

RE: Comparative Abortion Laws in the European Union
DATE: 09 July 2004

AUSTRIA

Federal Law of 23 January 1974. (*Bundesgesetzblatt*, No. 60, 1974.)

Sections 96, 97 and 98 of the Penal Code adopted in January 1974 and effective as of 1975 read as follows:

"Abortion

Sec. 96 (1) Anyone who interrupts a pregnancy with the consent of the pregnant woman shall be punished by imprisonment of up to one year; where the act is committed habitually and for gain ("*gewerbsmaessig*") by imprisonment up to three years.

(2) If the direct perpetrator of the act is not a physician the punishment shall be imprisonment of up to three years; where the act of such an offender is committed habitually and for gain, or where it causes death of the pregnant woman, the punishment shall be imprisonment from six months to five years.

A woman who performs or allows to be performed an abortion on herself shall be punished by imprisonment of up to one year.

Justification of abortion

Sec. 97 (1) An act is not liable to punishment under Sec. 96:

where the abortion is performed by a physician during the first three months from the beginning of the pregnancy after a previous medical consultation; or

2. where the abortion is required ("*erforderlich*") to avert a serious danger, not to be averted by other means, to the life or to the physician or mental health of the pregnant woman, or where a serious danger exists that the child may be afflicted with a serious physician or mental defect, or where the woman became when under 14 years of age; always provided the interruption of pregnancy has been performed by a physician; or

3. where the abortion is performed to save the pregnant woman from an immediate danger to her life, which could not otherwise be averted, under circumstances where medical aid was not available in time.

(2) No physician is obliged to perform an abortion or to take part in it, except where it is necessary ("*notwendig*") without delay to save the life of the pregnant woman from an immediately threatening danger which cannot otherwise be averted. This applies also to persons in para-medical, medico-technical, or auxiliary health employments.

(3) No one may be in any way disadvantaged because he or she has performed a justified abortion, or taken part in it, or because he or she has refused to perform or take part in such an abortion.

Abortion without consent of the pregnant woman

Sec. 98 (1) Anyone who interrupts a pregnancy without the consent of the pregnant woman shall be punished by imprisonment of up to three years; where the act causes the death of the pregnant woman, by imprisonment of from six months to five years.

(2) The perpetrator of the act shall not be punished under para. (1) where the abortion is performed to save the pregnant woman from an immediate danger to her life, not otherwise to be averted, under circumstances where the consent of the woman cannot be obtained in time."

Note: The legislative history of the new code shows that, according to the report of the judicial committee of the *Bundestag* (*Bericht des Justizausschusses*, p. 22), the beginning of pregnancy is the moment of nidation. The three-month period referred to in Sec. 97, para. (1) is calculated from this time.

The Penal Code was adopted by a vote of 92 to 89 in the *Bundestag* (after the upper chamber, the *Bundesrat*, had objected by a 29 to 28 vote). The Government of the *Land* (province) of Salzburg petitioned the Constitutional Court to declare the provisions of Sec. 97, para. (1) 1, which allows abortion in the first trimester, to be unconstitutional. The petition claimed, *inter alia*, that under the Austrian Constitution as well as under the European Convention on Human Rights, an embryo is a "person" from the moment of nidation and must be protected by criminal sanctions like any person who has been born.

In its decision of 11 October 1974 the Court held that the decriminalization of abortion in the first trimester of pregnancy violates neither the Austrian Constitution nor the European Convention (which has the status of constitutional law in Austria). The Court reasoned: a) that the Austrian Constitution's provisions on the protection of human life are concerned only with action on the part of the public authorities and b) that Article 2, para. 1, of the European Convention ("Everyone's right to life shall be protected by law") should not be construed as protecting the embryo.

SUMMARY:

Grounds/Gestational Limits:

- On request at about 15 weeks (12 weeks implantation)

Second trimester in cases of:

- Risk to life of woman
- Risk to woman's physical health
- Risk to woman's mental health
- Risk to foetal health or of foetal handicap

Conditions:

- Doctor consultation
- Minors under 14 years need consent from parents

Induced abortion is not paid for by normal health insurance providers.

BELGIUM

Law on termination of pregnancy 3 April 1990

National Evaluation Committee

(Law of 13 August 1990)

Grounds/Gestational Limits:

Abortion remains forbidden (art. 348, 350-353 of the Penal Code) but is legal under the Law on termination of pregnancy of 3 April 1990. Article 351 provides for imprisonment from 2 to 5 years and for a fine for any woman who obtains an abortion at her own request.

- If the pregnancy causes a “state of distress/emergency” for the woman (up to 12 weeks after conception = 14 weeks pregnancy - the law does not define the state of distress/emergency)
- If the pregnancy contains serious risks for the health of the pregnant woman or if the foetus is judged to be suffering from “an extremely serious and incurable disease” (no time limit)

Conditions:

- On request of the woman and to be confirmed by a doctor. Compulsory waiting period of 6 days. Parental advice for minors is not mentioned in the law. The woman is to be given all necessary information about alternative solutions (adoption, keeping the baby)
- The advice of a second doctor is only requested if the pregnancy contains serious risks for the health of the pregnant woman or if the foetus is judged to be suffering from an extremely serious and incurable disease. In that case there is no time limit.

Abortion is not reimbursed by the Belgian social security system.

CYPRUS

Law 59/1974; Law 186/1986.

Grounds/Gestational Limits:

- Risk to life of woman
- Risk to woman's physical health
- Risk to woman's mental health
- Risk to foetal health or of foetal handicap
- Unwanted pregnancy by rape or other sexual crimes
- Social, socio-medical or socio-economic

Conditions:

- A certificate from the appropriate police authority supported by a medical certificate
- The bona fide opinion of two medical practitioners

No cost for patients eligible for abortions under Cyprian law when done in a hospital. Abortions performed in private clinics average 300 Euros.

Czech Republic

Law 63 and 77. 23 October 1986 effective January 1987. Enactment of the Czech Ministry of Health, No 11/1993.

Grounds/Gestational Limits:

- On request (up to 12 weeks)
- Medical reasons
- Risk to the woman's life
- Risk to foetal health or of foetal handicap
- Rape or other sexual crimes

Conditions:

- Only for Czech citizens or women with permanent residence.
- For non-residents only when risk to life is involved.
- Recommendation of physician
- Minors under 16 years need parental consent
- Forced counseling

Abortion for medical grounds is paid for by the State. Costs for all other reasons—Up to 8 weeks 2381 Czech Krowns or 80 Euros; 9 to 12 weeks maximum of 3459 Czech Krowns or 100 Euros.

The abortion rates have increased drastically from 2.7 per 1000 women aged 15 to 44 in 1957 to 48.7 per 1000 women aged 15 to 44 in 1988.

DENMARK

Act No. 350 13 June 1973

Grounds/Gestational Limits:

- On request (up to 12 weeks)

Second trimester in cases of:

- Risk to woman's life and physical health
- Risk to foetal health of foetal handicap
- Unwanted pregnancy by rape or other sexual crimes
- Social, socio-medical or socio-economic

Conditions:

- Parents consent for minors (under 18 years)
- Possibility of dispensation
- Permission of a committee of four people

No cost for abortions. Cost is paid for by the public health care system.

Between 1970 and 1987, the abortion rates per 1000 women 15 to 45 years of age increased from 9.4 to 18.3. Single women and those under 20 years of age have the highest abortion rates.

ESTONIA

Abortion has been legal since the year 1955 (by Soviet Union abortion law). New criteria since 1992 and 1993 by decree of the Estonian Ministry of Social Affairs has been implemented and also regulations on performing abortions in private health care centers. In June 1993 the Estonian Abortion Register was introduced; filling in abortion register forms is obligatory for all the institutions allowed to perform abortions.

Grounds/Gestational Limits:

- abortion is done on request up to 12 weeks
- abortion on medical reasons is allowed up to 20 weeks (the list of illnesses and conditions has set by the decree of the Estonian Ministry of Social Affairs)

Conditions:

- consultation with a doctor;
- those under 16 need consent from parent(s)

Since February 1994, law provides that women having lawful abortion procedures will have 50% paid for by State health insurance. Funds obtained from abortions are used to subsidize contraceptives for certain demographics such as full time students.

FINLAND

Law 239/1970; Law 564/1978; Law 572/1985.

Grounds/Gestational Limits:

- Up to 12 weeks in cases of:
- Risk to woman's mental health
- Unwanted pregnancy by rape or other sexual crimes
- Social, socio-medical or socio-economic

Up to 20 weeks in cases of:

- Risk to life of woman
- Risk to woman's physical health
- Risk to foetal health or of foetal handicap

Conditions:

- Recommendation of two physicians and authorization of the State Medical Board.

Abortion is free of charge under national health insurance but women must pay hospital fee of FIM 125 per day.

FRANCE

Law 75-17/1975; Law 79-1204/1979; L 162-1 to L 162-11 of the Public Health Code of 1985.

French Abortion Law of 1975

Excerpts from Law No.75-17 of 17 January 1975, concerning voluntary termination of pregnancy, as amended by Law No.79-1204 of 31 December 1979.

1. The law guarantees the respect of every human being from the commencement of life there shall be no derivation from this principle except in cases of necessity and under the conditions laid down by this law. [The teaching of this principle and its consequences, the provision of information on the problems of life and of national and international demography, the education towards responsibility, the acceptance of the child in society, and family-orientated policy, are national obligations. The State, with the co-operation of local authorities, implements these obligations and supports initiatives towards these ends.]

13. The voluntary termination of pregnancy must under no circumstances constitute a means of birth control. In this connection, the government shall take all the measures necessary to promote information on birth control on as wide a scale as possible, notably by the universal establishment, within maternal and child care centers, of family planning or education centers, and by the utilization of all communications media. [The education and practical training of physicians, midwives, and nurses (male and female) shall include instruction concerning contraception.]

Voluntary Termination of Pregnancy Performed before the End of the Tenth Week

Article L. 162-1. A pregnant woman whose condition places her in a situation of distress may make a request to a physician for the termination of her pregnancy. The termination may be performed only before the end of the tenth week of pregnancy.

Article L. 162-2. A voluntary termination of pregnancy may be performed only by a physician.

The procedure must be carried out only in a public or private hospital conforming to the provisions of Article L.176.

[Article 162-3. A physician who has been approached by a woman with a view to the termination of her pregnancy is required at the time of her first visit, to:

- (1) inform her of the medical risks to herself and to her future maternity; and of the biological seriousness of the operation requested by her;
- (2) furnish her with an information folder, to be updated at least once every year, containing in particular:
 - (a) a reference to the provisions of Article 1 of Law No. 75-17 or 17 January, 1975 as well as to the provisions of Article L. 162-1 of this code, limiting the termination of pregnancy to those cases where the pregnant woman is by her condition placed in a situation of distress;
 - (b) a list of the rights, forms or assistance, and benefits guaranteed by laws to families, mothers, including unmarried mothers, and their children, as well as of the possibilities offered by adoption of children to be born;
 - (c) a list and the addresses of the institutions referred to in Article L. 162-4 as well as of the associations and institutions capable of supplying the persons concerned with moral or material assistance; and
 - (d) a list and the addresses of establishments where voluntary termination by pregnancies are performed.]

Article L. 162-4. A woman who considers herself to be placed in the situation referred to in Article L. 162-1 must, after completion of the formalities prescribed in Article L. 162-3, consult a family information, counseling, or advisory establishment, a family planning or education center, a social welfare service, or any other approved institution, which shall furnish her with a certificate to the effect that the consultation has taken place.

This consultation shall be in the form of a private interview during which the woman shall be provided with assistance and advice appropriate to her situation, as well as the necessary means to resolve the social problems posed [especially with a view to

enabling her to keep her child. On this occasion she shall be supplied with the names and addresses of persons who, either as individuals or acting on behalf of organizations, may be able to provide moral or material assistance to women and couples facing problems of accepting or raising a child.

With the exception of public hospitals, the above consultations may not be undertaken inside establishments where voluntary terminations of pregnancies are performed.]

Wherever possible, both partners shall participate in the consultation and in the decision to be taken.

Article L. 162-5. Should the woman repeat her request for a pregnancy termination after the consultations referred to in Article L. 162-3 and L. 162-4, the physician must ask her to give written confirmation; he may not accept such confirmation before a period of one week has elapsed following the woman's initial request [except in cases where there is a risk that the period of ten weeks might be exceeded, the physician being the sole judge of the propriety of his decision. Moreover, this confirmation may not be given sooner than two days after the consultation provided for in Article L. 162-4, which time may be included in the period of one week provided for above.]

Voluntary Termination of Pregnancy Performed on Therapeutic Grounds

Article L. 162-12. A voluntary termination of pregnancy may be performed at any stage of gestation if two physicians certify, after an examination and discussion, that the continuation of the pregnancy is seriously endangering the woman's health or that there is a strong possibility that the unborn child is suffering from a particularly serious disease or condition considered as incurable at the time of the diagnosis.

One of the two physicians must be practicing his profession in a public or private hospital conforming to the provisions of Article L. 176, while the other must be entered on a list of experts registered with the Court of Cassation or a Court of Appeal.

SUMMARY:

Grounds/Gestational Limits:

- On request (12 weeks since last menstrual period, 10 weeks of pregnancy).

Second trimester in case of:

- Risk to life of woman
- Risk to woman's physical health
- Risk to foetal health or of foetal

Conditions:

- A physician must be consulted
- Waiting period of up to one week required
- Minors (under 18 years) need parental consent

- Certificate from two doctors recognized by tribunal for second trimester abortion

Women are reimbursed 80% of the cost of the abortion procedure under the French health care system.

In 1988, the abortion rate was 13.2 per 1000 women from 10 to 44 years of age. From 1976 to 1988, the rates ranged from 12.3 in 1976 to 15.9 in 1981. Studies suggest that 250,000 legal abortions are performed in France annually, and an estimated 5000 women go abroad after their 10th week of pregnancy.

GERMANY

Law 27 July 1992. Changed by law 24 August 1995. Order by the German Federal Constitutional Court 28 May 1993.

Grounds/Gestational Limits:

- Can request (up to 12 weeks from conception)
- 12 weeks from conception in cases of rape or other sexual crimes.
- No limit for medical reasons (broad definition covering mental health risks including such ones caused by foetal damage and general health risks caused by adverse socio-economic conditions).

Conditions:

- Obligatory counseling and three days waiting period after counseling, only abortion on request.
- In cases of abortion for medical reasons or pregnancy caused by rape or another sexual crime permission of another doctor than the one who is to carry out the abortion.
- Counseling is not obligatory in medical cases and in cases of rape or other sexual crimes

Free in medical cases. Completely covered by statutory health insurance or civil servant health assistance (over 90 per cent of population) in cases of rape or other sexual crimes. Cost of abortions on request is covered only partially (e.g. for anesthesia, but not for the abortion itself) by statutory health insurance or civil servant health assistance. Further cost is taken over by the state if the woman's personal income is below certain limits (covering around 50 per cent of women in Western Germany and almost all women in the East).

The law represents a compromise between West and East German laws when the two Germany's were unified. The Federal Constitutional Court struck down certain portions of the compromised law.

Prior to unification, the abortion rates per 1000 women 15 to 44 years of age ranged from 1.5 in 1975 to 5.8 in 1990 in the Federal Republic of Germany and from 25.2 to 20.1 for the same time span in the German Democratic Republic. In 1991, the abortion rate in the unified Germany was 8.7 per 1000 women 15 to 44 years of age. In 1995, nearly 3000 women were reported to have traveled to the Netherlands for an abortion.

GREECE

Abortion is dealt with by the Criminal Code, article 304 titled Interruption of Pregnancy; by Law 821/1978 on Transplantation of Biological Substances, paragraph 3, article 5; and by Law 1609/1986.²⁵

According to article 304 of the Criminal Code, abortion is justified provided it is performed in a hospital, by competent medical doctors, in the presence of an anesthesiologist, with the woman's consent, and in the following cases:

- a) if it is performed before the first 12 weeks of pregnancy completed;
- b) when serious abnormalities of the fetus are found through means of prenatal diagnosis and the gestation period is no longer than 24 weeks;
- c) when there is unavoidable danger to the life of the pregnant woman or serious or permanent injury to her physical or mental health (in this case, one more medical doctor has to certify the necessity of the termination of a pregnancy);
- d) if the pregnancy is the result of a criminal act, such as rape, incest, seduction of a minor, abuse of one incapable or resistance, and if the gestation has not lasted more than 19 weeks

If the pregnant woman is a minor, the consent of one of her parents or guardian is necessary.

A pregnant woman who unjustifiably interrupts her pregnancy or permits a third person to do so shall be punished by imprisonment of at least one year.

The above law sets an upper limit of 24 weeks when serious abnormalities of the fetus are found and a limit of 19 weeks for an induced abortion in case the pregnancy is the result of a criminal act, such as rape, incest, etc. The law does not set an upper limit in case the pregnancy poses a serious or permanent injury to the physical or mental well being of the woman; therefore an abortion may be performed after the 20th week. A conflict, however, arises between the interests of the pregnant woman and those of a potentially viable fetus. In light of this fact, article 304A of the Criminal Code provides that anyone who performs an abortion on a pregnant woman unlawfully and causes serious mental or physical damage to the fetus or to a newborn child will be punished by imprisonment from 2 to 10 years.

SUMMARY:

Grounds/Gestational Limits:

- On request (up to 12 weeks)
- Medical/psychological (up to 20 weeks)
- Rape or other sexual crimes (up to 20 weeks)
- Eugenic (up to 24 weeks)

Conditions:

- Minors and consent from parents
- Under sixteen years of age

Free of charge if performed in public hospital. Most abortions are performed privately in outpatient clinics and women pay between 40,000 and 80,000 Drachma.

Greece is among the EU Member States with the lowest abortion rates, 3.6 in 1989.

HUNGARY

“Law on the protection of foetal life” passed December 1992.

Grounds/Gestational Limits:

- Unlimited abortion in first 12 weeks but in certain circumstances it is possible to have an abortion at later stage
- Grave danger to health of pregnant women
- Pregnancy result of criminal act
- Grave crisis situation for the pregnant women
- Minors must have parental consent

Conditions:

Women must attend counseling service. Women must wait three days after counseling but not longer than eight days before abortion takes place. “Grave crisis situation” is defined by the woman herself and during application is not discussed as this is considered a private matter for the woman.

The rates of abortion in Hungary ranged from a high of 83.8 per 1000 women 15 to 44 years of age in 1970 to 35.6 in 1980. In 1990, the rate was 40.0 per 1000 women 15 to 44 years of age.

IRELAND

Article 40.3.3. of the Constitution of Ireland: “The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.”

Protocol No. 17, annexed to the *Maastricht Treaty* and signed of February 7, 1992. “Nothing in the *Treaty on the European Union*, or in the Treaties establishing the European Communities, or in the Treaties or Acts modifying or supplementing those Treaties, shall affect the application in Ireland of Article 40.3.3. of the Constitution of Ireland.”

Grounds/Gestational Limits:

- Where life of the woman is at risk, including the risk of suicide. No abortions known to have been carried out and each woman would probably have to have permission from the Courts.

Conditions:

- The Supreme Court ruling in the ‘X case’ effectively varied the constitution such that there is an entitlement to have an abortion when there is ‘a real and substantial risk to the life of the mother’. Such right exists within the state. An attempt in 1992 to exclude the risk of suicide from this right, by constitutional amendment, failed.

The European Court of Justice in Case C-159/90, *Society for the Protection of Unborn Children (Ireland) Ltd. v. Grogan and Others*, 3 C.M.L.R. 849 (1991) ruled that an abortion performed according to the law of the Member State in which it is performed constitutes a service within the meaning of Article 60 of the EEC Treaty. It was determined that abortion is a service Irish women have a right to obtain in any Member State that lawfully provides it.

In 1990, the abortion rate in Ireland was 5.4 per 1000 women aged 15 to 44.

ITALY

Law 194, 22 May 1978 on Social Protection of Motherhood and Voluntary Interruption of Pregnancy.

Grounds/Gestational Limits:

- Social, socio-medical or socio-economic (up to 90 days)

Over 90 days in cases of:

- Medical reasons
- Eugenic reasons
- Rape or other sexual crimes
- The pregnancy threatens the physical or mental health of the woman.

Conditions:

- Women must obtain a doctor's certificate and wait for a minimum of seven days
- Minors (under 18 years) need consent from parents or a judge.
- Counseling (not compulsory)

Abortions are free of charge in Italy (paid for by the local government and nationalized health insurance agencies), although there is considerable religious and medical objection to performing the procedure.¹

Law No. 194 abrogated the entire Title 10 of Book II of the Italian Penal Code on Crimes Against the Integrity and Health of the Race.

As of 1990, the rate of abortion was 12.7 per 1000 women between 15 and 44 years of age.

LATVIA

Latvia, known prior to 1992 as the Latvian Soviet Socialist Republic, was subject to the abortion legislation and regulations of the former Union of Soviet Socialist Republics. As a result, abortion practices in Latvia were similar to those throughout the former USSR.

In 1991 an abortion law was accepted by the Cabinet of Ministers, that determined the termination of pregnancy for a fee.

With the help of international consultants a new abortion law has been drafted, and will be discussed in the Cabinet of Ministers of Latvia. No new information is available regarding the status of this draft law.

Grounds/Gestational Limits:

- Available on demand up to 12 weeks of gestation. Up to 22 weeks - in cases of special medical and social situations.

¹ It is estimated that nearly 70% of physicians and a majority of other health care professionals have invoked the "conscience clause" whereby medical professionals who oppose abortion for moral or religious reasons may refuse to perform the procedure. Rita J. Simon, Abortion: Statutes, Policies, and Public Attitudes the World Over (Praeger, 1998), 14-15.

Conditions:

- Parental consent is required for women up to 18 years of age
- Abortions should be performed only by government medical centers and private medical centers, that have contracts with the state health fund

The cost of an abortion as of the most recent available data is 15.00 Ls - 65.00 Ls (1USD = 0,53 Ls).

There are only some cases of illegal abortions reported every year. Legal abortions rate is still very high - 1208 abortions per 1000 live births. This extension of the grounds for abortion after the first 12 weeks of pregnancy led to a dramatic increase in the number of officially reported abortions, estimated in 1996 at 44.1 abortions per 1,000 women.

LITHUANIA

The abortions were made legal from November 23, 1995 by Governmental decision of U.S.S.R.

In December 1987 the Ministry of Health of the former Soviet Union issued the order by which it was allowed to discontinue the pregnancy of more than 12 weeks due to non medical (social) indications.

Since 1990, the discontinuance of more than 12 weeks pregnancy due to social indications is not performed.

Grounds/Gestational Limits:

- On request (up to 12 weeks)

Medical indications (up to 22 weeks):

- risk to life of women
- risk to women physical health
- risk to foetal health or of foetal handicap

Conditions:

- can be performed only by a physician and only in medical institution
- consultation with a doctor
- examination of patient (investigation of blood, cervical smear)
- in practice, girls under 16 need a written agreement of their parents

Abortion for medical reasons is paid for by the State. Due to poor reporting systems the rate of abortion in Lithuania is not known, but as in many former Soviet nations, the rate is known to be high.

Luxembourg

Law amending Penal Code Act, 353, 15 November 1978.

Grounds/Gestational Limits:

- Social and social-medical (up to 12 weeks)

Second trimester in cases of:

- Risk to life of women
- Risk to woman's physical health
- Risk to woman's mental health
- Risk to foetal health or of foetal handicap
- Unwanted pregnancy by rape or other sexual crimes.

Conditions:

- Women must obtain a doctor's certificate and wait for a minimum of seven days

Women are reimbursed by the State for lawful abortions. As in Italy, there is a high rate of conscientious objection by the medical community in performing abortions. Therefore, many women go to the Netherlands for the procedure. This artificially deflates the abortion rate calculation for Luxembourg.

MALTA

Abortion in Malta is illegal in all circumstances and is punishable under section 241-243A of the criminal code of Malta. Malta offers no exceptions to this law. The Maltese Attorney General has also stated that citizens of Malta who travel abroad to procure an abortion are also subject to criminal punishment. Such prosecution would be illicit under the ECJ's ruling in Case C-159/90, *Society for the Protection of Unborn Children (Ireland) Ltd. v. Grogan and Others*, 3 C.M.L.R. 849 (1991).

Malta also annexed a protocol to its EU accession treaty which states: "Nothing in the Treaty of the European Union, or in the Treaties Establishing the European Communities, or in the Treaties or Acts modifying or supplementing those Treaties, shall affect the application in the territory of Malta of national legislation relating to abortion."

NETHERLANDS

Law of May 1, 1981, *Staatsblad* [official law gazette of the Netherlands, *Stb.*] 257; and Decree on Termination of Pregnancy, Decree of May 17, 1984, *Stb.* as amended.

Grounds/Gestational Limits:

- Up to 24 weeks : “Intolerable situation” for the woman to be defined jointly by the woman and her doctor
- The law does not stipulate a time limit as to when an abortion may be performed. The criterion used is the viability of the foetus. Clinics and hospitals that perform abortions on women that have been pregnant longer than 13 weeks are required to meet a number of extra conditions.

Conditions:

- Minors (under 18 years) need parents consent
- Compulsory waiting period (5 days)
- A physician is obliged to determine whether the woman took her decision freely

Nationals of the Netherlands are reimbursed in full by the State for the procedure. People who travel from abroad to obtain the procedure, who are not covered by nationalized health care, must pay for the procedure.

Some statistics suggest that the Netherlands has among the lowest abortion rates in Europe.² However, this is most likely attributed to underreporting of procedures as the Netherlands, due to liberally interpreted abortion laws, is a source for many abortions for foreign visitors.

POLAND

In May 1997, by a nine to three ruling, the Constitutional Tribunal passed legislation that makes abortion illegal. The new law permits abortion only in the case of rape or incest or gross foetal deformity. Physicians may face criminal charges for illegal abortions, including time in prison.

The 1997 law supplanted legislation in 1993 known as the law on Family Planning, Human Embryo Protection and Conditions of Abortion, which was more liberal than the 1997 legislation.

The government of Poland, while negotiating according to their constitution and 1993 legislation proscribing abortion regarding the use of the term ‘reproductive rights’ at Beijing+5 in New York, were severely reprimanded by EU Member States for not towing the EU party line in support of the undefined term. Led by the chairman of the European Parliament’s Women’s Rights Committee from Sweden, the Polish delegation was told that its refusal to accept the EU definition, or lack thereof, of the term ‘reproductive rights’ would result in Poland’s expulsion from candidacy in the enlargement process proposed in the Nice Treaty. Notes from the meeting also allege that Poland should be

² See e.g. Rita J. Simon, Abortion: Statutes, Policies, and Public Attitudes the World Over (Praeger, 1998).

cautious in how it proceeds lest she find herself “isolated” and listed “among such countries as Iran, Sudan, Syria [and] Algeria.” The threats and breach of diplomatic protocol were met with an angry letter denouncing the actions of the EU delegation at Beijing+5 signed by 32 MEP’s and insisting that the EU delegation had no authority to conduct themselves in this manner.³ Poland, in May 2004, became the largest of the new EU Member States.

PORTUGAL

Intentional termination of pregnancy is governed by the Penal Code.⁴ The general standard is that intentional abortion is not legally permitted. The specific circumstances of each case may result in varying penalties. Article 139 states that an abortion performed without the consent of a woman and in contravention of the laws of Portugal may be subject to a term of imprisonment of up to 8 years.

Grounds/Gestational Limits:

Governed by Article 140:

Up to 12 weeks in cases of:

- Risk to life of woman
- Risk to woman’s mental health
- Rape or other sexual crimes

Up to 16 weeks for eugenic reasons

Conditions:

- Minors need parental authorization
- Two favorable medical opinions
- Waiting period of up to three days
- The physician who approves the abortion cannot perform the abortion
- No abortion is permitted as a matter of principle under the law during the third trimester of pregnancy.

Lawful abortions in Portugal are paid for by nationalized health insurance.

SLOVAKIA

Law 73, 23 October 1986 effective January 1987

³ *Report to the Declaration of the National Council of the Slovak Republic on the Sovereignty of the Member States of the European Union in the Cultural and Ethical Issues*, KDH 2002.

⁴ *Codigo Penal*, compiled by Victor Sa Pereira, annotated and commentated (Livros Horizonte, Lisbon, 1988).

Grounds/Gestational Limits:

On request/to 12 weeks

Second trimester in cases of

- Medical reasons
- Risk to woman's life
- Risk to foetal health or of foetal handicap
- Rape or other sexual crimes
- Space of at least six months between two abortions

Exceptions:

- Women with at least two births, aged 35 years or more in case of rape

Conditions:

Recommendation of physician in case of:

- Minors under 16 years needed parental consent
- Minors 16-18 years, after abortion physician must inform parents
- Forced counseling

The fee for an abortion is a maximum of 3000 Sk, or approximately 80 Euros. Abortion on medical grounds is free of charge.

The abortion rate in Slovakia rose from 30.5 per cent in 1984 to a high of 43.1 in 1988. However, the abortion rate declined substantially in the course of the 1990s. It was estimated at 19.7 abortions per 1,000 women aged 15-44 in 1996. The Government reported a gross abortion rate of 4.9 per cent in 1999. The result of this decline can be attributed to the strong presence of anti-abortion politicians in the Slovak Parliament. Since 1992, Slovakia has had two Prime Ministers for a total of three terms who were anti-abortionists: Jan Carnogursky of KDH and Mikulas Dzurinda of SDKU.

SLOVENIA

Slovenia gained independence from the former Socialist Federal Republic of Yugoslavia in 1991; abortion is still regulated by Law No. 7/1977. This law was enacted by Slovenia when it was part of Yugoslavia to implement article 191 of the Federal Constitution of Yugoslavia of 21 February 1974, which proclaims that "it is a human right freely to decide on the birth of children."

Under the 1977 Law, an abortion may be performed on request during the first 10 weeks of pregnancy. The abortion must be performed in a hospital or other authorized healthcare facility. If the woman is a minor, she requires parental consent, unless she has

been recognized as fully competent to earn her own living. After the first 10 weeks of pregnancy, special authorization by commission, composed of a gynecologist/obstetrician, a general physician, or specialist in internal medicine, and a social worker or a psychologist is required. The commission decides on the basis of whether the procedure entails a risk to the woman's life, health or future motherhood that is less than the risk to the woman or the child associated with the continuation of the pregnancy or childbirth. A woman can appeal to the commission of second instance if the commission of first instance rejects her request.

Medical organizations and persons who violate provisions of law are subject to criminal punishment. A woman, however, is never held criminally responsible for inducing her own abortion or for cooperating in such procedure.

Summary:

Grounds/Gestational Limits:

- To save the life of the woman
- To preserve physical health
- To preserve mental health
- Rape or incest
- Foetal impairment
- Economic or social reasons
- Available on request

Conditions:

- After 10 weeks, special authorization is required from a committee of health care professionals to determine if the procedure would be a risk to the life, health or reproductive health of the patient. The applicant may appeal an adverse decision to a commission of second instance.

No information regarding the cost of abortions in Slovenia could be found.

In 2001, 30.9 % of known pregnancies ended in legal abortions. In 1995 the rate of induced abortion was 20.8 per 1000, or 0.55 abortions per one live birth. In 1997, the induced abortion rate was 18.7 per 1000 or 0.54 abortions per live birth.

SPAIN

In direct reference to the Spanish constitutional provision on the right to life and to the protection of physical and mental integrity⁵, Spanish legal scholars refer to intentional abortion as a criminal offense and this is reflected in the Penal Code. Specific

exemptions are however provided for under pertinent provisions.⁵ The basic passages may be paraphrased as follows:

Article 411. The person who intentionally causes an abortion must be penalized as follows:

- 1) With major imprisonment⁶ [6 to 12 years], if committed without the consent of the woman concerned.
- 2) With minor imprisonment [6 months to 6 years], if it was performed with the consent of the woman involved.

If either violence, intimidation, threat of deceit was used to perform the abortion under No. 1 above, or to obtain the woman's consent under No.2 above, the maximum penalty prescribed for major imprisonment shall be applicable.

When as a consequence of the abortion, or of abortive practices performed on a woman who is not pregnant but under the assumption that she is, or using inadequate means to produce an abortion, the woman concerned dies or sustains some of the injuries included under Article 420, No. 1 [injuries causing imbecility, sterility, or blindness], the penalty of minor reclusion [12 to 20 years] shall be imposed on the offender; if any other serious injury results, the offender shall be penalized with minor imprisonment [6 months to 6 years].

Article 412. When the abortion is performed with violence, with knowledge of the pregnancy of the woman but not having the intention to cause it, the penalty shall be of minor imprisonment [6 months to 6 years].

Article 413. The woman who causes an abortion on herself, or consents that another person do so, must be penalized with minor imprisonment.

Article 414. When a woman causes her own abortion or consents to another person performing it on her, with the purpose of protecting her reputation [*honor*], she will be subject to the penalty of major arrest [one to six months].

The same penalty is applicable to the parents who, with the same purpose and with the consent of the daughter concerned, either produce or are instrumental [*cooperen*] in the performance of an abortion on her. If the pregnant woman dies or sustains serious injuries, the parents will be penalized with minor imprisonment [6 months to 6 years].

Article 415. The physician who abusing his professional standing [*su arte*], performs an abortion himself or is instrumental in the performance thereof, will incur in the maximum penalty prescribed in the preceding provisions plus a fine of 75,000.00 to 1,500,000.00 *pesetas*.

The same increased penalty and a fine of 30,000.00 to 300,000.00 *pesetas* will be imposed on those who, not being professionally qualified, practice these activities regularly.

⁵ *Código Penal*, compiled by José Maria Escribá (Bosch, Casa Editorial. Barcelona, 1985).

⁶ *Id.* art. 30. All categories of penalties are defined therein.

The pharmacist who, without the required medical prescription, supplies an abortive substance will incur in the penalty of major arrest [one to 6 months] and a fine of 30,000.00 to 300,000.00 *pesetas*.

The penalties to the professionally qualified offenders will be applicable to physicians, midwives, practice nurses [*practicantes*] and persons holding a health sciences degree as well as to pharmacists and their assistants.

There are number of provisions governing a variety of situations involving participation of individuals other than the woman concerned herself and factual circumstances.

As stated above, there are circumstances under which abortion is permitted under the law. The same Code includes in this regard the following.

Article 417. bis 1. There will be no penalties for abortions practiced by a physician or under his or her direction, when performed at health centers or establishments, public or private, so certified, with the expressed consent of the pregnant woman provided they take place under the following circumstances:

1. When it is necessary to avoid grave danger to the life or the physical or mental health of the pregnant woman and is so indicated by the medical opinion and the expressed consent of the pregnant woman may be dispensed with.
2. When the pregnancy concerned is the consequence of a rape, provided that the abortion is performed within the first twelve weeks and that the offenses concerned have been properly reported.
3. When it is anticipated that the fetus will be born with grave physical or mental deficiencies, provide that the abortion is performed within the first 22 weeks of pregnancy, and that the medical opinion issued prior to the abortion was made by two physicians- specialists of a public or private health center or establishment certified to that effect and different from those who would perform the abortion.

A Royal Decree was enacted on November 21, 1986⁷ to implement Article 417. bis of the Penal Code on matters concerning certification of health centers or establishments for the performance of abortions and the manners in which the medical opinion of physicians-specialists must be issued when so required as well as on specific aspects of record keeping.

Concerning the specific question on abortions performed during the last trimester of pregnancy, and according to all of the above, it may be stated that under Spanish law the maximum limit allowed is 22 weeks, therefore, abortion within such third trimester is not legally allowed.

Summary:

Grounds/Gestational Limits:

- Rape (up to 12 weeks)
- Eugenic reasons (22 weeks)

⁷ Real Decreto No. 2409/1986. *Dario Oficial del Estado* of November 24, 1986.

- No limit in case of risk to women's physical or mental health

Conditions:

- In case of rape, the rape must be reported
- One medical opinion must be provided for cases where there is a risk to a woman's life, physical or mental health
- Two medical opinions must be provided for abortions up to 22 weeks on eugenic grounds
- Minors (under 18 years) need parental consent

Abortions provided by public health care providers are paid for by the State. 97% of abortions are performed privately.

According to the Alan Guttmacher Institute, in 2002, 77, 125 abortions were performed in Spain, 13.8% of known pregnancies end in legal abortions. These numbers are said to be incomplete, most likely due to underreporting.

SWEDEN

Abortion Act 595 14 June 1974

Amended May 1995.

Grounds/Gestational Limits:

- Unlimited up to 12th week of pregnancy
- On request (up to the end of the 18th week of pregnancy if a determination is made that the abortion will not threaten her health or life)

Conditions:

- On request (up to the end of the 18th week of pregnancy)
- The women must be a citizen of Sweden or permanent resident, otherwise a determination must be made by the department of social affairs
- Only licensed physicians can perform abortions; they must be performed in a general hospital or in an approved medical clinic

The cost of abortions is covered by Swedish national health insurance. As for all medical treatment certain fees have to be paid by the patient. In the case of surgical abortion the cost for the patient is totally SEK 120 and for medical abortion SEK 290.

There are penalties of imprisonment for illegal abortions.

In 2001, the abortion rate is 25.8% of known pregnancies and lawfully performed. In 2003, 33, 000 abortions were performed in Sweden.

UNITED KINGDOM

Abortion Act 17 October 1967, Amended 24 April 1990 Human Fertilization and Embryology Act

Termination of Pregnancy

Since the enactment of the Abortion Act 1967, it is no longer a criminal offense when a pregnancy is terminated by a registered medical practitioner, if two medical practitioners are of the opinion, formed in good faith, that:

- (a) the continuance of the pregnancy would involve greater risk to the life or physical or mental health of the pregnant woman or any existing children of her family than if the pregnancy were terminated; or
- (b) there is a substantial risk that if the child were born it would be seriously handicapped⁸

Any treatment for the termination of a pregnancy must be carried out in a hospital vested in the National Health Service or in a facility approved by the government.⁹ The opinion of only one medical practitioner will suffice in cases in which termination is immediately necessary to save the life of or prevent injury to the pregnant woman.¹⁰

The statute frees from guilt not only the person actually terminating the pregnancy, but also others who could be liable as principals or accessories.¹¹ The question of the “good faith” of a medical practitioner is to be decided by the jury, which may take medical evidence.¹²

Late-Term Abortions

The Act does not set a time limit for the legal termination of pregnancies. However, another statute, the Infant Life (Preservation) Act 1929, concerning the destruction of children at or before birth, declares a fetus to be capable of independent life after twenty-eight weeks of pregnancy.¹³ A termination of pregnancy after that period would amount to child destruction, punishable under the earlier statute.

Abortion Reform

There have been numerous attempts in recent years to amend the 1967 Act. A bill before Parliament in 1989 would have banned abortions after 18 weeks. Supporters of the measure have recently renewed their efforts.¹⁴ Another faction in Parliament—a group of about 100 Conservative M.P.’s—backs a reduction in the abortion limit to twenty-four weeks. The bill being considered is a Private Member’s Bill and does not have the necessary government backing needed for it to become law.

⁸ Ch. 87, § 1(1).

⁹ *Id.* § 1(3).

¹⁰ *Id.* § 1(4).

¹¹ *Royal College of Nursing v. DHSS*, [1981] A.C. 800 (H.L.).

¹² *R. v. Smith*, [1974] 1 All E.R. 376 (C.A.).

¹³ 19 & 20 Geo. 5, ch.34, sec. 1(2).

¹⁴ *Financial Times*, January 20, 1990, at 9.

Summary:

Grounds/Gestational Limits:

- Up to 24 weeks for social, socio-medical or socio-economic reasons, except in cases of risk of serious handicap, risk of grave permanent injury to life of woman.

Conditions:

- Consent of two doctors
- Girls under 16 years usually require the involvement of parents/guardians or social worker if they are in care except in exceptional circumstances when it is left to the doctors clinical judgment.

In principle, there is no charge for abortions in the United Kingdom under the National Health System. However, 43% of women pay about 300 Pounds for abortions in private clinics.

In 2003, 197, 000 lawful abortions were performed in the U.K.. In 2001, the rate of abortion was 22.8% of know pregnancies that ended in lawful termination.