

Abortion: a disunited Europe

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INTRODUCTION

Access to safe abortion is a part of women's human rights.¹ It has been clearly shown that access to legal abortion improves physical and mental health outcomes both for women and for children.² Abortion laws are therefore an important subject for consideration and investigation in a comparative fashion. This article is the personal view of a clinician with an interest in, and commitment to, provision of humane abortion services.

While the countries of Europe are increasingly working together for socio-economic advancement, abortion laws are a neglected area. Abortion remains constrained by lack of political will for change and by religious interference. Admittedly laws are not the whole story when it comes to access to abortion; as described elsewhere in this Journal issue, extra-legal factors are also important determinants of availability.³ Nevertheless the law is the overall framework under which induced abortion operates. Although arguably decriminalisation of abortion⁴ is an ultimate goal, this may take a long time to achieve. Moving to more progressive laws or addressing some of the unnecessary restrictions outlined in this article by minor amendments to laws would improve abortion care for many European women.

Conscientious objection and task-sharing with non-doctors are not included in this paper. Both these aspects of abortion have been comprehensively reviewed elsewhere.^{5,6}

STATE INTERVENTION

It should be remembered that women and health professionals in Europe have suffered in relation to abortion even in the fairly recent past. Under the Vichy régime in France in 1943, Marie-Louise Giraud was beheaded for performing 'back-street' abortions.⁷ In the Republic of Ireland, the midwife Mamie Cadden was sentenced to death in 1956 (later commuted to life imprisonment) for performing an abortion on a woman who subsequently died of air embolism.⁸ In

Belgium, liberalisation of abortion law in 1990 was only achieved after a long and strenuous political and legal battle.⁹ In Romania between 1966 and 1989, under the Ceauseşcu régime, abortion was outlawed. Abortion-related maternal mortality increased to a level ten times that of any other European country due to women making recourse to illegal, unsafe abortions.¹⁰

RELIGION AND POLITICS

While the influence of Church on State is generally not as great as in, say, Latin America, in European countries with Category 1 and 2 abortion laws (see later) this influence is nevertheless felt. Generally, in countries with Category 3 and 4 laws the Church has less influence. In France, for example, secularism (*laïcité*) is based on a 1905 law separating the Church and the State.

THE TREND TOWARD LIBERALISATION

Since the 1930s there has been a progressive trend toward liberalisation of abortion laws across Europe^{11–13} and indeed throughout the world.^{14,15} In France, campaigns by radical feminists played a major part in achieving abortion on request in 1975.¹⁶ In some countries, such as Great Britain, there has been one main change, the Abortion Act 1967, followed by a period of stagnation of the law despite many changes in society and medical practice. This is in the context of several attempts to restrict the law in the years following the passage of the Act.¹⁷ In contrast, in France changes since the Simone Veil law of 1975 have been incremental, with repeated adjustments to keep pace with societal and medical changes: there have been 13 new laws, decrees or circulars. This more responsive form of legislating could well be emulated by other countries.

CLASSIFICATION OF ABORTION LAWS IN EUROPE

The European Union (EU) was formed in 1993 when the Maastricht Treaty came



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into force, and has since expanded to 28 states. The other European countries are Norway, Iceland and Switzerland and a number of 'microstates', all of which have special relationships with the EU. These 42 countries are shown in Table 1, though there is some debate about which countries to include on the continent's eastern fringes; the European countries of the former Soviet Union are not considered here. In Table 1 the European countries are sorted into four categories. It should be noted that the UK includes six different jurisdictions, bringing the total number of jurisdictions to 47, all of which have different abortion laws.

Most (32/42) of the countries in Table 1 are in Category 4, with no restriction as to reason, in other words abortion on request is permitted. Mostly, this freedom of access relates to the first trimester only, with second-trimester abortions requiring vetting by doctors, social workers or committees. Within Category 4, some jurisdictions (Belgium, Germany, Jersey, Luxembourg, the Netherlands and Switzerland) require women to declare that they are in a 'state of distress'. Insisting on such a declaration can hardly be regarded as a deficiency in the laws of these six jurisdictions, but in an ideal world this condition would be removed. Until liberalisation of the law in Luxembourg in 2012, only a doctor could determine if a woman was in distress. The need for this declaration was removed altogether from French law in 2014.

Although the three countries in Category 3, which require socioeconomic reasons for abortion, have technically more restrictive laws, in effect the access provided is little different from the countries in Category 4. However, in these three countries abortion is medicalised as, legally, doctors decide if women can have an abortion rather than the women themselves.¹⁸ In the author's view, such laws, which leave women dependent on the vagaries of medical discretion and goodwill, should be challenged.¹⁸

The countries in Categories 1 and 2 are in a completely different league. In these countries women do not have access to abortion in the true sense of the word 'access'. Unless they accept continuing with an unwanted pregnancy, women whose life is not at risk will need financial resources to travel to another

jurisdiction, or they may resort to a clandestine abortion with its associated risks² or attempt self-induced abortion. The microstates Andorra and San Marino have no explicit exceptions to the criminal law to save a woman's life but their laws are normally interpreted to permit life-saving abortions under the defence of necessity.¹⁹ The 2007 Treaty of Lisbon contains a protocol explicitly protecting the Republic of Ireland's constitutional 'right to life' of the fetus, but under the the Protection of Life during Pregnancy Act 2013 a panel of doctors may agree to applications on grounds of risk to the woman's life due to physical illness or from suicide. In Malta, since 1981, there have been no exceptions to the prohibition of abortion and doctors do not dare to invoke the defence of necessity. Denial of abortion to this extent by the countries with Category 1 laws has been described as cruel and tantamount to torture and ill-treatment.^{20 21}

RESTRICTIVE COMPONENTS OF LIBERAL LAWS

Despite a general liberalisation of laws from the 1930s up to the present, some laws still contain antiquated requirements that unnecessarily constrain service delivery. Some of these are described here.

- 1 *Premises* – Permitted premises are confined to hospitals in Cyprus, Finland and Iceland. Elsewhere there has been a progressive widening of permitted premises to include free-standing clinics.
- 2 *Signature of a second doctor* – Some countries require a second medical signatory in cases of abortion performed on medical grounds. The UK is unusual in continuing to insist on a second signatory for all abortions (unless carried out in an emergency), despite a Parliamentary recommendation to abolish this because of resultant delays.²² With early medical abortion services becoming increasingly nurse-led in the UK, this is a restrictive regulation that makes services more difficult and more expensive to run.
- 3 *Parental consent for minors* – Parental authorisation of abortion for women under the age of 18 years is a widespread requirement in Europe, present in the laws of 35 countries. It undermines the autonomy of the young woman in making her decision. It delays access, can have an adverse psychosocial impact in the presence of coercion in making a decision and breaching confidentiality, and risks violence and abuse in unsupportive families.²³

Table 1 Classification of abortion laws in Europe³⁶

Category	Legal grounds for abortion	Country
1	To save the woman's life or prohibited altogether	Andorra, Republic of Ireland, Malta, San Marino
2	To preserve health	Liechtenstein, Monaco, Poland
3	Socioeconomic grounds	Finland, Iceland, UK*
4	Without restriction as to reason	Albania, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Kosovo, Latvia, Lithuania, Luxembourg, Macedonia, Moldova, Montenegro, Netherlands, Norway, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland

*Six jurisdictions in total. England and Wales=3; Scotland=3; Northern Ireland=2; British Crown Dependencies (not strictly part of the UK): Isle of Man=2, Guernsey=3; Jersey=3.

In some countries parental consent is only required when the woman is under 16 years of age. In Norway there is an opportunity for parents to express their views only. In some other countries, while the requirement is still in the law, it is not insisted upon, or authorisation from adults other than the parents is accepted.

- 4 *Waiting periods* – Waiting periods are a historical leftover that serve no purpose. It is known that most women's decisions are stable by the time they reach abortion providers.²⁴ Reflection requirements in abortion laws stereotype women with unwanted pregnancies as impetuous, emotional and unreflective about the implications of the choices they make.²⁵ Thirteen out of 47 jurisdictions have such waiting periods: these range from 2 days in Kosovo and Slovakia; 3 days in Germany, Hungary, Latvia, Portugal and Spain; 5 days in the Netherlands; 6 days in Belgium to 7 days in Albania, Italy, Jersey and Luxembourg. Mostly these waiting periods can be waived or reduced when women present at higher gestations. France had a 6-day waiting period for many years; a decision to remove this was made by a National Assembly vote in April 2015.
- 5 *Compulsory pre-abortion counselling* – Historically, dissuasive counselling was included in some abortion laws. The prime example is the compromise reached following German reunification, the 'pregnancy conflict' law, which states that crisis pregnancy counselling serves to protect unborn life. Subjecting women to compulsory counselling about their decision to have an abortion is contrary to their wishes and wastes resources; it may well be counter-productive as it can introduce delay and so prolong women's distress.^{26–28} Thirteen jurisdictions have mandatory pre-abortion counselling. A restrictive law introduced in 2000 in Hungary requires two rounds of counselling.

AN EXAMPLE OF RESTRICTIVE CHANGES

Despite the overall trend to liberalisation of abortion laws throughout Europe, there are some exceptions. Poland is an extreme example: there was limited liberalisation as long ago as 1932 and then abortion on request from 1956. Between 1956 and 1974 Swedish women used to travel to Poland to take advantage of the more liberal law there. But since 1989 the Polish Catholic Church has had a powerful influence over the state.²⁹ In both 1993 and 1997 restrictive amendments to the Polish law were imposed, followed by stigmatisation, gross social inequity and exploitation of the situation by the private sector.³⁰ The law now has a 'chilling effect' on doctors, who tend to invoke conscientious objection in the public sector while also participating in the 'White Coat Underground', performing abortions for fees exceeding the average monthly income of a Polish citizen.³⁰ Abortions are still legal in cases of serious risk to the health of the woman, rape or incest, and fetal anomaly; however, doctors do not always agree to abortion in such cases. This has led to challenges in the European Court of Human Rights, the highest court in Europe hearing

human rights cases, where it has been affirmed that women must be treated with respect, worth and dignity.^{31 32} Domestic courts must 'take into account' decisions made in Strasbourg.

FREEDOM OF MOVEMENT

A fundamental EU policy is guaranteed freedom of movement and open borders. Health care can be obtained in another country, paid for by the country of origin, but this does not extend to abortion. Little is known overall about such movement in relation to abortion. Statistics are kept only by some countries. In Britain keeping abortion statistics is a legal obligation and the figures are fairly reliable, although information on women from abroad is probably underestimated due to some women giving an address in Britain rather than their home address. In 1974, the year before the liberalisation of the law in France, 36 443 French women crossed the channel for an abortion in England.³³ Between 1980 and 2013, 158 252 women from the Republic of Ireland crossed the Irish Sea to England or Wales for an abortion.³⁴ This demonstrates that women who can afford to pay the cost of the abortion and the travel will obtain an abortion in another jurisdiction if their own country restricts abortion. Those who do not have the money are subject to the services that may (or may not) be on offer determined by their domestic law.

WHAT WOULD BE AN IDEAL LAW?

An ideal situation is where abortion that is carried out in a health care setting comes under civil law rather than criminal law. Such a situation obtains in Canada and in three Australian states (Australian Capital Territory, Victoria and Tasmania).³⁵ As yet, there are no European countries that have decriminalised their abortion law and it is doubtful that a common, coherent EU abortion law or policy will ever emerge. Each country will need to debate the issue of abortion internally. However, by comparing different laws, good examples can be replicated by countries, or even improved upon.

CONCLUSIONS

Although there has been substantial liberalisation of abortion laws in most European countries, there is a strong tendency for legislation to lag behind societal attitudes and medical progress: many laws are over-medicalised and unnecessarily restrictive; in some countries interpretation of the law is not clear and requires official guidance. Individual countries with Category 1–3 laws should consider moving to a category higher on the scale. Sections of laws relating to premises, second signatures, parental authorisation, waiting periods and compulsory counselling should be repealed.

The population remains at the mercy of politicians who vote for laws; they are too often influenced by a vocal minority and ignore the opinions of the

majority. There can be risks in putting abortion to a parliamentary vote as there is a chance that a fought-for advance in legislation may be reversed in a parliamentary ambush. In a few countries it is difficult to foresee change until society insists on greater separation of Church and State.

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