

## *The constitutional right to abortion and conscientious objection in France.*

### *What perspectives?*

While in several Eastern European countries and the United States of America, the guarantee of a woman's right to have an abortion appears to be in clear decline<sup>1</sup>, in France, on the other hand, Constitutional Law No. 2024-200 was recently promulgated, which ensured the protection of this right at the highest level of the hierarchy of sources.

This law, in fact, intervened to amend Article 34 of the French Constitution of 4 October 1958 to expressly sanction a woman's right to self-determination in matters of sexual and reproductive health, although the right to abortion was already recognised and regulated by the Loi Veil of 17 January 1975.

Overcoming the tendency of constitutional texts to remain silent on reproductive issues, France has thus made a major impact on the international scene by amending its Constitution.

If, on the one hand, the guarantee of a woman's right to conscious and responsible procreation is thus undoubtedly strengthened, on the other hand, however, evident perplexities may be raised as to the consequences that this development may have on the actual exercise of the right to conscientious objection by doctors and midwives.

The conscience protection clause that aims to guarantee health professionals the right to refuse to participate in the performance of an act contrary to their personal, professional or ethical convictions is expressly contained in Article L2212-8 of the Public Health Code. It states, in particular, that «the doctor or midwife is never obliged to carry out the voluntary interruption of pregnancy but must inform the person concerned, without delay, of own refusal and inform immediately of the names of the professionals or midwives who are qualified to carry out such an intervention within the prescribed time limits».

There can be no doubt that the inclusion in the Constitution of the formula guaranteeing a woman's freedom to have recourse to the voluntary interruption of pregnancy does not require

---

<sup>1</sup> On this point, see the reflections of MARZIA MARIA FEDE, *La nuova legislazione in materia di interruzione volontaria della gravidanza nella Repubblica di San Marino e nello Stato della California*, in *Diritto e Religioni*, 2, 2023, pp. 348-366. See also CATERINA GAGLIARDI, *Gli 'aborti di emergenza' in America. Riflessioni a margine della sentenza della Corte di Appello del Quinto Circuito degli Stati Uniti d'America, Stato del Texas v. Becerra n. 23-10246*, in *Diritto e Religioni*, News, <https://www.rivistadirittoereligioni.com/news/stati-uniti-damerica-gli-aborti-di-emergenza-in-america-caterina-gagliardi/>.

any amendment to the existing regulatory provisions, nor does it call into question the other constitutionally guaranteed rights and freedoms, such as, in particular, the freedom of conscience that underlies the freedom of doctors and midwives not to perform abortions.

It cannot be excluded, however, that the constitutional revision may in fact indirectly weaken the physician's conscience clause since opposing the practice of abortion would be tantamount to opposing a value of the Republic. It will therefore be interesting to observe the dynamics to which the protection of the physician's freedom of conscience will actually be subject with a view to observing whether or not a compression of this freedom will prevail in the current legal framework.

On the other hand, it is well to remember that Law No. 2001-588 of 4 July 2001 has already reduced its scope in the part in which it established that the objector doctor is obliged to inform the person concerned of his refusal to perform the abortion and immediately communicate the name of the professionals qualified to perform the operation. In other words, the objecting health professional is to some extent obliged to facilitate access to abortion despite the fact that such an act contravenes the dictates of his conscience. This same law has also abrogated the conscience clause in favour of primary doctors of a public hospital because they are responsible for organising voluntary termination of pregnancy interventions even though they do not practise them.

Although the French constitutional reform marked an important milestone in the affirmation and promotion of women's rights, it is nevertheless clear how complex it remains to strike a balance between the different freedoms involved in the practice of abortion.

**Caterina Gagliardi**

Fonte: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000049251463>.