, the constitutional protection afforded to a right or freedom makes even more sense because its integration into the constitutional framework renders it untouchable in times of exceptional circumstances. Indeed, Article 16 of the French Constitution states that, "the President of the Republic cannot initiate or pursue a revision of the Constitution." Thus, even in times of exceptional circumstances, a constitutional right or freedom cannot be modified unlike a simple law.

06

Constitutionalising sets the example for other governments and other constitutions

Making the freedom to abort a constitutionally “guaranteed freedom” for women is a call-out for the rest of the world.

3.2 THE DISAPPOINTING CHOICE OF PHRASING BEHIND THE FIRST-WORLD CONSTITUTIONALISATION OF ABORTION

While the French constitutionalisation of the freedom of abortion is a significant milestone in women's fight for their rights, the reality behind this unprecedented vote is quite disappointing. The wording chosen by Parliament remains highly restrictive, granting a simple freedom to undergo an abortion, whose conditions still depend on Parliament's choices, and solely granted to women, rather than establishing an untouchable universal human right. Let's analyse the phrasing together.

3.1.1 We have constitutionalised a freedom and not a right

Contrary to what has been related by various newspapers, on March 4th, the French hemicycle voted in favour of a “guaranteed freedom” to abort and not a right to abortion. As observed, there was a time when Parliament considered constitutionalising the right to abortion. But the momentum for integrating a right to abortion seems to have dwindled in the succession of legislative procedures. Thus, it is important to distinguish between the concepts of “right” and “freedom”. While it may appear to be a minor distinction, merely a matter of

semantics, the distinction between simply acknowledging the freedom to abort and recognising it as a right carries significant implications.

A freedom is a “capacity to act”, whereas a right is almost “an obligation that falls upon the interlocutor”. Thus, a right imposes on a State the obligation to guarantee it, whereas a freedom remains a simple “ability to resort to”. Regarding medical termination of pregnancy, it implies that women have the freedom to undergo an abortion, but it doesn't impose an obligation on the State to ensure access to abortion services. This poses a challenge in the case of abortion. (Europe 1, 2023)

In comparison, consider freedom of expression: if I wish to speak or publish something, I have the liberty to do so without expecting anything in return. Expression is permitted, and I can exercise it without the need for the State to provide means for me to express myself. However, with abortion, a woman cannot terminate a pregnancy herself without risking harm. The State must ensure the availability of medical infrastructure and trained medical personnel. As underscored by Mathilde Philip-Gay, professor of law at Jean Moulin University Lyon, “The right to abortion is the guarantee that if a person desires it or if it is necessary, they will be able to undergo a medical termination of pregnancy. Freedom is ensured by law, whereas the right must be guaranteed in itself” (RadioFrance, 2023).

Freedom is inherently limited, whereas a right implies regulation by the State. To establish freedom means that the State cannot prevent access to abortion. It therefore has a ‘negative’ obligation not to oppose it through excessive legal or regulatory constraints. But a right refers to the so-called ‘positive’ obligation to make every effort to ensure that women can access abortion, by putting in place legal frameworks (Les Surligneurs, 2024).

Simply acknowledging a ‘guaranteed freedom’ to abort without addressing these practical requirements seems inadequate and likewise confusing. The choice of wording seems to be designed to confuse us, to hide the failure behind the establishment of a mere freedom. Is the ‘guaranteed freedom’ a simple freedom or something close to a right? Will this ‘guaranteed freedom’ offer women a better access to abortion than a simple freedom? (Les Surligneurs, 2024).

3.1.2 We have constitutionalised a gender-based freedom

The article intends to consecrate a “freedom of women,” implying that it cannot be invoked by any other non-female person. Such a formulation forgets to include transgender people, which is a real problem. For instance, a trans man still can become pregnant and abort, but this case would clearly not be included in the choice of phrasing chosen by the French Parliament (Amnesty International, 2024 b).

Consequently, in order to protect and guarantee a freedom to abort to trans men, non-binary people and every person who can become pregnant, and not only to women and girls, it would have been more appropriate to speak of a freedom for "individuals to terminate their pregnancy" in order to protect a greater number of people. Faced with this formulation, it seems that we are left with a gendered-based freedom that excludes certain individuals from its scope, even though they too may resort to pregnancy termination.

3.1.3 We have constitutionalised the right of the legislator to determine the conditions under which the freedom to abort is exercised

Finally, the formulation "the law determines the conditions under which the freedom of women" includes the possibility for the legislator to reduce the conditions surrounding the access to abortion, such as the delay to access to abortion care. Therefore, the legislator may subtly restrict the exercise of this freedom. What needs to be understood is that with this choice of phrasing, it will always be up to the law to determine the legal framework of abortion. In other words, the legislator could very well restrict the number of weeks or limit access conditions for minors without violating this constitutional freedom (RadioFrance, 2023).

The article gives the legislator the power to reconsider the conditions already established around abortion, whereas the original intention was to enshrine a genuine autonomous right to abortion. The purpose of this constitutionalisation was to protect it against possible political setbacks, as we have seen in the United States or Poland. However, the article grants the legislator the competence to determine entirely the modalities of recourse to abortion. Ultimately, such constitutionalisation amounts to entrusting the entity from which we wished to protect the freedom to abortion the powers to annul any protection. Thus, what we sought to avoid ended up being enshrined in the Constitution.

Obtaining the integration of such an article amounts to achieving nothing, except the guarantee that the legislator can, whenever it wishes, revise the conditions for exercising a freedom that is feigned to be granted to women. If we have not constitutionalised a universal right to abortion, we surely have integrated the right for the legislator to define the conditions of access to medical termination of pregnancy.

CONCLUSION

With such an internationally unprecedented achievement France has successfully undertaken a particularly ambitious project. However, while the homeland of human rights seemed to set an example by embarking on a process of constitutionalisation, it did not succeed in making access to abortion a true fundamental right. Despite formulating the existence of a constitutional freedom under Article 34 of the French Constitution, it ultimately only reinforced legislative control over the controversial issue of medical termination of pregnancy. By placing the power to decide the parameters of abortion practice in the hands of the French Parliament, the Constitution merely offers the french legislator the possibility to question what had already been obtained through the hard work of Simone Veil.

Besides that, this successful project seems to have been used for political exploitation, seeing the newly appointed Prime-Minister, Gabriel Attal, and President Emmanuel Macron congratulate themselves on having enabled these advances without enough shedding light on the women who fought for this progress. Let us bear in mind that we firstly owe this success to women politicians but also, in a broader sense, to all activists for the right to abortion, through their demonstrations, on the internet, in the media, in politics... and all those who have fought for decades so that we are where we are today.

Is French constitutionalisation a good thing? Yes, without a doubt. The symbolism it holds and the example it sets for the world is unparalleled because incorporating abortion into the Constitution, whether as a "right" or "freedom," does not prevent new laws from enriching it. Having already constitutionalised the idea that this right exists, that women can have this freedom of access to abortion is a huge victory. A victory for France, but above all for women from all around the world. But one thing is sure, there are still many battles left to fight. And protecting abortion rights remains one of them.

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