



The Shock heard around the world: A European reaction to *Dobbs*

Sofia Hnatzuk-escobal

I. Introduction

On June 24, 2022, *Dobbs v. Women’s Health Organization* officially stripped American child-bearers the fundamental right to terminate their pregnancy, a right previously protected for over four decades.¹ Gilded under extreme textualism and notions of “history and tradition,”² the American Supreme Court re-gifted abortion regulation to individual states.³ For both pro-choice and pro-life advocates, ramifications pierced communities and were far from confined domestically. Less than a month after the decision, the European Parliament (EP) released a

¹ 597 U.S. (2022).

² *Id.* at 2.

³ *Id.*

motion for resolution⁴ chastising *Dobbs* and reminding European leaders of the “need to safeguard abortion rights and women’s health in the EU.”⁵

II. The EP resolution “on the US Court decision to overturn Roe” expressed indignities and urged member states the importance of a right to safe abortion.

The EP acknowledged that “women and girls across the U.S. will be impacted by the Supreme Court’s decision, and its harmful consequences will be experienced most acutely by individuals in vulnerable situations”⁶ Further, that “backsliding on the right to access safe and legal abortion is a grave concern,”⁷ condemned the regression in women’s rights taking place globally, and emphasized the belief that sexual and reproductive rights are “fundamental human rights which should be protected and enhanced and cannot in any way be watered down or withdrawn.”⁸ The EP even proposed to “include the right to abortion in the Charter of Fundamental Rights of the European Union,”⁹ and ultimately called on EU Member states to remove barriers to access.¹⁰

III. EU Member States' recent legislative sheds light on the European push to preserve abortion rights.

A. France

The day after the June *Dobbs* decision, representatives of President Macron’s party announced that they would introduce a parliamentary bill to enshrine access to abortion in the

⁴ A motion for resolution is a “non-legally binding text that expresses the Parliament’s opinion and could potentially influence the latest stage of its development. The document highlights a number of key recommendations and the European Commission is expected to consider them before launching the Strategy.” See Eurochild, *The European Parliament voted a motion that includes Eurochild’s amendments*, Mar. 10, 2021; See also Rules of Procedure of the EP, Title V, Rule 143, Feb. 2023 (Motions for resolutions; any member may table a motion for a resolution on a matter falling within the spheres of activity of the European Union).

⁵ EP Motion for Res. 2022/2742(RSP), 2022.

⁶ EP Motion for Res. 2022/2742(RSP), doc. B9-0365(C) 2022.

⁷ *Id.* at G.

⁸ *Id.* at (J)(1).

⁹ *Id.* at (J)(2).

¹⁰ *Id.* at (J)(12).

French Constitution.¹¹ In November 2022, the National Assembly, France's lower house of parliament, voted 337 for and 32 against to enshrine abortion rights in the constitution.¹² Members on the left and centre stated that “the US Supreme Court's overturning of a landmark ruling in June showed the need for new steps.”¹³ The bill must be voted on the same terms by the lower house and the senate, and on February 1st, the “senate voted 166 votes for and 152 against including the right to abortion in the constitution.”¹⁴ The text is now being sent back to the National Assembly for approval, as must agree on the text¹⁵ before it is put to a referendum to eventually become part of the constitution.¹⁶ If it eventually passes, France would become the first country in the world to make abortion a constitutional right.¹⁷

B. Germany

On July 19, 2022, the German Bundestag's repeal of paragraph 219a of the Strafgesetzbuch (German Penal Code) took effect as part of the new government's campaign to fully decriminalize abortion.¹⁸ Paragraph 219a law read:

¹¹ RFI, *After US supreme court ruling French lawmakers move to enshrine abortion rights in constitution*, June 25, 2022 <https://www.rfi.fr/en/france/20220625-after-us-supreme-court-ruling-french-lawmakers-move-to-enshrine-abortion-rights-in-constitution> [last accessed Mar. 4, 2023].

¹² France 24, *French lawmakers approve bill enshrining abortion rights in the constitution*, Nov. 24, 2022 <https://www.france24.com/en/live-news/20221124-%F0%9F%94%B4-french-national-assembly-approves-bill-enshrining-abortion-rights-in-the-constitution> [last accessed Mar. 4, 2023].

¹³ *Id.*

¹⁴ RFI, *France a step closer to adding abortion rights to constitution*, Feb. 2, 2022 <https://www.rfi.fr/en/france/20230202-france-moves-closer-to-adding-abortion-rights-in-constitution-after-senate-approves-text> [last accessed Mar. 4, 2023].

¹⁵ The Senate's text is an amendment to Article 34 of the French Constitution, which guarantees fundamental public rights. See Sénat Direction de la Séance, Amendment, *Droit fondamental à l'interruption volontaire de grossesse*, 143, 283 Jan. 31, 2023 http://www.senat.fr/enseance/2022-2023/143/Amdt_1.html# [last accessed Mar. 4, 2023].

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Christopher F. Schuetze, *Germany Ends Ban on Abortion Advertisement*, N.Y. TIMES, June 4, 2022 <https://www.nytimes.com/2022/06/24/world/europe/germany-abortion-law.html> [last accessed Mar. 4, 2023]; see also Panagiotis Lampropoulos, *Germany abolishes Nazi-era abortion information law*, JURIST, June 24, 2022 <https://www.jurist.org/news/2022/06/germany-abolishes-nazi-era-abortion-information-law/#> [last accessed Mar. 4, 2023].

“Anyone who publicly, in a meeting or by disseminating content... for their pecuniary benefit or in a grossly offensive manner own or third-party services to carry out or promote an abortion or means, objects or procedures that are suitable for the termination of pregnancy, with reference to this suitability”¹⁹

This Nazi-era ban on the advertisement of abortion services had effectively criminalized doctors who provided information about the procedure.²⁰ While neighboring countries Belgium and the Netherlands both have obligatory waiting periods, no other European country had banned the transmission of information about the procedure the way Germany had.²¹

The law has historically hindered access to abortion and information regarding procedures in Germany, as many doctors rightly feared criminal sanctions for so much as disseminating information on abortion on their websites. This law wielded its power as recently as 2017, when German gynecologist Kristina Hänel was fined €6,000 under 219a for a single word on her practice's website: abortion.²² Though a win for doctors and patients in Germany, paragraph 218 still makes the performance of an abortion punishable by 3 years in prison for anyone involved in the procedure, if not completed during the first 12 weeks of pregnancy.²³

C. Spain

On February 16, 2023, Spain pioneered reproductive rights in a sweeping series of progressive legislation. The Spanish Parliament officially approved laws which permit people above 16 to get abortions without parental permission, eliminates the mandatory three-day

¹⁹ See German Criminal Code (Strafgesetzbuch- StGB) Section § 219a (repealed).

²⁰ See *supra* note 18 (NY TIMES).

²¹ See *supra* note 18 (NY TIMES).

²² Carla Bleiker, *German doctor fined for illegally 'advertising' abortions*, DW, Nov. 24, 2017 <https://www.dw.com/en/german-doctor-fined-for-illegally-advertising-abortions/a-40598436> [last accessed Mar. 6, 2023]. See also In May 2021, German Dr. Detlef Merchel received a fine of €3,000 and was convicted for “advertising abortion” by sharing details about the type of abortion he offers, as well as the legal requirements for accessing it on his website. Ivana Kottasová, *Convicted for 'advertising' abortion, German doctors are fighting to share the facts*, CNN, June 7, 2021 <https://www.cnn.com/2021/06/07/europe/germany-abortion-law-doctors-cmd-intl/index.html> [last accessed Mar. 4, 2023].

²³ See German Criminal Code (Strafgesetzbuch- StGB) Section § 218. https://www.gesetze-im-internet.de/stgb/___218.html [last accessed Mar. 4, 2023].

reflection period between requesting and receiving an abortion, and mandates obligatory quality sex education in schools. Further, women who suffer miscarriages or have abortions and are unable to work will be entitled to paid leave, and period products will now be offered free in schools and prisons, while state-run health centers will do the same with hormonal contraceptives and the morning after pill.

Most notably, Spain is now the first country in Europe that will entitle workers up to five days of paid menstrual leave.²⁴ The initial draft of this bill was approved by Spain's leftist coalition government in May 2022 before the Dobbs decision.²⁵ However, Spain's firm stance on abortion manifests clearly through these laws, and Spanish Prime Minister Pedro Sánchez Dobbs response tweet stated that "We cannot take any rights for granted...Social achievements are always at risk of going backwards and their defense has to be our day to day. Women must be able to decide freely about their lives."²⁶

D. Malta

Last, but not least, a glimmer of hope lies in the future for Maltese citizens. Malta has one of the strictest abortion regimes in the world, where abortion is illegal in all circumstances, even in the case of rape, incest, or even if the woman's life is at risk.²⁷ In November 2022, Maltese

²⁴ See NPR, *Spain approves menstrual leave, teen abortion and trans laws*, Feb 16, 2023 <https://www.npr.org/2023/02/16/1157480905/spain-menstrual-leave-teen-abortion-trans-laws> [last accessed Mar. 4, 2023]; see also Jennifer O'Mahoney & Ciaran Giles, *Spain approves menstrual leave, teen abortion and trans laws*, AP NEWS, Feb. 16, 2023 <https://apnews.com/article/abortion-politics-spain-government-europe-e78fb56160f4bc9f40dc231602059b96> [last accessed Mar. 4, 2023]; see also Alyssa McMurty, *Spain passes law giving women with painful periods paid leave from work*, ANADOLU AGENCY, Feb. 16, 2023 <https://www.aa.com.tr/en/europe/spain-passes-law-giving-women-with-painful-periods-paid-leave-from-work/2822338> [last accessed Mar. 4, 2023].

²⁵ REUTERS, *In Europe's first, Spain aims to introduce paid menstrual leave*, May 17, 2022. <https://www.reuters.com/world/europe/europes-first-spain-aims-introduce-paid-menstrual-leave-2022-05-17/> [last accessed Mar. 4, 2023].

²⁶ @Sanchezcastejon, TWITTER (June 24, 2022, 11:18 AM), <https://twitter.com/sanchezcastejon/status/1540353673045299201>.

²⁷ Alice Taylor, *Maltese abortion law changes to be tabled in parliament next week*, EURACTIVE, Nov. 18, 2022 <https://www.euractiv.com/section/politics/news/maltese-abortion-law-changes-to-be-tabled-in-parliament-next-week/> [last accessed Mar. 31, 2023].

Prime Minister Robert Abela (Abela) announced that a recently proposed amendment will allow abortions under the narrow circumstances when pregnancy-related medical complications put the mother's life at risk, relieving doctors from performing under the risk of legal prosecution.²⁸

As recently as February 2023, Abela stated that discussions on the exact wording for the controversial abortion bill will be held soon.²⁹ The bill, as it is now stands, reads that no crime under the clauses banning abortion under Maltese law would be committed "when the termination of a pregnancy results from a medical intervention aimed at protecting the health of a pregnant woman suffering from a medical complication which may put her life at risk or her health in grave jeopardy."³⁰

Despite Malta's heavily catholic pro-life regime,³¹ the positive movement on this form can be seen as a win for the pro-choice community.

IV. Conclusion

For better or for worse, America sits as an influential piece of the international sphere. Repercussions of the *Dobbs* decision bleed far beyond American borders, influencing some of the most progressive to the most restrictive reproductive health regimes. This recent push to

²⁸ Alice Taylor, Malta to amend restrictive abortion laws, EURACTIVE, Nov. 7, 2022, https://www.euractiv.com/section/all/short_news/malta-to-amend-restrictive-abortion-laws/ [last accessed Mar. 31, 2023].

²⁹ THE MALTA INDEPENDANT, Discussions on exact wording of abortion bill are ongoing, PM says, Feb. 17, 2023, <https://www.independent.com.mt/articles/2023-02-17/local-news/Discussions-on-exact-wording-of-abortion-bill-are-ongoing-PM-says-6736249770> [last accessed Mar. 31, 2023].

³⁰ *Id.*

³¹ REUTERS, Protests in Malta as parliament debates abortion amendment, Dec. 4, 2022, <https://www.reuters.com/world/europe/large-demos-malta-parliament-debates-abortion-law-2022-12-04/> [last accessed Mar. 31, 2023].

preserve and loosen European reproductive rights may be an unintended but positive consequence for reproductive justice advocates internationally.