

# 25 years on, abortion with terms

The Senate, with a conservative majority, definitively passes the new bill- Women may terminate their pregnancy up to week 14 without a reason being required

MÓNICA CEBERIO BELAZA - Madrid – 25<sup>th</sup> February 2010

El País.

Spanish women may decide for themselves whether or not they wish to be mothers during the first 14 weeks of pregnancy, unpatronised. The Senate, with a conservative majority, definitively approved the legal abortion reform that introduces a term system in Spain that is operating in practically all the rest of Europe. After a year and a half of tough negotiations and a ferocious debate in the media, the Government managed to have its bill approved just as it left the Congress of Deputies. None of the 88 amendments proposed were accepted. The rest of the text was approved with 132 votes in favour, 126 against and one abstention. It was only rejected by the PP, UPN and Partido Aragonés. The Senators of Coalición Canaria and CiU, with freedom to vote, were split.

*The High Chamber rejected three vetos to the bill and 88 amendments*

The new Sexual and Reproductive Health and Voluntary Interruption of Pregnancy Act will be published in the Official State Gazette in the coming days. It will come into force within four months, during which the necessary implementing regulations must be approved. It arrives 25 years after the first de-penalisation of abortion in democratic Spain. The Act of 1985, the year the Constitutional Court gave its approval, only allowed it in three strictly defined cases: rape, malformation of the fetus and severe risk to the life, physical or mental health of the

women – which were eventually construed in a very ample manner and with scarce guarantees for the women and doctors concerned. It was a law that, according to the Council of State, needed to be “adapted” to the real circumstances, “because nothing is more contrary to the rule of law than a radical divorce between the rules and their application”.

The definitive approval of the bill by the Senate was also used by the Socialists in order to save face of the Minister of Equality, Bibiana Aído, the promoter of the project, who “had become the most insulted member of a democratic government”, according to the Senator Leire Pajín, whose first foray into the Senate yesterday was to defend this bill (appropriately wearing a purple jacket). The Minister of Health, Trinidad Jiménez, and the Minister of Justice, Francisco Caamaño, also thanked Aído for her courage in facing the “blows” she has borne.

Delivery of the law has been difficult. The PSOE, with abortion reform in its 2004 electoral programme, ignored it in 2008, except for mentioning the need to open a social debate on the subject. However, when it formed the Cabinet again, it got down to work. It was a difficult moment: an abortion clinic appeared to have broken the law; other blameless ones were suffering judicial harassment; and women were being called to depose using more than questionable means.

The Ministry chosen to spearhead the project was the recently created Ministry of Equality, headed by young Bibiana Aído, who would work jointly with the Ministries of Justice and Health. Being aware that they required consensus among the greatest number of parties, a parliamentary sub-commission was formed, while a committee of experts appointed by the Government also set to work on the project. The Executive Power had no doubt as to the need for a term law to bring Spain into line with the rest of Europe. The problems of legal insecurity caused by a very strict law on paper that nobody – except the public health service, where only 3% of clinical abortions are carried

out – implemented with rigour. The fact was that, had it been applied to the letter, it would have caused Spanish women to travel abroad to have an abortion.

The Government presented its bill in May 2009. The undoubted radical novelty was the term system, a true revolution compared with the previous law. However, the controversy reached another point: youths of 16 and 17 years. The Patient Autonomy Act of 2002 establishes a legal age of 16 in health matters, except in three cases, clinical trials, aided reproduction and abortion. The Government proposed removing clinical abortion from that exception, which caused waves of criticism and the debate concentrated – almost exclusively, for a time – on that article. The criticism even came from some members of the PSOE, who did not approve the Minister's idea either. After the media storm, an amendment was arranged in the Congress of Deputies: minors decide, but the parents are informed, except when the girl alleges “severe conflict” (a concept that is not fully defined).

The Council of State Attorneys had previously spoken, being highly split, and eventually reported against the project; the General Council for the Judicial Power that, for the first time in its history, did not manage to issue an opinion due to lack of agreement; and the Council of State that, although some amendments arose, was a breath of fresh air for the Government's text, at that time under pressure from the Church, the Partido Popular, anti-abortion groups and some of the media. A mass demonstration in October questioning the very existence of abortion encouraged the law's detractors.

It quietly tiptoed through the Senate, the negotiations taking place discretely and out of the limelight. Yesterday morning the Senate rejected the three vetos presented (by PP, UPN and a Senator from Convergència Unió). The voting in the afternoon cast out the 88 amendments. Roberto Lertxundi, a Socialist Senator, assured that the

content of some of them would be included in the implementing regulations. His colleague Patricia Hernández spoke of the need to overcome “debates from the past” once and for all. The Act would be in force within four months. One will then have to see whether, this time, there is a “marriage” between “the law and its application”.

## **The new regulation of abortion**

- **Term Law. Free abortion up to 14 weeks**, following information on termination of pregnancy, her rights, services and public aid for maternity, and with a period of reflection of at least three days.
- **Indications up to week 22.** A woman may terminate her pregnancy in the event of severe risk to her life or health, or if the foetus suffers severe anomalies.
- **After week 22.** If there is malformation incompatible with the life of the foetus, or if the foetus suffers “an illness of extreme severity or that is incurable”, there is no limit. In the first case, an opinion shall have to be issued by two specialist doctors other than the one performing the abortion. In the case of a severe, incurable disease, a clinical committee (three doctors) shall confirm the diagnosis. There shall be at least one committee on the Public Health network in each Autonomous Community, appointed by the health authorities. The woman may choose at least one of the three members of the committee.
- **Minors between 16 and 17 years old.** The decision is to be taken by them alone, but at least one of their legal representatives (father, mother, guardian), must be informed of the decision taken by the woman who wishes to terminate her pregnancy. Such information for the legal representative shall not be provided when the minor wishing to terminate her pregnancy alleges, basically, that this would cause her a severe

conflict, giving rise to certain danger of violence within the family, threats, coercion, abuse, or a situation of rejection or defencelessness arising.

- The new law guarantees the woman the right to have an abortion at a public centre. If this “cannot provide her that service in a timely manner”, she is recognised the right to “resort to any other accredited centre in the country, with the written commitment of direct payment of the service”.
- It is established that the public health system shall include the most modern anti-conception in its portfolio of services. This means it would finance 60% of their cost, as in the case of common medicines.
- Medical students will receive specific training in voluntary termination of pregnancy and research into new clinical techniques shall be encouraged. Moreover, sex health education shall be taught in schools. A subsequent regulation shall establish at what age.
- Doctors’ right to conscientious objection is guaranteed, although this shall be individual and permanent (a hospital or territory may not object overall, as now happens; and no doctor may object in public health and not do so in private health).

## ACAI expresses its satisfaction at approval of the Abortion Bill

### La Rioja./ EFE News

Madrid, 24<sup>th</sup> February (EFE).- Today, the Association of Accredited Pregnancy Interruption Clinics (ACAI) expressed its satisfaction with the consensus achieved between the different parliamentary forces to definitively approve the Abortion Bill in the Senate.

Professionals from the accredited centres congratulated the Ministry of Equality for promoting political and social agreement over the Abortion Act, which “recognises women the right to an unpatronised decision on their maternity for the first time”.

In a press release, the Association has declared it aims for the will to achieve “the best possible” law to be maintained in the implementing regulations. After approval of the Act, ACAI requested the Regional Governments not to obstruct effective application of the new law in their health management capacity.

To that end, the Association has called on the Government to promote, from the Interterritorial Health Council, common health action protocols to guarantee the quality, gratuity and equity of access to termination of pregnancy nationwide and for all women.

ACAI has asked the Executive Power to include “clinical abortion” in the health services of the Spanish National Health System and creation of units specialised in the termination of pregnancy.

The Association has pointed out that, due to abortion being a non-standardised practice in the Spanish National Health Service, “there is a clear reluctance to perform abortions among the public health doctors and gynaecologists, who do not find professional fulfilment in the practice”.

Due to this, it has been considered that, regardless of the training of the professionals and regulation of conscientious objection, it is essential to standardise the practice to ensure that there are doctors in Spain who are committed to this basic right for women.