

Abortion law and the Council of Europe

Introduction

A Council of Europe committee has produced a resolution which attacks unborn children's, and parents', human rights. It is also a threat to independent nations' right to provide legal protection for their people. If the resolution's provisions were implemented, its effects would be disastrous. It is crucial therefore that the resolution is rejected.

The draft resolution¹ on abortion proposed by the Parliamentary Assembly of the Council of Europe's Committee on Equal Opportunities for Women and Men:

- is based upon false claims
- ignores the evidence of the damaging effect of abortion on women
- would contravene internationally recognised human rights
- represents a threat to the national sovereignty of member states.

The draft resolution is based upon false claims that:

- a) access to abortion is a human right
- b) decriminalisation makes abortion safe
- c) prohibition of abortion does not result in fewer abortions but mainly leads to clandestine abortions
- d) abortion can be avoided by promoting birth control and introducing compulsory sex-education.

Abortion and human rights

The Parliamentary Assembly of the Council of Europe has no authority to call on member states to “*guarantee women’s effective exercise of their right to abortion*” (para 7.2) as no such right is recognised in any international human rights agreement.

The assembly cannot legitimately call for “*them to introduce compulsory relationships and sex-education*” (para 7.7). The implementation of both provisions would, in fact, violate internationally recognised human rights.

Abortion

Article 3(1) of the UN Convention on the Rights of the Child (CRC) affirms that the rights of the child are ‘*a primary consideration*’ of States Parties and not just “*a consideration.*” Under Article 6(1) the child has the right to life and States Parties are obliged under Article 6(2) to “*ensure to the maximum extent possible the survival and development of the child.*”

The preamble of CRC acknowledges that: “[*t*]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”

The right to life of children before birth is also recognised in the inclusive language of the preamble of the Universal Declaration of Human Rights, which upholds the inherent dignity and the equal and inalienable rights of “*all members of the human family.*” It is re-affirmed by Article 6(5) of the International Covenant on Civil and Political Rights (ICCPR) 1966 which stipulates, “[*s*]entence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.”

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The *travaux préparatoires* of the ICCPR makes clear that: “[t]he principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child.”²

This is explicit recognition in international law that human rights enjoyed by every member of the human family include the unborn.

Vindication of the rights of the unborn child is fully compatible with the European Convention on Human Rights. It also reflects the most probable interpretation of the Convention when read in conjunction with the other relevant treaties, particularly the Universal Declaration of Human Rights, invoked in the Convention’s preamble.

Nothing in the Convention recognises a right to abortion or confers on individuals a right to require a state to permit or facilitate abortion. Correspondingly the European Court of Human Rights has accepted in principle that Article 2 may restrict the availability of abortion (*Open Door Counselling and Dublin Well Women v Ireland* no 14234/88; 14235/88 judgment of 29 October 1992, Series A no 246 para 68) and in *Brüggemann and Scheuten v the Federal Republic of Germany* (p. 116, § 59) when it stated that: “... pregnancy cannot be said to pertain uniquely to the sphere of private life. Whenever a woman is pregnant her private life becomes closely connected with the developing foetus.”

The Court has ruled that the issue of when the right to life begins is a question to be decided at national level (*Vo v France* no 53924/00 judgment 8 July 2004 para 85). It follows that the legal protection afforded to early human life must also be decided at national level. By attempting to impose a policy on abortion, something for which the Parliamentary Assembly has no legal or legitimate justification, the draft resolution also represents an attack on the sovereignty of member states.

Compulsory sex-education

The resolution’s call for compulsory sex education is also incompatible with the Convention’s protocol on education which states: “*In exercise of any functions which it assures in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.*”³

Legalising abortion does not make it safe

Every abortion results in the death of an unborn child. However, the evidence of the physical and psychological harm done to women by abortion, regardless of its legality, continues to grow.

Physical risks

Immediate complications

About 10 percent of women suffer immediate complications; such as haemorrhage, infection or embolism, etc, one-fifth are life-threatening.⁴

² Marc J. Bossuyt in the Guide to the “*Travaux Préparatoires*” of the *International Covenant on Civil and Political Rights*, (Martinus Nijhoff Publishers, 1987)

³ Article 2, Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by protocol 11, Paris, 20 March 1952.

⁴ Frank, et.al., “Induced Abortion Operations and Their Early Sequelae,” *Journal of the Royal College of General Practitioners* 35(73):175-180, April 1985; Grimes and Cates, “Abortion: Methods and Complications”, in *Human*

Infertility and life-threatening reproductive risks

Abortion can damage reproductive organs and cause long-term, sometimes permanent, problems that can put future pregnancies at risk. Women who have abortions are more likely to experience ectopic pregnancies, infertility, hysterectomies, stillbirths, miscarriages, and premature births than women who have not had abortions.⁵

Psychological damage

Risk of suicide

A study of more than 173,000 American women found those who had an abortion had a 154 percent higher risk of suicide than women who carried to term.⁶

Clinical depression

A longitudinal study of American women showed that those who aborted were 65 percent more likely to be at risk of long-term clinical depression after controlling for variables including prior psychiatric state.⁷

Royal College of Psychiatrists

The Royal College of Psychiatrists issued new abortion guidance on 14 March 2008. Whereas previous guidance said that there was no evidence of long-term distress after early abortion, the college now says that some studies indicate a range of mental disorders following abortion.

Legal abortion and clandestine abortion

The draft resolution claims that banning on abortion “*does not result in fewer abortions, but mainly leads to clandestine abortions*” (para 4). The example of Romania is cited as proof of this (explanatory memorandum para 20). The memorandum, however, fails to take into account the circumstances specific to Romania which makes generalisations about other nations impossible.

In 2004 a World Health Organisation (WHO) report on Romania noted that: “*women consider abortion to be a traditional, safe, accessible, quick, and relatively cheap procedure, even if unpleasant and stressful... [g]ynaecologists also consider abortion to be a common, simple procedure, which does not require special attention.*”⁸

Contrary to the claims of the draft resolution, legalisation of abortion in 1989 did not prevent unlawful abortions from continuing in Romania, as the report observed “*...due to a number of social, educational, and economic reasons Romania continues to have a relatively high number of illegal (and*

Reproduction, 2nd ed., 796-813; M.A. Freedman, "Comparison of complication rates in first trimester abortions performed by physician assistants and physicians," *Am. J. Public Health* 76(5):550-554, 1986).

⁵ Strahan, T. *Detrimental Effects of Abortion: An Annotated Bibliography with Commentary* (Springfield, IL: Acorn Books, 2002) 168-206.

⁶ DC Reardon et al “Deaths Associated With Pregnancy Outcome: A Record Linkage Study of Low Income Women,” *Southern Medical Journal* 95(8):834-41, Aug. 2002.

⁷ JR Cogle, DC Reardon & PK Coleman, “Depression Associated With Abortion and Childbirth: A Long-Term Analysis of the NLSY Cohort,” *Medical Science Monitor* 9(4):CR105-112, 2003.

⁸ *Abortion & Contraception in Romania, a strategic assessment of policy, programme and research issues* WHO 2004 ISBN 973-99531-6-6

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unsafe) abortions as evidenced by the high number of hospital admissions for abortion complications.”⁹

The cultural factors observed by the WHO do not exist in Ireland where an absolute ban has not led to illegal abortions. And while some Irish women do travel to Britain for abortion, numbers have declined steadily over recent years.¹⁰

Nor does Ireland's prohibition on abortion endanger the lives of women. A World Health Organisation report shows that Ireland had just one maternal death per 100,000 live births in 2005. In the United Kingdom in 2004 there were eight such deaths per 100,000 births and in the United States in 2003 there were 11 such deaths per 100,000. The abortion regimes in Britain and America are more liberal than in Ireland.¹¹

In Poland a dramatic fall in the abortion rate occurred before legal protection for the unborn was introduced in 1993, from 59,417 in 1990 to 11,640 in 1992.¹² Statistics for induced abortions, miscarriages¹³ and maternal deaths¹⁴ also declined in subsequent years indicating that the change in abortion law has not led to clandestine abortions.

Birth control and abortion

The draft resolution's own explanatory memorandum admits "*making methods of contraception available, however, is not enough to prevent abortions*" (para 26). It also cites a French study which showed that almost two thirds of women with unintended pregnancies had conceived despite using birth control. The level of research which indicates that increasing the availability of birth control does not reduce the rate of abortions is now considerable.

Officially Britain has the highest rate of teenage conceptions in the European Union. In 1999 the British government launched its Teenage Pregnancy Strategy. It aimed to cut teenage pregnancies to 50 percent of the 1998 figure by 2010. The strategy relied on making birth control and abortion more easily available to underage children than ever before. It has received £150 million (c. €90 million) in public funds but shows no sign of success, having failed to meet its interim target of cutting under-18 pregnancies by 15 percent by 2004. Official statistics¹⁵ show a fall of only one percent in the under-18 pregnancy rate and six percent among under-16s while actual numbers rose.

In 2004, when the full impact of the strategy should have been seen, a total of 13,616 girls of 16 became pregnant compared to 13,303 in 2003 and 45 percent of those had an abortion. Among 17-year-olds, rates also showed an increase, from 20,835 to 20,921, and 41 percent had an abortion. The number of children under 14 becoming pregnant, however, rose from 334 in 2003 to 341 in 2004. Sixty percent of those pregnancies ended in abortion.

While abortion advocates continue to argue that the easier access to contraceptive services can reduce levels of abortion, they have long been aware of the reality. In 1973 Dr David Malcolm Potts, a medical director of International Planned Parenthood Federation, predicted: "*As people turn to contraception*

⁹ *ibid*

¹⁰ UK Department of Health Statistical Bulletins 2002-2006

¹¹ *Maternal Mortality in 2005, Estimates developed by WHO, UNICEF, UNFPA and The World Bank*

¹² Governmental Population Commission, Demographic Situation in Poland, reports 1993-2000;

¹³ Governmental Population Commission, Demographic Situation in Poland, reports 1993-2000; the Ministry of Health & Social Affairs, reports 1997-2000; Center of Information Systems of Health Care, report of Statistic Researches Program of Public Statistics 2001.

¹⁴ Demographic Yearbook, GUS, Warsaw 1995-2001.

¹⁵ Local Authority Under-18 Conceptions Statistics 1998-2006 version 28:02:08. Office of National Statistics and the Teenage Pregnancy Unit. <http://www.everychildmatters.gov.uk/resources/IG00200/>

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*there will be a rise, not a fall in the abortion rate.*¹⁶

An analysis of 23 studies published between 1998 and 2006 measured the effect of increased access to emergency birth control, on its uptake, on unintended pregnancy, and on abortion rates. Not one study found a reduction in unintended pregnancies or abortions following increased access to emergency birth control.¹⁷

In Sweden, research found that despite free abortions, free contraceptive counselling, low-cost condoms and oral contraceptives, and over-the-counter emergency birth control, Swedish teenage abortion rates rose to 22.5 per thousand from 17 per thousand between 1995 and 2001.¹⁸

There can be little doubt regarding the real relationship between abortion and availability of birth control. Also, many birth control drugs and devices can have an abortifacient effect in some cases.

Conclusion

Evidence contradicts the claims made by this resolution. Permissive abortion regimes do not protect the health of women. Countries where abortion is not permitted actually show substantially better healthcare for mothers and children. Many women experience serious physical and emotional suffering following legal abortion. Nor does decriminalisation guarantee an end to clandestine abortions. The promotion of birth control and contraceptive-based sex education has proved to be incapable of reducing the level of abortions.

That a committee of the Parliamentary Assembly of the Council of Europe has even proposed this resolution damages the Council of Europe's credibility. The resolution must be rejected in its entirety.

¹⁶ Cambridge Evening News 7 Feb 1973

¹⁷ E. Raymond et al, "Population Effect of Increased Access to Emergency Contraceptive Pills," *Obstetrics & Gynecology* 109 (2007): 181-8.

¹⁸ Edgardh, K et al Adolescent Sexual Health in Sweden, *Sex Trans Inf* 78 (2002): 352-6, available at <http://sti.bmjournals.com/cgi/content/full/78/5/352>.