

ACTUALITES

WOMEN'S RIGHT TO HAVE RECOURSE TO VOLUNTARY INTERRUPTION OF PREGNANCY— CONSTITUTIONAL LAW OF 8 MARCH 2024

The right to abortion in France is grounded in the country's commitment to the protection of human rights which include the rights to life, health, and privacy.

Some key dates¹

- 17 January 1975:² the 'Veil law' decriminalises abortion In November 1974, Simone Veil - Minister of Health in Jacques Chirac's government - presented her Bill legalising abortion to MPs. Simone Veil's text proposed authorising abortion within 10 weeks of pregnancy, but allowing any doctor or hospital to refuse to perform an abortion;

- 27 January 1993:³ Obstructing access to abortion became a criminal offence with a prison sentence of between two months and two years and a fine of between 2,000 and 30,000 francs. The law was to combat the upsurge of "anti-abortion commandos", as well as the series of actions carried out by anti-abortion activists to obstruct the operation of abortion facilities;

- 2001:⁴ the country legalised abortion on demand within the first 12 weeks of pregnancy;⁵

1 See Rose Amélie Becel, 'De la loi Veil à la constitutionnalisation, les huit dates clés de la conquête du droit à l'avortement.' Public Senat <https://www.publicsenat.fr/actualites/societe/de-la-loi-veil-a-la-constitutionnalisation-les-huit-dates-cles-de-la-conquete-du-droit-a-lavortement/>.

2 Loi Veil, n° 75-17 du 17 janvier 1975 relative à l'interruption volontaire de la grossesse, JORF du 18 janvier 1975.

3 In 2014, the offence was extended to include obstruction of information on abortion. Since 2017, websites which discouraged the practice of abortion were penalised.

4 Loi n° 2001-588 du 4 juillet 2001 relative à l'interruption volontaire de grossesse et à la contraception. Bajos, N & Ferrand M « L'avortement à l'âge de raison » (2001) 4 (n°17) *Mouvements* 99-105. <https://doi.org/10.3917/mouv.017.0099/>.

5 The legal deadline for having an abortion was extended on 2 March 2022 in order to guarantee continuity of access to abortion in the context of the Covid-19 epidemic, and to allow abortions to be carried out after a teleconsultation. In practice, this meant that women in France had the right to

- 17 December 2012:⁶ Although abortion costs were already fully reimbursed for under-age girls, adult women had to pay between 20% and 30% of the cost of the procedure so the 2012 law extended this benefit to all women;

- 2014: the Constitutional Council recognised the right to abortion as a fundamental right protected by the French Constitution.⁷

THE CONSTITUTIONAL AMENDMENT ACT OF 8 MARCH 2024

Even though the right to abortion in France was firmly established it remained the fact that the Constitutional Council had not given the right, constitutional value as such. The European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU) had not enshrined it either.

Therefore on 8 March 2024⁸ French legislators, in order to prevent any future undermining of this freedom by law, amended art 34 of the Constitution to state that "The conditions under which the freedom guaranteed to women to have recourse to a voluntary interruption of pregnancy is exercised, will be determined by legislation".⁹

This is the 25th revision of the 1958 Constitution. It enshrines in the Constitution the freedom guaranteed to women to have recourse to voluntary interruption of pregnancy. It reaffirms the fundamental nature of this freedom in France.

With this text, France became the first country in the world to give constitution a recognition to the freedom to have an abortion as a matter for women alone to decide. Now under French law, a woman has the right to access safe and legal abortion and the state is obliged to ensure that she has access to the necessary medical care and support in the exercise of the right.

This freedom is protected under the supervision of the Constitutional Court, which will be seized of the matter either directly after legislation has been passed, or at a later date via a priority question on constitutionality (QPC).

access safe and legal abortion services, free of charge, within the first 12 weeks of pregnancy. After 12 weeks, abortion is only allowed in cases where the pregnancy poses a risk to the life or health of the woman, or in cases of severe foetal abnormalities.

6 Loi n° 2012-1404 du 17 décembre 2012 de financement de la sécurité sociale pour 2013.

7 Décision n° 2014-700 DC. Noël, Johanna « La décision n° 2014-700 DC ou la poursuite d'une révolution juridique née il y a 40 ans » (2014) 33(2) *Civitas Europa* 253-258.

8 The law was promulgated on 8 March 2024, and published in the *Official Journal* on 9 March 2024.

9 « La loi détermine les conditions dans lesquelles s'exerce la liberté garantie à la femme d'avoir recours à une interruption volontaire de grossesse ».