

## **Reproductive rights being questioned. Reasons for an inquiry**

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### **Editorial**

Though it is common to think that freedom of decision and free access to abortion constitute acquired rights for women in most European countries, a more detailed analysis of the different contexts leads to a revision of such a statement.

Today, talking about abortion is still taboo almost everywhere, one of those issues you cannot - and should not - touch upon, even more so in times of political elections. Abortion is a typical controversial issue in which the boundary between right and wrong is always precarious, yielding, slippery, difficult to encapsulate in a simple slogan and, at any time, rather than generating a civil debate, it ends up feeding clashes between radical factions. Yet, the freedom of choice on maternity is one of the major issues that politics may face, something that crosses the boundaries of national

territories rising to the "supra-national" level. Nevertheless, despite many attempts to build a "common policy", all efforts in this sense have miserably failed so far.

Even at European Union level, although this institution appears to be a harbinger of good premises and interpretations in favor of freedom of choice for women, incisive action on national legislations is impossible, since the EU can only provide indications of good practices to align the different situations. In this sense, on July 3rd 2002 the European Parliament called for the right to legal abortion, safe and accessible to all women, with the aim of safeguarding their health and their reproductive rights. The victory was narrow, with 280 votes in favor, 240 against and 28 abstentions. The aim of the resolution was very strong in nature, requiring all member states and candidate countries wishing to join the Union to take real steps to legalize the right to voluntary termination of pregnancy; to distribute free methods of contraception, such as the morning-after pill; to promote sex education, especially in schools; to make methods of contraception accessible to minors without the need for parental consent. However, the intent of the resolution was not that of imposing compulsory regulations, but simply of asking the national governments to harmonize their legislations with the International Plans of Action as adopted at the UN Conference in Cairo in 1994 and in Beijing in 1995.

More recently, on 12th December 2012, the European Parliament approved the annual report on the situation of fundamental rights in the Union (2010-2011) with 308 votes in favor, 229 against and 49 abstentions. The report urged member states not to limit access to abortion and to recognize the rights of national minorities, LGBT people and migrants. The Parliament also expressed "concern about the restrictions recently imposed in some member states on health care services for reproductive health, such as safe and legal access to abortion". A further institutional pronouncement took place in December 2013, this time in the opposite direction: the European Parliament rejected the so called "Estrela report" on the right to sexual and reproductive health (SRHR), submitted by the Commission for women's rights and gender equality.

Subsequently, on April 10, 2014, the European Parliament had to deal with the ultra-conservatism of the transnational movement "One of us", who presented in Brussels several pages of signatures collected in the 28 member countries for a campaign calling on the EU to put an end to political and economic support to any activities that could lead to the destruction of human embryos, including research on embryonic stem cells and safe abortion services provided by non-governmental organizations in developing countries.

As Danielle Bousquet - Chairperson of the High Council for equality between women and men - has recently pointed out, the list of the attacks is worrying and it has continued to lengthen in the recent months: in Spain, France, Italy, Lithuania, Macedonia, Hungary, the law is under pressure, while in Poland, Malta and Ireland abortion is still illegal.

So let's take a look at some of these European cases.

To start from the most emblematic, Ireland is the only EU country in which abortion is illegal, except in some extreme cases. The Catholic Church has tremendous power in such a country, both on public opinion as well as on the political scene, and it is able to act directly on political issues such as bioethics. According to the legislation currently in force in the country, abortion is only possible when the pregnancy poses a serious health threat to the mother. A fetus can only be removed when its heartbeat has stopped. Irish people opposed the legalization of this practice with as many as three referendums, in 1983, 1992 and 2002. The recent death of a young girl who was denied abortion, even after the ascertainment of conditions of serious danger to her life, has brought into the spotlight the 16 December 2010 ruling, by which the European Court condemned Ireland for violating the human rights to health ratified in the Convention. Today this sentence is a useful case-law reference for other cases in which women present action against Ireland (and also against Poland, which is in the same situation).

In France, although in absence of a real threat to the law, women are facing a strong weakening of their "freedom of choice" – above all the less well-to-do, who cannot afford to go abroad when they do not succeed in obtaining an abortion in time in their country. Despite the fact that François Hollande's government has taken provisions in order to improve the possibilities for women to exercise their right to choose, women have recently faced the closing of a lot of maternity and abortion centres, since between 150 and 170 of these facilities have disappeared in the last ten years; funds for supplying information on sexual education and on contraceptives have also been drastically curtailed and contraceptives are not reimbursed by the health care system anymore. The long-lasting consequences of the cuts that affect the health budget and undermine the de facto possibility to have an abortion in the time granted by the law must not be underestimated.

In Spain, with the "Ley Organica" (2010) promoted by the Zapatero government, abortion has gone from being an illegal act, allowed only in certain circumstances, to being considered a fundamental right, and this represents a significant breakthrough in the discourse on women's body. However, the implementation of the new law, even during the Zapatero government, has undergone various delays, to the point of giving way and time to a reactionary opposition to organize a

persuasive discourse. The current conservative executive, led by Mariano Rajoy (Partido Popular) since January 2012, have stated - by voice of the Minister of Justice, Alberto Ruiz- Gallardón - their intention to reform Zapatero's law, with the intent to return to the "partial decriminalization" of abortion with a provision similar to the one contained in the previous law of 1985, but more severe, thus expropriating women of their rights. Several protests have been implemented recently in Spain as well as abroad, since most of the women's movements in Europe have been mobilized to support Spanish women. The new proposal would make Spain one of the most restrictive European countries on this matter, second only to Ireland.

In Lithuania abortion legalization dates back to 1955, allowing women to terminate their pregnancy within week twelve. Among the countries with the lowest fertility rate in the world, the former Soviet Republic has recently undertaken a policy aimed at restricting the rights of women to choose motherhood, and in June 2013 the Parliament adopted - with 49 votes in favor, 19 against and 25 abstentions - a new bill, similar to the Spanish one, limiting the availability of abortion only to cases of rape, incest and when a woman's health is strongly at risk.

Abortion legalization in Macedonia dates back to the seventies. However, the Macedonian Parliament has recently adopted a new law and, in accordance with the proposed changes, women seeking an abortion after week ten of pregnancy must now submit a specific request to the Ministry of Health, claiming that they have listened to the opinion of specialist consultants, informed their partner or spouse and met a gynaecologist. The government has also allowed the broadcast of a pro-life TV commercial: the video shows a doctor ironically congratulating the partner of a woman who has just interrupted pregnancy, using these words: "I congratulate you: you have just killed a baby in good health".

Although the Irish case is the most worrying in the European landscape, the Italian situation does not appear less of a problem at present, since it faces a daily questioning of the 194/1978 law regulating the voluntary termination of a pregnancy. Within the territory, a massive increase of the presence of conservative institutions and movements, most of them Catholic - such as the pro-life movement that has been working hard over the last thirty years on conscientious objection in order to obtain a widespread adherence by doctors - has had the effect of gradually decreasing, and in a more clear-cut way, the prerogatives of the law, making it, in some cases and in some areas of the country, even inapplicable. Two conferences, just to give some examples- the first organized by the movement "Usciamo dal silenzio" and the second by the association of non-objector doctors - have raised the issue of the full implementation of the law, proposing a manifesto and a petition in support of Law 194 and giving serious thought to a possible reform of conscientious objection in

the matter. The “Observatory on the North East”, edited by Demos for the newspaper “Il Gazzettino”, has recently revealed that 37% of the residents surveyed would be in favour of, or somewhat agree to, the revision of Law 194, restricting the cases in which it can be applied.

On March 8th 2014, the European Committee of Social Rights has recognized that Italy violates the rights of the women who, according to law 194/1978, intend to terminate their pregnancy, due to the growing number of conscientious objectors. The "judgment" is in response to a complaint coming from the European Network of the International Planned Parenthood Federation, an international organization active since the 1950's for the right to free choice in procreation. The appeal was lodged against Italy in order to ascertain the state of non-application of law 194/1978 and the European Committee accepted all the profiles of violation.

At the gates of institutional Europe, in Turkey, abortion is still the battleground between the defenders of the secularized republic and the Islamic nationalist government of Prime Minister Recep Tayyip Erdogan, engaged in a strategy of Islamization of the country. The associations for the defense of women's rights are at the forefront in the battle opened by Erdogan, who stated that an abortion 'is a murder', a part of a conspiracy' to reduce the birth rate of the country and prevent Turkey from further transformation into a regional power. Erdogan announced the forthcoming repeal of the 1983 Act allowing the termination of a pregnancy up to week 10. Thousands of women protested along the streets of Istanbul ("the largest demonstration of women in Turkey's history," wrote the local newspapers). Meanwhile, from the Prime Minister's party, came the proposal to ban abortion even in cases of rape.

In launching this call for papers, we asked ourselves how such a violent attack can happen today, in time of crisis, and why in different political situations, in different economies. Why such a similar persecution, why the same attempt to steal women's body by taking away their free choice of life. The crisis is a unifying element, but it is not enough. It is a matter of a freedom of decision acquired by women, which no longer allows one to use their massive reproduction of the species at no cost.

Back to our investigation, in order to fully understand the complexity and severity of the attack on the freedom of women emerging at all latitudes, the fundamental work of Jacqueline Heinen opens the horizon: there is no place on Earth where reproductive rights are safe. Women who choose are the target.

The inquiry starts in South America: Mogaburo, Moragas and Perez analyze the context of the representations and gender identities in Argentina, a country in which abortion is illegal. They start

with some cases of abortion treated by the national and local press: even where the penal code cannot punish, it is the action of the media that criminalizes women, making them feel guilty .

From another point of view, the Argentine reality is investigated by the contribution of Chaneton and Vacarezza, which penetrates the secrecy of a socially widespread practice getting in touch with the narratives of women who suffer it. The analysis of the two scholars sheds light on how the awareness of undertaking an illegal practice leads to discredit the choices of women on their body. Humiliated, guilty, socially punished for choosing something that somewhere else is a right.

The case of Nicaragua is examined by the contribution of Granelli, who returns to a concept of abortion that, instead of being considered and discussed as a right of women in itself, has become an object of power exchange. In 2007, the Sandinist government of Daniel Ortega arrives at the full criminalization of abortion, effectively integrating national policies of the traditional Catholic Church and following the same political line of the right-wing governments of the past. This is the price to pay for the maintenance of power in the country. From the overlap of the political agenda with the religious agenda comes the social construction of the role of women, unable to be masters of their own bodies, autonomous and free in exercising their sexual and reproductive rights.

The situation in the U.S. is investigated from two different points of view, the ones of Viggiani and Danna. Viggiani proposes a conceptual analysis of the right to abortion in the United States by analyzing the theoretical debate which has been taking place since 1973. The author wants to show how the principle of privacy, upon which this right is built, is an inappropriate legal tool for this issue and has a detrimental effect on poor women. In fact, the privacy principle makes of the abortion choice a merely private decision rather than a public right , reinforcing the public/private dichotomy. Danna, on the other hand, analyzes a very peculiar context in which the implications of the decision to abort may occur: the cases of surrogate motherhood established by contract. In California, where contracts are enforced by law even if the father is not genetically related to the child (it is a unicum), disagreements about termination apparently happen even more often than about the delivery of the baby to the intended parents, which is mandatory by law. In the typical surrogacy contract, the woman's personal right to choose to terminate or bring the pregnancy to term, established with *Roe v. Wade*, is constrained by an (unconstitutional) clause threatening monetary sanctions.

A very interesting contribution comes from Africa: Batisai's article profiles policies on abortion in Zimbabwe, a country with restrictive legal frameworks on reproductive rights that are influenced by customary or cultural practices. The article first maps the international policy landscape onto

reproductive and sexual rights, and the laws governing the termination of pregnancy. It then examines the extent to which international policy discourses inform national frameworks governing women's sexual bodies in Zimbabwe.

Returning to the European context, the Spanish case (analyzed by Sogos) and the Belgian case (analyzed by Marquez-Pereira) bring attention to situations in which a national law allowing women to voluntarily terminate a pregnancy does exist, but is subject to severe restriction. A restriction supported by powerful language and aggressive-influential-media, media that are now public opinion builders.

The Italian situation is investigated by Scirba through the case of migrant women: the essay analyses the current increase of abortions among migrant women in Italy, by comparing the available data and statistics with those concerning the parallel decrease in the number of abortions among Italian women. Migrant women who interrupt pregnancy seem to experience situations of segregation and subordination, which recall at least partially the conditions experienced by Italian women in the past.

As is certainly clear, this work is not intended as a complete map of the situation of reproductive rights around the world. Our research stands as an invitation to reflect once again on one of the main feminist issues and on such a massive and generalized attack to women's rights; it is meant to represent a moment of reflection and a chance to open further ways of investigation as well as to figure out new forms of resistance.