

The Legalization of Abortion: Law 194 of the Italian Republic, 1978

ITALY. Law No. 194 of 22 May 1978 on the social protection of motherhood and the voluntary termination of pregnancy. (*Gazzetta Ufficiale della Repubblica Italiana*, Part I, 2 May 1978, No. 140, pp. 3642-3646).

1. The State guarantees the right to responsible and planned parenthood, recognizes the social value of motherhood, and shall protect human life from its inception.

The voluntary termination of pregnancy as covered by this Law shall not be a means of birth control.

The State, the regions, and local authorities, acting within their respective powers and areas of competence, shall promote and develop medicosocial services and shall take other measures necessary to prevent abortion from being used for purposes of birth control.

2. The family counselling centres [consultori familiari] established by Law No. 405 of 29 July 1975 shall assist any pregnant woman, subject to the provisions of that Law:

a) by informing her of her rights under State and regional legislation and of the social, health, and welfare services actually available from agencies in her areas;

b) by informing her of appropriate ways to take advantage of the provisions of labour legislation designed to protect the pregnant woman;

c) by taking special action, or suggesting such action to the competent local authority or social welfare agencies in the area, wherever pregnancy or motherhood create problems which cannot be satisfactorily dealt with by normal action under item (a);

d) by helping to overcome the factors which might lead the woman to have her pregnancy terminated.

For the purposes of this Law, the counselling centres may make use of voluntary assistance, on the basis of pertinent regulations or agreements, from

appropriate basic social welfare organizations and voluntary associations, which may also assist mothers in difficulties after the child is born.

The necessary means for achieving freely chosen objectives with regard to responsible parenthood may also be supplied to minors by health agencies and counselling centres, against a medical prescription.

3. [*Financial provisions*]

4. In order to undergo termination of pregnancy during the first 90 days, women whose situation is such that continuation of the pregnancy, childbirth, or motherhood would seriously endanger their physical or mental health, in view of their state of health, their economic, social, or family circumstances, the circumstances in which conception occurred, or the probability that the child would be born with abnormalities or malformations, shall apply to a public counselling centre established under item (a) of Section 2 of Law No. 405 of 29 Jul 1975 or to a fully authorized medicosocial agency [struttura socio-sanitaria] in the region, or to a physician of her choice.

5. In all cases, in addition to guaranteeing the necessary medical examinations, counselling centres and medicosocial agencies shall be required, especially when the request for termination of pregnancy is motivated by the impact of economic, social, or family circumstances upon the pregnant women's health, to examine possible solutions to the problems in consultation with the woman and, where the woman consents, with the father of the conceptus, with due respect for the dignity and personal feelings of the woman and the person named as the father of the conceptus, to help her to overcome the factors which would lead her to have her pregnancy terminated, to enable her to take advantage of her rights as a working woman and a mother, and to encourage any suitable measures designed to support the woman, by providing her with all necessary assistance both during her pregnancy and after the delivery.

Where the woman applies to a physician of her choice, he shall: carry out the necessary medical examinations, with due respect for the woman's dignity and freedom; assess, in consultation with the woman and, where the woman consents, with the father of the conceptus, with due respect for the dignity and personal feelings of the woman and of the person named as the father of the conceptus, if so desired taking account of the result of the examinations referred to above, the circumstances leading her to request that her pregnancy be terminated; and inform her of her rights and of the social welfare facilities available to her, as well as regarding the counselling centres and the medicosocial agencies.

Where the physician at the counselling centre or the medicosocial agency, or the physician of the woman's choice, finds that in view of the circumstances termination is urgently required, he shall immediately issue the woman a certificate attesting to the urgency of the case. Once she has been issued this certificate, the woman may report to one of the establishments authorized to perform pregnancy terminations.

If termination is not found to be urgently required, the physician at the counselling centre or the medicosocial agency, or the physician of the woman's choice, shall at the end of the consultation, if the woman requests that her pregnancy be terminated on account of circumstances referred to in Section 4, issue her a copy of a document signed by himself and the woman attesting that the woman is pregnant and that the request has been made, and shall request her to reflect for seven days. After seven days have elapsed, the woman may take the document issued to her under the terms of this paragraph and report to one of the authorized establishments in order for her pregnancy to be terminated.

6. Voluntary termination of pregnancy may be performed after the first 90 days:

- a) where the pregnancy or childbirth entails a serious threat to the woman's life;
- b) where the pathological processes constituting a serious threat to the woman's physical or mental health, such as those associated with serious abnormalities or malformations of the fetus, have been diagnosed.

7. The pathological processes referred to in the preceding Section shall be diagnosed and certified by a physician on the staff of the department of obstetrics and gynaecology of the hospital establishment in which the termination is to be performed. The physician may call upon the assistance of specialists. The physician shall be required to forward the documentation on the case as well as his certificate to the medical director of the hospital in order for the termination to be performed immediately.

Where the termination of pregnancy is necessary in view of an imminent threat to the woman's life, it may be performed without observing the procedures referred to in the preceding paragraph and in a place other than those referred to in Section 8. In such cases, the physician shall be required to notify the provincial medical officer.

Where it is possible that the fetus may be viable [sussiste la possibilità di vita autonoma del feto], pregnancy may be terminated only in the case referred to in item (a) of Section 6, and the physician performing the termination shall take any appropriate action to save the life of the fetus.

8. Pregnancy terminations shall be performed by a physician on the staff of the department of obstetrics and gynaecology of a general hospital as referred to in Section 20 of Law No. 132 of 12 February 1968; this physician must also confirm that there are no medical contraindications.

Pregnancy terminations may likewise be carried out in specialized public hospitals, the institutes and establishments referred to in the penultimate paragraph of Section 1 of Law No. 132 of 12 February 1968, and the institutions referred to in Law No. 817 of 26 November 1973 and Decree No. 754 of 18 June 1958 of the President of the Republic, wherever the competent administrative agencies so request.

During the first 90 days, pregnancy terminations may also be performed in nursing homes that are authorized by the regions and have the requisite medical equipment and adequate obstetric and gynaecological services.

The Minister of Health shall issue a decree restricting the capacity of authorized nursing homes to carry out terminations of pregnancy, by establishing:

1. the percentage of pregnancy terminations that may be performed relative to the total number of surgical operations performed during the preceding year at the particular nursing home;
2. the percentage of patient-days allowed for pregnancy-termination cases in relation to the total number of patient-days in the preceding year under conventions with the regions.

The percentages referred to in items 1 and 2 shall be not less than 20% and shall be the same for all nursing homes.

Nursing homes may select the criterion which they will observe from the two set out above.

During the first 90 days, pregnancy terminations may likewise be performed, following the establishment of local medicosocial units, at adequately equipped

public outpatient clinics [poliaambulatori pubblici], operating under the hospitals and licensed by the regions.

The certificate issued under the third paragraph of Section 5 and, after seven days have elapsed, the document delivered to the woman under the fourth paragraph of the same Section shall entitle her to obtain, on an emergency basis, the termination and, where necessary, hospitalization.

9. Health personnel and allied health personnel shall not be required to assist in the procedures referred to in Sections 5 and 7 or in pregnancy terminations if they have a conscientious objection, declared in advance. Such declaration must be forwarded to the provincial medical officer and, in the case of personnel on the staff of the hospital or the nursing home, to the medical director, not later than one month following the entry into force of this Law, or the date of qualification, or the date of commencement of employment at an establishment required to provide services for the termination of pregnancy, or the date of the drawing up of a convention with insurance agencies entailing the provision of such services.

The objection may be withdrawn at any time, or may be submitted after the periods prescribed in the preceding paragraph, in which case the declaration shall take effect one month after it has been submitted to the provincial medical officer.

Conscientious objection shall exempt health personnel and allied health personnel from carrying out procedures and activities specifically and necessarily designed to bring about the termination of pregnancy, and shall not exempt them from providing care prior to and following the termination.

In all cases, hospital establishments and authorized nursing homes shall be required to ensure that the procedures referred to in Section 7 are carried out and pregnancy terminations requested in accordance with the procedures referred to in Sections 5, 7, and 8 are performed. The regions shall supervise and ensure implementation of this requirement, if necessary by the movement [mobilità] of personnel.

Conscientious objection may not be invoked by health personnel or allied health personnel if, under the particular circumstances, their personal intervention is essential in order to save the life of a woman in imminent danger.

Conscientious objection shall be deemed to have been withdrawn with immediate effect if the objector assists in procedures or pregnancy terminations provided for under this Law, in cases other than those referred to in the preceding paragraph.

10. [*Administrative provisions*]

11. The hospital establishment, the nursing home, or the outpatient clinic in which the termination has been performed shall be required to submit to the competent provincial medical officer a declaration by the physician performing the termination stating that the termination has taken place and indicating the documentation on the basis of which it was performed, without disclosing the woman's identity.

Items (b) and (f) of Section 103 of the Public Health Code, approved by Crown Decree No. 1265 of 27 July 1934, shall be repealed.

12. Requests for pregnancy termination under the procedures prescribed by this Law shall be made in person by the woman.

Where the woman is under 18 years of age, the consent of the person exercising parental authority over the woman or her guardian shall be required for the termination of pregnancy. However, during the first 90 days, if there are serious grounds rendering it impossible or inadvisable to consult the persons exercising parental authority or the guardian, or if those persons are consulted but refuse their consent or express conflicting opinions, the counselling centre or medicosocial agency, or the physician of the woman's choice, shall carry out the duties and procedures set out in Section 5 and submit to the magistrate responsible for matters of guardianship [giudice tutelare] in the locality in which it (he) operates, not later than seven days following the request, a report giving its (his) views on the matter. Within five days, after interviewing the woman and taking account of her wishes, the grounds which she puts forward, and the report submitted to him, the magistrate may issue a decision, which shall not be subject to appeal, authorizing the woman to have her pregnancy terminated.

Where the physician finds that termination is urgently required in view of a serious threat to the health of a woman under 18 years of age, he shall make out a certificate indicating the conditions justifying the termination of pregnancy, without requesting the consent of the persons exercising parental authority or the guardian and without applying to the magistrate. The certificate shall entitle

the woman to obtain, on an emergency basis, the termination and, where necessary, hospitalization.

In the case of a pregnancy termination after the first 90 days, the procedures referred to in Section 7 shall likewise be applicable to women under 18 years of age, without regard to the consent of the persons exercising parental authority or the guardian.

13. Where the woman is under civil disability on account of a mental illness, the request referred to in Sections 4 and 6 may be submitted, if not by the woman in person, by her curator or, if he is not her curator, by her husband, provided that he is not legally separated.

Where the request is submitted by the woman under disability or by her husband, the views of the curator must be heard. A request submitted by the curator or the husband must be confirmed by the woman.

The physician at the counselling centre or the medicosocial agency, or the physician of the woman's choice, shall submit to the magistrate responsible for matters of guardianship, not more than seven days following the submission of the request, a report containing details of the request and its source, any particular attitude displayed by the woman, the degree and nature of the mental disorder, and the curator's views if expressed.

Not later than five days following the date on which the report is received, the magistrate, having interviewed the interested parties if he considers this advisable, shall issue a decision which shall not be subject to appeal.

The decision issued by the magistrate shall have the effects referred to in the last paragraph of Section 8.

14. The physician performing the pregnancy termination shall be required to supply the woman with information and instructions on birth control and to acquaint her with the abortion procedures, which must, however, be carried out with all due respect for the woman's personal dignity.

In the presence of pathological processes, such as those associated with abnormalities or malformations of the fetus, the physician carrying out the pregnancy termination shall supply the woman with the necessary details for the prevention of such processes.

15. Acting in collaboration with the universities and hospital establishments, the regions shall promote the refresher training of health personnel and allied health personnel concerning problems of responsible and planned parenthood, contraceptive methods, the various stages of pregnancy, childbirth, and the use of the more modern techniques of pregnancy termination which are physically and mentally less damaging to the woman and are less hazardous. In addition, the regions shall promote courses and meetings which may be attended both by health personnel and allied health personnel and by persons wishing to be informed on matters concerning sex education, the various stages of pregnancy, childbirth, contraceptive methods, and techniques of pregnancy termination.

In order to guarantee implementation of the provisions of Sections 2 and 5, the regions shall draw up an annual programme of refresher training and information on State and regional legislation, as well as on the social, health, and welfare services available in the region.

16. Not later than February of each year, starting from the year following that in which this Law enters into force, the Minister of Health shall present to Parliament a report on the implementation of the Law and its effects, including reference to the problem of prevention.

The regions shall be required to supply the necessary information by January of each year, using questionnaires provided by the Minister.

A similar report shall be presented by the Minister of Mercy and Justice with regard to matters within the specific competence of his Ministry.

17. Any person who criminally causes a woman to terminate her pregnancy shall be liable to from three months' to two years' imprisonment.

Any person who criminally causes a woman to give birth prematurely shall be liable to the penalty indicated in the preceding paragraph, reduced by one-half.

In the cases referred to in the preceding paragraphs, if the act is committed in contravention of labour protection standards, the penalty shall be increased.

18. Any person inducing a pregnancy termination without the consent of the woman shall be liable to from four to eight years' imprisonment. Consent extracted by violence or threats or under false pretences shall be deemed not to have been granted.

The same penalty shall be applicable to any person who brings about a pregnancy termination by actions designed to injure the woman.

This penalty shall be reduced by one-half if the injuries result in the hastening of childbirth.

If the woman dies as a result of the acts referred to in the first and second paragraphs, the penalty shall be from eight to 16 years' imprisonment; where very grave personal injury is the result, the penalty shall be from six to 12 years' imprisonment; where grave personal injury is the result, the latter penalty shall be reduced.

The penalties laid down under the preceding paragraphs shall be increased if the woman is under 18 years of age.

19. Any person who induces a voluntary termination of pregnancy while failing to observe the conditions laid down in Sections 5 or 8 shall be liable to up to three years' imprisonment.

The woman shall be liable to a fine of up to 100,000 *lire*.

Where voluntary termination of pregnancy occurs without the medical examination provided for under items (a) and (b) of Section 6 or in any event without observing the conditions laid down in Section 7, the person bringing about such termination shall be liable to from one to four years' imprisonment.

The woman shall be liable to up to six months' imprisonment.

Where voluntary termination of pregnancy is performed upon a woman who is under 18 years of age or who is under civil disability, in cases other than those laid down in Section 12 and 13 or while failing to observe the conditions laid down in those Sections, the person bringing about such termination shall be liable to the corresponding penalties laid down in the preceding paragraphs, increased by up to one-half. The woman shall not be liable to any penalty.

Where the woman dies as a result of the acts referred to in the preceding paragraphs, the penalty shall be from three to seven years' imprisonment; where very grave personal injury is the result, the penalty shall be from two to five years' imprisonment; where grave personal injury is the result, the latter penalty shall be reduced.

The penalties laid down under the preceding paragraph shall be increased if the woman dies or is injured as a result of the acts referred to in the fifth paragraph.

20. The penalties laid down under Sections 18 and 19 with regard to persons bringing about a pregnancy termination shall be increased if the offence is committed by a person who has expressed a conscientious objection under the terms of Section 9.

21. Except in the cases indicated under Section 326 of the Penal Code, any person who reveals the identity, or in any way divulges information liable to reveal the identity, of any person who has had recourse to the procedures or operations referred to in this Law, such knowledge having come to him through his professional or official activities, shall be liable to the penalties laid down under Section 622 of the Penal Code.

22. Title X of Book II of the Penal Code shall be repealed.

In addition, item 3 of the first paragraph and item 5 of the second paragraph of Section 583 of the Penal Code shall be repealed.

Except where an irrevocable sentence has already been pronounced, no person shall be punishable for the crime of abortion with the woman's consent prior to the entry into force of this Law, if the magistrate confirms that the conditions stipulated under Sections 4 and 6 have been observed.

This Law, bearing the seal of the State, shall be incorporated in the official collection of laws and decrees of the Italian Republic. All those concerned shall be required to comply and to ensure compliance with it as a law of the State.

from: <http://annualreview.law.harvard.edu/population/abortion/ITALY.abo.htm>