

CONSTITUTIONALIZE ABORTION IN FRANCE



Constitution

The Constitution is a founding act of society to form its identity and determine the desired social order. In particular, it enshrines fundamental rights and freedoms and defines the conditions for their protection. It is at the top of the hierarchy of norms.

To include the right to abortion in the Constitution is to choose to make this right an acquired one and to perpetuate it. Abortion would then become a fundamental right, which cannot be called into question. Indeed, it is much more difficult to amend the Constitution than a law, because the revision of the Constitution is subject to specific protective rules. Once enshrined in the Constitution, this right will be protected from changes in political majorities and reversals. It would also allow the Constitutional Council to exercise a supervisory role, by preventing any text that would seek to limit it.

Moreover, enshrining the right to voluntary interruption of pregnancy is highly symbolic. In addition to its superior legal value, the Constitution has a symbolic value, because it justifies the foundation of a nation.

Article 89 of the Constitution provides two procedures for revising the constitution:

In the first, the revision can be initiated by the President of the Republic on the proposal of the Prime Minister (agreement required). In this case, we speak of a draft revision, submitted to the vote of the two Assemblies (Senate and National Assembly) meeting in Congress. In order for the draft revision to be adopted, it must be voted by a majority of 3/5th of the members of Congress.

In the second procedure, the revision is initiated by a member of Parliament. It is then a proposal for revision. The text must be examined and voted (by a simple majority) in identical terms ("Any bill or proposed law shall be examined successively in the two assemblies of Parliament with a view to the adoption of an identical text. Article 45, paragraph 1, of the Constitution) by the National Assembly and the Senate. The text is then submitted to the French people by referendum. In fact, this revision proposal is only final once it has been approved by referendum.

Unlike a draft revision carried by the executive, a proposal of parliamentary origin will always be subject to a referendum. This involves political campaigns and debates that affect society as a whole.



FRANCE : WHO QUESTIONS THE RIGHT TO ABORTION TODAY?



Left: demonstration for abortion / Right: pro-life demonstration

Reactionary views of the very conservative right-wing and extreme right-wing political parties, in Europe as well as in the rest of the world, are challenging the right of women to control their own bodies - a fundamental right, the result of a long struggle by women over the past decades.

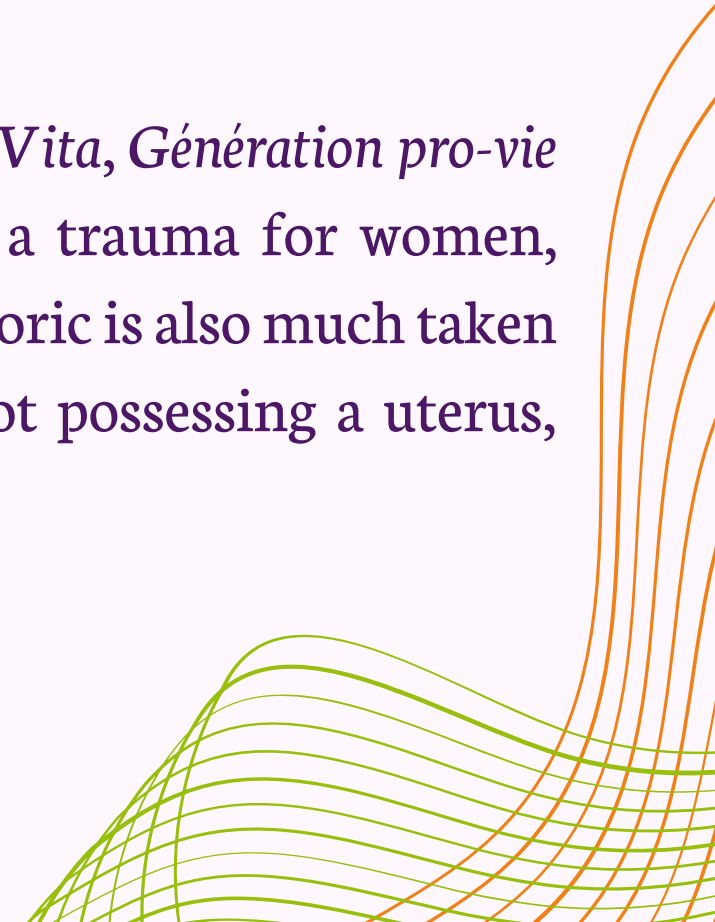
In France, politicians are fighting over the inclusion of the right to abortion in the Constitution. Several bills have been tabled in the National Assembly and the Senate by different political groups and are being criticized by the opposition for being "useless" or "political". Although according to a survey by the IFOP polling institute, 81% of French people are in favor of including access to abortion in the French Constitution, we must not forget the very high score of the *Rassemblement national* (extreme right-wing) in the last legislative elections, whose leader Marine Le Pen has repeatedly questioned access to abortion for all women.

Why do some people still oppose abortion, even though it has been legalized since 1975? Let's deconstruct together the arguments of the anti-abortion movements.

At the beginning of 2022, they were several thousand to demonstrate in Paris against the bill of the deputy Albane Gaillot - extending the legal time limit for abortion from 12 to 14 weeks - displaying moralistic slogans: "The only choice is life", "Abortion only kills innocent people",... Brandishing Article 3 of the 1948 Universal Declaration of Human Rights according to which "Everyone has the right to life, liberty and security of person", opponents to abortion consider this practice as an act of barbarism leading to the murder of an innocent human being who has a sacred right to life.

This argument is highly questionable considering the dramatic consequences of unwanted pregnancies and/or clandestine abortions on women's psychological and physical health. Indeed, banning abortion has never put an end to this practice, but condemns it to clandestinity, forcing women to resort to archaic, dangerous and often deadly methods.

Pro-life movements (*La Marche pour la vie* (March for Life), *Les Survivants* (Survivors), *Alliance Vita*, *Génération pro-vie* (Generation Pro-Life), *Fondation Lejeune*) also argue that abortion remains a violence and a trauma for women, leading to depression and having side effects on their health (pain, risk of sterility..). This rhetoric is also much taken up by right-wing and extreme right-wing political parties, often by men who, although not possessing a uterus, suddenly feel very concerned by the alleged despair of women after abortion.



Beyond the irony of the situation, it's definitely possible to argue that free, consenting and informed decisions are rarely regretted. In fact, according to a study by the Bixby Center for Global Reproductive Health at San Francisco Hospital School of Medicine published in 2015, 95% of women who have had an abortion believe it was a good decision. In addition, side effects and risks of infertility are almost impossible if the abortion is performed under the right conditions.

On the other hand, the misinformation that circulates on websites such as SOS bébé or IVG.net - a strategy used by anti-abortionists to discourage women from having recourse to this practice - can lead to serious medical consequences.

Finally, anti-abortionists are terrorized by the misconception that "women will have abortions like they go shopping. In addition to the fact that having an abortion is rarely enjoyable, there are no studies showing that women use abortion as a substitute for contraception. Especially since there are more accessible, less expensive and less painful methods of contraception than abortion. However, this idea is defended by many people such as Marine Le Pen who denounces what she calls "comfort abortion" by asking for the de-reimbursement of abortion to avoid "abuses". In particular, she has taken a position against extending the time limit for abortion to 14 weeks.

The questioning of the right to abortion does not only exist in associative, religious and political circles, but also among health professionals. In 2019, the Syngof, a union of gynecologists, has threatened to start an "abortion strike". The president of this union, Bertrand de Rochambeau, regularly makes polemical remarks comparing abortion to murder and reopens the debate on the conscience clause of doctors. Indeed, doctors can invoke the conscience clause to refuse to perform any medical act. Abortion is subject to a specific conscience clause, a very useful weapon for those who oppose abortion. Although a doctor is not required to perform an abortion, he or she must inform the patient of the time limits and refer her to other practitioners. In practice, this obligation to inform is not always respected, depriving hundreds of women of their rights.

Not without difficulty, after three shuttles between the Senate and the National Assembly, the Gaillot law was finally adopted in March 2022. It extends the legal time limit for abortion from 12 to 14 weeks, reduces the reflection period by two days and gives midwives the authority to perform surgical abortions. The political blockages to this law illustrate the need to constitutionalize this right, so that it will never be challenged. The real basis for banning abortion is always the same: to exert control over the bodies and lives of women.

In response to politicians who claim that the debate on the revision of the Constitution is pointless and that there are more urgent things to do: No, there is nothing more urgent than to guarantee a fundamental right. More than forty years after the Veil Act - officially the "Law of 17 January 1975 on the voluntary termination of pregnancy" -, it is still necessary and vital today to protect women's freedom and the right to have control over their own bodies, by enshrining the fundamental right to abortion in the Constitution.



EUROPEAN UNION

THE INCLUSION OF THE RIGHT TO ABORTION IN THE CHARTER OF FUNDAMENTAL RIGHTS



The European Council

On the 7th of December 2000, the European Council of Nice proclaimed the Charter of Fundamental Rights of the European Union (EU). It consists of 54 articles that enshrine the fundamental rights of people within the EU. Dignity, freedom, equality, solidarity, citizenship and justice are the six individual and universal values that make up the articles.

One of the objectives of its drafting is to offer a text that is a strong and understandable reference for every European citizen. To achieve this, the Charter brings together existing rights that were previously spread over several texts (European Convention for the Protection of Human Rights, 1950; European Social Charter, 1962, etc.). New fields such as bioethics or personal data protection have also enriched the list of human rights in Europe.

The other objective is to improve the protection of fundamental rights. No details of these rights were included in a treaty. The only legal bases for their defense were Article 6 of the Treaty on European Union (TEU), which stipulates that "the Union shall respect fundamental rights", and the case law of the Court of Justice of the European Communities, which became the Court of Justice of the European Union (CJEU) with the Treaty of Lisbon.

Since 2009, thanks to the Treaty of Lisbon, the Charter of Fundamental Rights has the same legal value as the treaties. The Charter is thus binding on the Member States and any citizen can invoke it if a European text does not respect these rights.

The Charter is strictly defined by its legal scope. It applies first and foremost to the institutions and bodies of the EU, but also to the Member States when they implement Union law (Article 51 of the Charter). However, some states, such as Poland and the Czech Republic, benefit from a derogation from its application following negotiations.

The legal value of the Charter of Fundamental Rights is identical to that of the treaties. It is thus a matter of primary law, at the top of the hierarchy of the Union's norms. Fundamental rights are not part of the EU's competences. However, the EU must respect the whole corpus of texts that constitute fundamental rights.



Since the revocation of the right to abortion by the US Supreme Court on 24 June 2022, it has become essential to enshrine the right to have bodily autonomy in a legally binding reference text, such as the European Charter. The European Parliament has formulated that it condemns the "rollback of women's rights and sexual and reproductive health and rights in the United States and in some Member States."

On 7 July 2022, the European Parliament therefore called for the right to voluntary interruption of pregnancy (abortion) to be enshrined in the Charter of Fundamental Rights of the European Union. The MEPs decided, in plenary session in Strasbourg, by 324 votes in favour (155 against, 38 abstentions), to ask the Council, which represents the Member States, to set this right in stone.

This is a first victory. On the other hand, to enshrine a new right in the Charter requires the unanimity of the member countries. However, the subject divides the EU-27. That is why MEPs also asked the Council "to meet to discuss a convention to revise the treaties" in order to challenge the unanimity rule.

The MEPs complete their resolution with the following principle: "EU countries should ensure access to safe, legal and free abortion services, prenatal and maternal care services, voluntary family planning, contraception, youth-friendly services and HIV prevention, treatment and support without discrimination.

"The protection of women's health is a key point of the resolution, as we know that banning abortion does not produce more children, but puts the lives of women at risk, especially the most vulnerable who may not have the means to travel to a country where abortion remains legal," said Irene Tolleret, Renaissance MEP and member of the European Parliament's Committee on Women's Rights.