

Protests at the Clinic: Regulating Abortion Access in Europe*

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1. Introduction: The times they are a-changing

When it comes to abortion, for better or for worse, “the times they are a-changing”. In an increasingly polarized European society, divisive issues like abortion that once felt sort of settled have again become the forefront of heated debate. Indeed, anti-abortion narratives have recently gained momentum, even as more European countries increasingly recognize the right to abortion – Ireland¹ being a prominent recent example.

However, in countries where far-right parties have won elections, we see a stark decline in the protection of the right to abortion. On 22 October 2020, the Polish Constitutional Court (K1/20)², with their independence captured by Law and Justice (PiS), declared the right to abortion in cases of severe foetal impairment or life-threatening incurable illness unconstitutional. Since this judgment, there have been reports of more women dying of septic shock after doctors refused to perform abortions

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¹ Consequently through the introduction of the Thirty-Sixth Amendment of the Constitution of Ireland, 18 September 2018 and the consequent introduction of the Health (Regulation of Termination of Pregnancy) Act 2018, 20 December 2018.

² Constitutional Tribunal of the Republic of Poland, *Family planning, the protection of fetuses, and grounds for permitting the termination of a pregnancy (K 1/20)*, Press release after the hearing, 2 November 2020, trybunal.gov.pl.

out of fear of legal persecution³. Several women have gone to the ECtHR and successfully challenged the legitimacy of the Polish Constitutional Court decision⁴. The Tusk government, after regaining power, tried to change the country's strict abortion laws, but failed to get the bill passed in parliament⁵.

In Hungary, Orbán's government signed Ministerial Decree 29/2022,⁶ requiring healthcare providers to present patients with proof of the foetus's vital functions in a "clearly identifiable way", which has been interpreted as mandatory listening to the foetus's heartbeat⁷. Another measure limiting access to abortion was taken in Italy, where the parliamentary majority led by Meloni approved a Decree-Law No. 19 of 2 March 2024 allowing anti-abortion groups to approach women inside abortion clinics⁸.

Outside Europe, in Argentina, Milei's party has proposed a law punishing women who have abortions with up to three years in prison⁹. But the most illustrative and well-known example of a far-right shift in abortion policy comes from the United States, where the Roberts Supreme Court decided on 24 June 2022 to overturn the constitutional protection provided to abortion by *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*¹⁰.

In response to these trends, more socio-liberal democracies are trying to strengthen abortion protections. After *Dobbs*, Spain's Constitutional Court finally resolved the constitutional challenge brought against Organic

³ See A. Easton, *Doctors found guilty over death of pregnant woman in Poland*, BBC, 17 July 2025, [bbc.com](#); X, *Doctors charged over death of pregnant woman in Polish hospital that prompted abortion protests*, Notes From Poland, 30 May 2025, [notesfrompoland.com](#).

⁴ See ECtHR, 13 November 2025, *A.R. v. Poland*, app. 6030/21 and ECtHR, 14 December 2023, *M.L. v. Poland*, app. 40119/21. In both decisions, the Court concluded that the legality criterion was not met since the Constitutional Court was not a body compatible with the rule of law requirements.

⁵ X, *Polish parliament rejects bill seeking to ease strict abortion law*, Reuters, 12 July 2024, [reuters.com](#); X, "Tusk admits Polish abortion law liberalisation unlikely this parliamentary term", Notes From Poland, 26 August 2024, [notesfrompoland.com](#).

⁶ Ministerial Decree 29/2022 (IX. 12.) BM rendelete a magzati élet védelméről szóló 1992. évi LXXIX. törvény végrehajtásáról szóló 32/1992. (XII. 23.).

⁷ M. Cursino, *Hungary decrees tighter abortion rules*, BBC, 13 September 2022, [bbc.com](#).

⁸ *Decreto-legge n. 19, 2 March 2024, Ulteriori disposizioni urgenti per l'attuazione del Piano nazionale di ripresa e resilienza*; A. Giuffrida, *Italy passes measures to allow anti-abortion activists to enter abortion clinics*, The Guardian, 16 April 2024, [theguardian.com](#).

⁹ M. Centenera, *El partido de Milei presenta en el Congreso un proyecto para penalizar el aborto en Argentina*, El País, 8 February 2024, [elpais.com](#).

¹⁰ For an in-depth analysis of the *Dobbs*-case: A. Buratti, *La Corte Suprema e la "disincorporation" del diritto all'aborto*, in *Rivista di Diritti Comparati*, n. 3, 2023, p. 1-14.

Law 2/2010, declaring the right to abortion constitutional after a decade-long silence on the issue (STC 44/2023). France incorporated the right to abortion into its Constitution¹¹ through Constitutional Law No. 2024-200 of March 8, 2024¹². The European Parliament, inspired by the French example, approved a motion to include abortion access in the EU Charter of Fundamental Rights (2024/2655(RSP)). This motion should be seen rather as a political statement rather than an actual constitutional amendment proposal, since changing the EU Charter requires consensus among Member States. In the meantime, some Member States have taken matters into their own hands. In October 2025, Luxembourg's majority reached a political agreement to enshrine the freedom to abort in its Constitution¹³, and the Spanish government has proposed introducing the right to voluntary termination of pregnancy into the Constitution¹⁴.

These enforcements of women's right to choose are emblematic but mainly symbolic. As Bosh said in the Spanish context, it is not enough to guarantee an abstract constitutional right or freedom; more systemic issues with the effective access to abortion must also be addressed¹⁵. This is why, in 2022, the Council of Europe's Parliamentary Assembly signed Resolution 2439 on "Access to abortion in Europe: stopping anti-choice harassment"¹⁶, calling for the criminalization of anti-choice harassment both online and in person (Article 10.1), measures to combat disinformation regarding abortion (Article 10.3), and the introduction of buffer zones near abortion facilities, where "all anti-choice information and awareness-raising activities and protests should be prohibited, whether aimed at the public or at individuals" (Article 10.2). This paper aims to give an overview of all the current European countries who, as of date and to my knowledge, have acted on this call.

¹¹ E. Bottini e.a., *Enshrining Abortion Rights in the French Constitution: A Global Statement with Little Domestic Substance?*, *Verfassungsblog*, 9 March 2023, [verfassungsblog.de](https://www.verfassungsblog.de).

¹² As a notable exception to the far-rights aversion of pro-choice politics, Marine Le Pen and her party voted in favour of this constitutional amendment. (C. Guillou, *In a shift in views, Marine Le Pen supports constitutional protection for abortion access*, *Le Monde*, 24 November 2022, [lemonde.fr](https://www.lemonde.fr)).

¹³ T. Toussaint, *Seven key points about the agreement to enshrine abortion rights in the Constitution*, *RTL Today*, 8 October 2025, [today.rtl.lu](https://www.rtl.lu).

¹⁴ J.A. Bosch, *¿El aborto a la Constitución?*, *Periodismo Alternativo*, 28 March 2025, [nuevarevolucion.es](https://www.nuevarevolucion.es).

¹⁵ *Ibid.*

¹⁶ Parliamentary Assembly of the Council of Europe, Resolution 2439 (2022), *Access to abortion in Europe: stopping anti-choice harassment*, [pace.coe.int](https://www.pace.coe.int).

Regulating anti-abortion harassment and introducing buffer zones interferes with citizens' freedom of religion (Article 9 ECHR), expression (Article 10 ECHR), and assembly (Article 11 ECHR). How can European countries guarantee women's right to safe and legal abortions without cracking down on political dissent and public debate on such a topical, divisive issue? This article first analyses whether this interference aligns with current Strasbourg jurisprudence (II.). Then, it provides an overview of all the current European countries who – again, as of date and to my knowledge – have implemented Resolution 2439 by enacting national buffer zone legislation (III.) or criminalizing anti-choice harassment (IV.). Finally, it highlights the main strengths and weaknesses of each approach, showing how a balance can be found between privacy and free speech when regulating anti-abortion protests at the clinic (V.).

2. Article 8 vs. Article 10 in abortion matters at the ECtHR

The European Court of Human Rights (ECtHR, the Court) has not yet issued a ruling on the legitimacy of anti-choice harassment regulation or the introduction of buffer zones near abortion facilities under the European Convention on Human Rights (ECHR). In 2020, the case *Dulgheriu and Others v. Ealing Borough Council* was brought before the ECtHR. In that case, the UK Court of Appeal upheld the legality of a provision broadly prohibiting all abortion-related protests within 100 meters of reproductive health clinics¹⁷. The applicants alleged that this buffer zone violated Article 10 of the ECHR¹⁸. In 2021, the ECtHR unfortunately rejected their application¹⁹, which could have served as valuable jurisdictional guidance on this topic²⁰.

While we await more relevant ECtHR cases, some jurisprudence on civil and administrative injunctions against individual anti-choice activists can serve as guidance on how the ECtHR *might* approach the issue.

¹⁷ E. Otley, *Fixed Buffer Zone Legislation: A Proportionate Response to Demonstrations Outside Abortion Clinics in England and Wales*, in *Medical Law Review*, Vol. 30, No. 3, 2022, p. 512.

¹⁸ N.J.L. Swart, *The ECtHR on buffer zones around abortion clinics*, *GCHL*, 12 February 2021, [rug.nl](#).

¹⁹ ECtHR, 14 January 2021, app. 45893/20, *Dulgheriu and Orthova v. UK* (inadmissibility decision; not published).

²⁰ N.J.L. Swart, *Wetgeving bij abortusklinieken in Europa: Blijft Nederland ten onrechte achterop?*, in *Tijdschrift voor Constitutioneel Recht* 15, n. 2, 2024, p. 112.

a) The earlier, the clearer

In *Van den Dungen v. The Netherlands*, the European Commission of Human Rights (the Commission; predecessor to the ECtHR) addressed a case in which Dutch courts imposed a restraining order requiring the applicant to stay 250 meters away from an abortion clinic. The national courts justified the order because the applicant would approach patients while displaying images of foetal remains and of Jesus Christ, calling abortion child murder and clinic employees murderers. The applicant argued that this measure violated Article 10 ECHR, claiming he had “the right to try and stop women from having an abortion, which he deems a crime against humanity”. The Commission rejected this argument, stating that the interference was proportionate, as it served the legitimate aim of protecting the rights of others and because “the injunction against the applicant was granted for a limited duration and a specified, limited area”²¹.

The Commission reached a similar conclusion in *Van Schijndel e.a. v. The Netherlands*, where it found no violation of Article 9 ECHR. In that case, a group of individuals received suspended criminal fines for praying in the hallway of an abortion clinic, thereby blocking access and movement within the premises. After refusing to leave, the clinic’s director called the police, who forcibly removed the applicants. The applicants claimed that their conviction for the crime of “breach of the peace” violated their freedom of religion. The Commission dismissed this claim, emphasizing that Article 9 of the Convention “does not always guarantee the right to behave in the public sphere in a way which is dictated by a belief”. Furthermore, the applicants “sought to manifest their religious convictions and beliefs by a communal praying session in a corridor of an abortion clinic without having obtained permission from and against the will of the clinic’s direction”²². The Commission therefore held that the conviction was prescribed by law, reasonably justified, and necessary in a democratic society to protect the rights and freedoms of others.

b) The Court’s rulings on a Convention right to abortion

In *A, B and C v. Ireland*, the Court ruled that the moral and ethical question of abortion is one of “acute sensitivity”²³, and that there is no

²¹ ECtHR, 22 February 1995, app. 22838/93, *Van den Dungen v. The Netherlands*, § 2.

²² ECtHR, 20 May 1998, app. 30936/96, *Van Schijndel, Van der Heyden and Leenman v. The Netherlands*, § 1.

²³ ECtHR, 16 December 2010, app. 25579/05, *A, B and C v. Ireland*, § 233.

European scientific or legal consensus on when life begins²⁴. Although the Court recognizes that there is “consensus amongst a substantial majority [...] allowing abortion on broader grounds than accorded under Irish law” (para. 235), the Court does not consider that “this consensus decisively narrows the broad margin of appreciation of the State” (para. 236). This is one of the leading cases establishing that the right to abortion is not included in Article 8 ECHR, giving the states wide margin of appreciation in regulating abortion²⁵. Fifteen years later, the Court has not yet departed from this doctrine²⁶.

However, since then, Strasbourg has made some clarifications. In countries where the legislature has granted a right to abortion, the Court has considered that ensuring the *effective enjoyment* of this right does fall under Article 8 ECHR. In *R.R. v. Poland*, the Court stated that “the State is under a positive obligation to create a procedural framework enabling a pregnant woman to exercise her right of access to lawful abortion”²⁷. In *P. and S. v. Poland*, the Court added that access to reliable information on the conditions and procedures for lawful abortion is “directly relevant for the exercise of personal autonomy”²⁸. Two recent Polish cases, *M.L. v. Poland*²⁹ and *A.R. v. Poland*³⁰, ruled that the Constitutional Court’s decision to restrict abortion in Poland (K1/20) did not meet the legality criteria to restrict fundamental rights, since the Court considered the Polish Constitutional Court to not be established according to the rule of law criteria. These decisions have been criticized by legal doctrine³¹ for the Court’s procedural approach “focusing on the rule of law requirement rather than undertaking a substantive analysis of the abortion ban”, and the Court’s unwillingness to adapt to “to the growing consensus among European countries to adopt more liberal abortion laws”³².

²⁴ *Ibid.*, § 237.

²⁵ *Ibid.*, § 214.

²⁶ For an excellent analysis of the *A., B. and C. v. Ireland* case and its concurring opinions, see: Weichie, *A., B. and C. v. Ireland: Abortion and the Margin of Appreciation*, *Strasbourg Observers*, 17 December 2010, strasbourgobservers.com.

²⁷ ECtHR, 26 May 2011, app. 27617/04, *R.R. v. Poland*, § 200; ECtHR, 20 March 2007, app. 5410/03, *Tysiąc v. Poland*, §§ 116-124.

²⁸ ECtHR, 30 October 2012, app. 57375/08, *P and S v. Poland*, § 111.

²⁹ ECtHR, 14 December 2023, *M.L. v. Poland*, app. 40119/21.

³⁰ ECtHR, 13 November 2025, *A.R. v. Poland*, app. 6030/21.

³¹ D. Murauskas, *Delayed effect, immediate consequences: reflections on A.R. v. Poland*, *Strasbourg Observers*, 23 December 2025, strasbourgobservers.com.

³² N. Vreven, *M.L. v. Poland: potential to liberalise women’s abortion rights?*, *Strasbourg Observers*, 19 April 2024, strasbourgobservers.com.

In conclusion, although the Court has issued various recent rulings on how abortion regulation falls within the scope of Article 8 ECHR, none of these cases address a collision between Article 8 and Article 10 ECHR.

c) More recent, more ambiguity

This collision can be found in two recent Strasbourg cases. In *Hoffer and Annen v. Germany*, the ECtHR reaffirmed its earlier doctrine as established by *Van den Dungen* and *Van Schijndel*. The applicants had been convicted for comparing abortion to the Holocaust. They had distributed leaflets outside a clinic identifying one of the doctors by name and labelling him a “killing specialist for unborn children”, accompanied by the phrase: “Then: Holocaust; Today: Babycast. Whoever remains silent becomes guilty too!”³³. The German courts convicted the applicants of defamation and ordered them to pay criminal fines. The ECtHR, considering the doctors’ rights to privacy and dignity as well as the historical meaning of the term “Holocaust” in Germany, concluded that the criminal conviction did not violate Article 10 ECHR. Ó Fathaigh criticized this decision as a disproportionate restriction on freedom of expression³⁴.

However, in *Annen v. Germany*, the Strasbourg Court broke its pattern for the first time. The facts were very similar to the *Hoffer* case. In *Annen*, however, the applicant’s leaflets did include a footnote stating that abortion procedures were technically permitted under German law, even though the applicant considered them unjust, adding: “The killing of human beings in Auschwitz was unlawful, but the morally depraved Nazi state permitted the murder of innocents and did not make it a criminal offense”³⁵. Unlike *Hoffer*, *Annen* was not criminally convicted for defamation; instead, a civil injunction prohibited the further distribution of the leaflets and the mentioning of the doctor’s personal information on the applicant’s website “*babycast.de*”. Strasbourg held that this injunction violated the applicant’s freedom of expression. The German courts, according to the ECtHR, had failed to sufficiently consider the hyperbolic language typically used in leaflets and the fact that the abortion debate was a matter of public interest³⁶.

³³ ECtHR, 13 January 2011, app. 397/07 and 2322/07, *Hoffer and Annen v. Germany*, § 8.

³⁴ R. Ó Fathaigh, *Comparing Abortion to the Holocaust*, in *Strasbourg Observers*, 25 January 2011, strasbourgobservers.com.

³⁵ ECtHR, 26 November 2015, app. 3690/10, *Annen v. Germany*, § 11.

³⁶ *Ibid.*, § 18.

Heri criticized the Court's divergence from *Hoffer*³⁷, joining the two dissenting opinions that faulted the majority for insufficiently considering the privacy rights of patients and the harm caused to clinic staff. According to the dissenting opinion, the commotion sufficiently harmed the doctors' reputation to force them to close their clinic, thereby depriving many women in the area of access to gynaecological services³⁸.

All of these cases dealt with *specific* court injunctions or criminal convictions on general laws; none of the Court's case law deals specifically with the criminalization of anti-choice harassment or the enactment of buffer zone laws in *general*. However, several national Supreme and Constitutional Courts have already addressed the constitutionality of these provisions. The following section provides an overview of national jurisdictions that have enacted such legislation and examines whether, and how, these measures have withstood constitutional challenges.

3. Safe Access Zones (SAZ) or Buffer Zone Legislation

Safe access zone (SAZ) legislation creates, or allows for the creation of, "a protective area around premises where abortion services are provided"³⁹. Within these zones, a wide range of behaviour typically undertaken by anti-abortion demonstrators is prohibited⁴⁰, often including filming or harassing individuals entering the clinic, but also merely "influencing any person's decision" or "causing them alarm or distress"⁴¹.

a) The United States: sidewalk protests as inspiration

The first country to introduce SAZ around abortion clinics was the United States, which has likely served as an inspiration for similar, more recent legislation in other common law countries. The U.S. is a peculiar case, as pro-life demonstrations there have involved far greater levels of violence

³⁷ C. Heri, *The Problem with Insularity: On the Court's View of Anti-Abortion Campaigning in Annen v. Germany*, in *Strasbourg Observers*, 15 December 2015, strasbourgobservers.com.

³⁸ ECtHR, 26 November 2015, app. 3690/10, *Annen v. Germany*, Joint Dissenting Opinion of Judges Yudkivska and Jäderblom.

³⁹ E. Ottley, *The Delicate Balance Struck by the Abortion Services (Safe Access Zones) (Scotland) Act 2024*, in *Medical Law Review*, 2024, 32, p. 559.

⁴⁰ *Ibid.*

⁴¹ E. Ottley, *International Comparison of Abortion Safe Access Zones Legislation: Literature Review*, Scottish Parliament Library, 12 February 2024, p. 29.

than in Europe – reaching the level of bombings and arson, and even assaults or murders of clinic staff⁴².

In response, Congress enacted the Freedom of Access to Clinic Entrances Act of 1994. This federal statute prohibits the use of physical force or intimidation to “interfere with persons obtaining or providing reproductive health services” and forbids vandalism against such facilities (18 U.S.C. § 248).

On a regional level, several states and municipalities introduced “fixed buffer zones”, which prohibit obstruction near abortion clinics⁴³. The U.S. Supreme Court has upheld these exclusion zones as constitutional, provided they are fixed, narrow, and confined to a limited perimeter around the clinic. In *Schenck v. Pro-Choice Network of Western N.Y.* (1997), a five-meter radius was upheld, whereas in *McCullen v. Coakley* (2014), a ten-meter radius was deemed too broad. Thus, U.S. SAZ-legislation primarily prohibits “sidewalk protests” that obstruct clinic entrances. However, organizing protests in very close proximity – across the street, for example – remains permissible under the Supreme Court’s jurisprudence. This makes sense within the broader context of a robust First Amendment protection in U.S. free speech doctrine⁴⁴.

b) The United Kingdom

In the UK, all jurisdictions have recently adopted safe access zone legislation. Northern Ireland was the first to enact its Abortion Services (Safe Access Zones) (Northern Ireland) Act in 2023, followed shortly by Section 9 of the Public Order Act 2023 in England and Wales. In 2024, Scotland joined by enacting the Abortion Services (Safe Access Zones) (Scotland) Bill 2024.

⁴² E. Ottley, *International Comparison*, cit., p. 27; C. Mathias, *The Anti-Abortion Movement Killed People. Now Victims’ Families Face A Post-Roe World*, *Huffpost*, 13 June 2022, [huffpost.com](https://www.huffpost.com).

⁴³ E. Ottley, *International Comparison*, cit., 40)

⁴⁴ O. Pollicino, *Judicial Protection of Fundamental Rights in the Transition from the World of Atoms to the World of Bits: The Case of Freedom of Speech*, in *European Law Journal*, 25, no. 2, 2019, p. 156-157.

There are small differences between these statutes⁴⁵. In England and Wales⁴⁶, the SAZ has a fixed perimeter of 150 meters⁴⁷. In Northern Ireland, the perimeter ranges between 100 and 250 meters, depending on the needs of the specific facility. Here, these zones are not automatically enacted but may be established upon request of a clinic operator⁴⁸. The Scottish Act also provides this flexibility: buffer zones of 200 meters are automatically enacted, but their size can be reduced or extended when necessary⁴⁹. Indeed, rural areas might require larger zones, whereas densely populated city centres might function with smaller ones. Ottley considers the Scottish law to best balance the different fundamental rights at stake: not only because of its flexible perimeter, but also because it requires public consultation and rigorous justification before any modification⁵⁰.

As mentioned above, the prohibited behaviour within these perimeters is very similar and quite broad: from preventing access to video-recording, or (in)directly influencing a person, or even causing “harassment, alarm, or distress”⁵¹. The penalties are also similar: no criminal sentences are foreseen, but offenders can face fines of maximum £500⁵². In Northern Ireland, failure to comply with police instructions to vacate a buffer zone is punishable with a fine of up to £2,500⁵³.

The Abortion Services (Safe Access Zones) (Northern Ireland) Act 2023 was challenged before the UK Supreme Court for its compatibility with the ECHR. The UKSC rejected the challenge in *Reference by the Attorney General for Northern Ireland* [2022] UKSC 32⁵⁴. The Court held that lawmakers

⁴⁵ E. Ottley and S. Rowlands, *Would it be feasible for European Union countries to implement Safe Access Zones for premises providing abortion services?*, in *The European Journal of Contraception & Reproductive Health Care*, 30-2, 2025, p. 110.

⁴⁶ For an in-depth analysis of the Section 9 of the Public Order Act 2023 in England and Wales, see: E. Ottley, *Fixed Buffer Zone Legislation*, 2022, p. 509-533.

⁴⁷ E. Ottley, *International Comparison*, cit., p. 53-54; Public Order Act, s. 9.

⁴⁸ Safe Access Zones Act, Art. 4.

⁴⁹ Safe Access Zones Bill, ss. 7-8.

⁵⁰ E. Ottley, *The Delicate Balance Struck by the Abortion Services (Safe Access Zones) (Scotland) Act 2024*, in *Medical Law Review*, 2024, 32, p. 559-561.

⁵¹ *Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023*; Public Order Act 2023, s.9; *Scottish Safe Access Zones Bill*, Art. 5.

⁵² Public Order Act s.9(4); *Safe Access Zones (Northern Ireland)*, Art. 5; *Scotland Act*, Art. 5.

⁵³ *Safe Access Zones (Northern Ireland)*, Art. 5.

⁵⁴ UK Supreme Court, 7 December 2022, *Reference by the Attorney General for Northern Ireland – Abortion Services (Safe Access Zones) (Northern Ireland) Bill*, UKSC/2022/0077; E. Ottley, *International Comparison*, cit., p. 512; E. Ottley and S. Rowlands, *Would it be feasible?*, cit., p.110-111.

have wide discretion when balancing the interests between abortion access and anti-abortion protesters, since abortion “raises sensitive and controversial questions of ethical and social policy” (para. 131). It further doubted whether such protests “meaningfully contribute to the public debate on abortion”⁵⁵, stating “that the protesters are more focused on influencing the personal decisions of individual women than on the political question of whether abortion law should be amended”, (para. 132). The Court even considered non-violent activities, such as silent prayer, prohibited conduct⁵⁶. It emphasized that SAZs do not completely prevent freedom of expression or assembly, but merely limit *where* protests may take place. According to the Court, protesters do not have a right to a “captive audience” (para. 128).

c) Ireland

Ireland was long one of Europe’s most restrictive countries regarding abortion⁵⁷. In 2016, a Citizens’ Assembly recommended amending the Constitution to allow legislation on abortion. In May 2018, 66.4% of Irish voters supported repealing the Eighth Amendment which protected the life of the unborn. Based on the Assembly’s recommendations, the Health (Regulation of Termination of Pregnancy) Act 2018 was signed into law⁵⁸.

Although the right to abortion was thus a quite recent addition, the Irish Oireachtas also chose to adopt SAZ-legislation to facilitate access to abortion. The Health (Termination of Pregnancy Services) (Safe Access Zones) Act 2024 came into effect on 17 October 2024. The Bill Digest recognized the need to balance various fundamental rights but, following the common law tradition, joined the wider trend of buffer zone legislation.

The prohibited conduct within these zones is similar to the UK equivalent. Some notable differences include the possibility of imprisonment as a penalty (Safe Access Zones Act 2024, Art. 5), and explicit exceptions allowing protests within 100 meters of the Houses of the Oireachtas and places of worship (Arts. 3(1)–(2)), even if these fall within the buffer zone of an abortion facility.

d) Germany

⁵⁵ E. Ottley and S. Rowlands, *Would it be feasible?*, *cit.*, p.110.

⁵⁶ *Ibid.*; [2022] UKSC 32, § 84 *juncto* § 128.

⁵⁷ F. De Meyer, *Abortion law reform in Europe: The 2018 Belgian and Irish Acts on termination of pregnancy*, in *Medical Law International*, 20(1), 2020, p. 5.

⁵⁸ F. De Meyer, *Abortion law reform in Europe*, *cit.*, p. 5-6.

On 9 February 2024, Germany introduced the Act on Pregnancies in Conflict Situations (*Schwangerschaftskonfliktgesetz* or *SchKG*), which makes harassment of pregnant women within a 100-meter buffer zone around counselling centres and abortion clinics an administrative offense. Within these zones, it is prohibited to deliberately block pregnant women from entering; impose one's opinions upon women entering; harass or intimidate them; or state or show false factual information on pregnancy or abortion (para. 8(2) *SchKG*). Violations constitute an administrative offense punishable by fines of up to €5,000 (para. 35(4) *SchKG*)⁵⁹.

Germany introduced this law at the federal level to avoid regional disparities, “protest tourism” between *Länder* (regions), and inconsistent municipal regulation. Before this law, several municipalities had already prohibited protest activities near healthcare centres. In 2022, however, a municipal order in Pforzheim was overturned by the Higher Administrative Court, which held that it disproportionately infringed the protesters' rights to freedom of assembly, expression, and religion because the protests did not “directly and immediately address” people entering the facilities⁶⁰.

4. Criminalizing Anti-Choice Harassment

Besides the introduction of SAZs, another way to prevent protests near abortion clinics is by criminalizing anti-choice harassment. In these countries, the criminal behaviour acts as a *lex specialis* to the general crime of harassment (*lege generalis*). Especially in continental Europe, this seems to have been the preferred solution, with France being the prime example that inspired similar legislation in Belgium and Spain.

Ottley and Rowlands argue that anti-choice harassment laws do not include safe access zones⁶¹, and that these countries have therefore not implemented the Council of Europe's Resolution 2439⁶². While these laws are not SAZ-legislation, I do believe they are also an implementation of the Resolution 2439, since they have the same *rationale* and effect: stopping anti-choice harassment near abortion facilities. In my view, both safe access zone

⁵⁹ J. Gesley, *Germany: Harassing Pregnant Women at Counseling Centers or Abortion Clinics Now Chargeable as an Administrative Offense*, Library of Congress, 19 November 2024, [loc.gov](#).

⁶⁰ E. Ottley and S. Rowlands, *Would it be feasible?*, *cit.*, p. 108; BVerwG, 23 May 2023, 40-tägige Versammlung zum Schutz des ungeborenen Lebens vor einer Beratungsstelle nach dem Schwangerschaftskonfliktgesetz, no. BVerwG 6 B 33.22, [bverwg.de](#).

⁶¹ E. Ottley and S. Rowlands, *Would it be feasible?*, *cit.*, p. 107-108.

⁶² Parliamentary Assembly of the Council of Europe, Resolution 2439 (2022), *Access to abortion in Europe: stopping anti-choice harassment*, [pace.coe.int](#).

laws and the criminalization of anti-choice harassment are different means to the same end: guaranteeing peaceful and private access to abortion facilities. However, anti-choice harassment often targets behaviour that goes beyond the territorial limitations of the clinics, such as online harassment or abortion-related disinformation campaigns. The following section highlights these variations and their implementation difficulties.

a) France: the original model

France has taken a fundamentally different approach from common law countries. Instead of adopting administratively enforceable buffer zones near abortion clinics, the French legislature introduced a specific criminal offence in 1993: Article L.162-15 of the Code de la santé publique (CSP) prohibits “disrupting access” or using “threats or any act of intimidation” against medical personnel or women entering abortion clinics⁶³. The provision was introduced in response to the growing presence of pro-life activists blocking access to such facilities⁶⁴.

The law has since been amended several times. A notable expansion took place in March 2017 with *Loi n° 2017-347 du 20 mars 2017 relative à l’extension du délit d’entrave à l’IVG*, which introduced the criminalization of obstruction not just by “disrupting access” or by “externing moral or psychological pressure”, but also through (online and in-person) disinformation. The deliberate dissemination of misleading information about abortion procedures, with the intent to dissuade women from undergoing the procedure, can now be punished by two years of imprisonment and a fine of up to 30,000 euros (Article L.2223-2 CSP).

French jurisprudence has interpreted these provisions broadly⁶⁵, since courts have also considered “passive and silent” actions an obstruction⁶⁶. For example, placing pro-life posters in a gynaecology department⁶⁷ or organising a silent prayer vigil in an abortion facility’s waiting room⁶⁸ has

⁶³ As introduced by Article 37 of *Loi n° 93-121 du 27 janvier 1993 portant diverses mesures d’ordre social*, JORF n°25 du 30 janvier 1993.

⁶⁴ N.J.L. Swart, *Wetgeving bij abortusklinieken in Europa: Blijft Nederland ten onrechte achterop?*, in *Tijdschrift voor Constitutioneel Recht*, 15(2), 2024, p. 123.

⁶⁵ N.J.L. Swart, *Wetgeving bij abortusklinieken in Europa*, cit., p. 123; Législative Reports, *Proposition de loi relative à l’extension du délit d’entrave à l’interruption volontaire de grossesse*, 7 December 2016, no. 195 (2016-2017), Provision B.2., senat.fr.

⁶⁶ *Ibid.*; Cour d’appel de Dijon, chambre correctionnelle, 30 novembre 1995.

⁶⁷ *Ibid.*; Cour de cassation, chambre criminelle, 12 février 2002, no. 01-83.554.

⁶⁸ *Ibid.*; Cour de cassation, chambre criminelle, 1er septembre 2015, no. 14-87.441.

resulted in convictions under L.2223-2 CSP. However, as Swart noted⁶⁹, all these convictions concerned actions that took place *inside* abortion facilities, not merely in their vicinity. According to Swart and Oireachtas Library & Research Service, the 2017 amendment nevertheless proved effective, as protests outside clinics have decreased since its adoption⁷⁰.

The major novelty of the 2017 reform lies in the criminalization of online anti-choice harassment, particularly through disinformation campaigns. However, the scope of this criminalization should be viewed with caution, as the *Conseil constitutionnel's* decision⁷¹ following a constitutional challenge to the 2017 amendment significantly limited its potential application.

The Court upheld the constitutionality of Article L.2223-2 CSP, holding that it did not disproportionality impact freedom of expression. However, it introduced two essential clarifications on Article L.2223-2 CSP's application in paragraphs 14 and 15 of the judgment.

In para. 14⁷², the Court clarifies that the mere dissemination of (dis)information is not enough to constitute psychological pressure. Only information targeting one or more *specific individuals* with the intention of preventing them from having an abortion can be criminalized. In other words: general pro-life discourse – whether true or false, or whether online or in person – remains protected, even if a pregnant person considering an abortion would stumble upon it. What is illegal is using these (online) channels to harass specific individuals.

In para. 15⁷³, the Court adds that the provided (dis)information can only amount to moral pressure if two conditions are met: (a) the person was

⁶⁹ N.J.L. Swart, *Wetgeving bij abortusklinieken in Europa*, *cit.*, p. 124.

⁷⁰ *Ibid.*; Oireachtas Library & Research Service, *L&RS Note: Safe access zones – What do other countries do?*, 8 May 2019, data.oireachtas.ie.

⁷¹ Conseil constitutionnel, 16 March 2017, no. 2017-747/DC, conseil-constitutionnel.fr.

⁷² “14. Toutefois, d'une part, la seule diffusion d'informations à destination d'un public indéterminé sur tout support, notamment sur un site de communication au public en ligne, ne saurait être regardée comme constitutive de pressions, menaces ou actes d'intimidation au sens des dispositions contestées, sauf à méconnaître la liberté d'expression et de communication. Ces dispositions ne peuvent donc permettre que la répression d'actes ayant pour but d'empêcher ou de tenter d'empêcher une ou plusieurs personnes déterminées de s'informer sur une interruption volontaire de grossesse ou d'y recourir”.

⁷³ “15. D'autre part, sauf à méconnaître également la liberté d'expression et de communication, le délit d'entrave, lorsqu'il réprime des pressions morales et psychologiques, des menaces ou tout acte d'intimidation à l'encontre des personnes cherchant à s'informer sur une interruption volontaire de grossesse, ne saurait être constitué qu'à deux conditions : que soit sollicitée une information, et non une opinion ; que cette information porte sur les conditions dans lesquelles une interruption volontaire de grossesse est pratiquée ou sur ses conséquences et qu'elle soit donnée par une personne détenant ou prétendant détenir une compétence en la matière”.

deliberately *seeking information*, not opinions, about the legal conditions or consequences of abortion procedures; and (b) the information provider has – or presented themselves as having – medical or expert *authority*. The Court confirmed that only when these conditions are met can the restriction on freedom of expression be considered proportionate (para. 16).

In my view, the French Constitutional Court made it clear that interpersonal conflicts about abortion fall outside the scope of Article L.2223-2 CSP. I consider these clarifications essential to safeguard the freedom of expression of those close to a person considering an abortion – their partner, or family member – who may try to convince them to continue the pregnancy. Interpersonal disagreements on important life choices should not constitute criminal behaviour. What could constitute prohibited conduct under the French Constitutional Court's interpretation is for example, pro-life organisations establishing deceptive “consultation centres” near abortion clinics, thereby misleading patients into entering under the false impression that they are legitimate abortion care providers⁷⁴. Or, for example, individuals using social media accounts to harass pregnant persons considering an abortion.

b) Belgium: The (Unnecessary) Copycat

Belgium presents an interesting case because anti-abortion protests or blockages in front of clinics are virtually non-existent⁷⁵. Nonetheless, during the 2018 general reform of its abortion law, Belgian lawmakers drew inspiration from the 2017 French reform and inserted Article 3.2 into the Law concerning Voluntary Termination of Pregnancy⁷⁶:

“He who attempts to prevent a woman from having free access to a healthcare facility that performs voluntary terminations of pregnancy shall be punished with imprisonment from three months to one year and with a fine of one hundred to five hundred euros”.

The explanatory memorandum clarifies that this clause targets only the *physical obstruction* of women attempting to access clinics⁷⁷. The Belgian Constitutional Court confirmed this interpretation when rejecting a

⁷⁴ L. Franco, *Los antiabortistas abren cinco locales alrededor de la Clínica Dator para multiplicar su acoso a mujeres embarazadas*, *El País*, 22 October 2024, elpais.com.

⁷⁵ N.J.L. Swart, *Wetgeving bij abortusklinieken in Europa*, *cit.*, p. 125.

⁷⁶ *Wet van 15 oktober 2018 betreffende de vrijwillige zwangerschapsafbreking, tot opheffing van de artikelen 350 en 351 van het Strafwetboek, tot wijziging van de artikelen 352 en 383 van hetzelfde Wetboek en tot wijziging van diverse wetsbepalingen*, BS 29 October 2018.

⁷⁷ Toelichting Wetsvoorstel betreffende de vrijwillige zwangerschapsafbreking, *Parl. St. Kamer* 2017-18, no. 54K3216001, p. 4.

constitutional challenge in 2020⁷⁸, stating that attempts to persuade a woman not to have an abortion are not punishable; only the physical obstruction of access is (para. B.21).

Lawmakers seemed aware that this interpretation diverged from the *ratio legis* of the French model, so they proposed an amendment in 2019⁷⁹ to include obstruction “in any manner whatsoever”, thereby covering psychological pressure as well. The explanatory memorandum cited examples of targeted behaviour: concealing information about abortion facilities or spreading misleading information about abortion online, through pamphlets, or via posters⁸⁰.

The Belgian Council of State, however, criticised the proposed amendment for being unclear, too broad, and a disproportionate interference with freedom of expression⁸¹. The Council questioned whether the legislator sought to criminalise “fake news”⁸² about abortion and urged caution in using imprisonment as a penalty for such acts, noting that the ECtHR generally reserves imprisonment for exceptional expression offences such as hate speech or incitement to violence⁸³.

The Council acknowledged that a similar amendment had been adopted in France but reminded the legislator of the *Conseil constitutionnel*'s qualifications regarding what types of disinformation campaigns could constitute criminal behaviour (see *supra*). Some parliamentarians took this advice to heart and proposed several amendments to bring the text closer to the French version. Still, in its second opinion, the Council of State remained critical: while the new version was clearer, it still lacked an explicit reference that psychological pressure must be applied to a specific person, and its scope remained broader than the French law, as even the mere

⁷⁸ GwH 24 September 2020, no. 122/2020, *nl.const-court.be*.

⁷⁹ Toelichting Wetsvoorstel tot wijziging van diverse wetsbepalingen teneinde de voorwaarden om tot een vrijwillige zwangerschapsafbreking over te gaan te versoepelen, *Parl.St. Kamer* 2019-20, no. 55-0158/009.

⁸⁰ *Ibid.*, p. 2 en 3.

⁸¹ Advies RvS, afdeling Wetgeving, 24 February 2020, no. 66.881/AV/AG, p. 20; F. De Meyer and C. De Mulder, *Een nieuw tijdperk voor abortus? Een analyse van het voorstel ter versoepeling van de Belgische abortuswet*, in *Family & Law*, July 2021, p. 32-34; N.J.L. Swart, *Wetgeving bij abortusklinieken in Europa*, *cit.*, p.126.

⁸² Advies RvS, afdeling Wetgeving, 24 February 2020, no. 66.881/AV/AG, p. 21-22.

⁸³ Advies RvS, afdeling Wetgeving, 24 February 2020, no. 66.881/AV/AG. See also ECtHR, 23 April 1992, app. 11798/85, *Castells v. Spain*, § 46; ECtHR, 15 March 2011, app. 2034/07, *Otegi Mondragón v. Spain*, § 59; ECtHR, 15 October 2015, app. 27510/08, *Perinçek v. Switzerland*, § 198.

“hiding of information” could theoretically constitute a criminal act⁸⁴. To illustrate its concern, the Council posed a hypothetical: if a partner tells a woman that he will end the relationship if she proceeds with an abortion, would this amount to “moral or psychological pressure”? Such ambiguity, the Council argued, must be clarified in accordance with the *lex certa*-principle⁸⁵.

In the end, the 2021 bill was not enacted. Nevertheless, political support for reform remains: a similar bill was proposed in 2025, again aiming to extend criminal liability to psychological pressure, intimidation, or spreading misleading information, explicitly referring to the French law⁸⁶.

c) Spain: The (Struggling) Copycat

Just like in Belgium, Spain’s “anti-abortion harassment” offense was modelled on the French law. But unlike in Belgium, the Spanish reality is very different: abortion access is hindered by a high number of conscientious objectors in the public health system⁸⁷ – leaving very few public abortion facilities – and by persistent protests from groups like “40 Days for Life” or “The Saviours” outside the clinics that remain⁸⁸.

To address this, Organic Law 4/2022⁸⁹ inserted Article 172 *quater* into the Spanish Penal Code (SPC). The preamble describes organized groups approaching women entering clinics with photos, toy foetuses, and anti-abortion messages, aiming to change their decision through coercion or intimidation. The law seeks to “guarantee a safety zone” around abortion providers to protect women’s privacy, security, and freedom of movement. Article 172 *quater* SPC thus punishes “annoying, offensive, intimidating, or

⁸⁴ Advies RvS, afdeling Wetgeving advies, 19 June 2020, no. 67.122/AV, p. 17-18.

⁸⁵ *Ibid.*

⁸⁶ Wetsvoorstel tot wijziging van diverse wetsbepalingen, teneinde de voorwaarden voor een vrijwillige zwangerschapsafbreking te versoepelen, 26 March 2025, *Parl. St. Kamer* 2024-25, no. 56-0822/001, p. 10.

⁸⁷ P. Linde y I. Validés, *La inequidad del aborto: cada año cientos de mujeres tienen que salir de su comunidad a interrumpir el embarazo*, *El País*, 8 June 2023, elpais.com.

⁸⁸ L. Franco, *The pro-life campaign to stop women from having abortions in Spain*, *El País*, 2 November 2021, elpais.com; A. Comas, “Abortion in Spain: where the law doesn’t reach,” *El País*, 30 September 2021, elpais.com.

⁸⁹ Ley Orgánica 4/2022, de 12 de abril, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, para penalizar el acoso a las mujeres que acuden a clínicas para la interrupción voluntaria del embarazo.

coercive acts” intended to hinder access to abortion⁹⁰ with prison sentences (from three months to one year) or community service.

Spanish legal scholars have criticized the penalization of anti-abortion harassment on three main grounds: (i.) redundancy, (ii.) overreach and (iii.) overuse of symbolic criminal law. First, they argue a *lex specialis* was unnecessary because Article 172 SPC already criminalizes harassment and coercion as *legi generalis*⁹¹. They also contest the inclusion of “annoying” and “offensive” acts, which is protected speech⁹². Finally, they fault the legislator for creating new minor offenses instead of relying on less intrusive administrative or civil law measures⁹³. Some, like Cuervo, suggest administrative sanctions to create broad safety perimeters around clinics would have been more appropriate⁹⁴.

In previous work⁹⁵, I made three main arguments countering some of these claims. First, I argued that the introduction of a *lex specialis* was not redundant. Harassment outside abortion clinics has been a persistent phenomenon, and despite theoretical doctrinal claims, there is no practical jurisprudence applying Article 172 SPC to these cases. According to the 2018 ACAI report, the few complaints filed by women or staff were dismissed or suspended in the judicial process⁹⁶.

Second, I stressed the weakness of relying solely on administrative enforcement in Spain. Because administrative sanctions depend on regional

⁹⁰ Either by hindering pregnant persons accessing abortion facilities or the healthcare staff working there.

⁹¹ E.I. Colina, *Sobre la reforma al artículo 172 quater del Código Penal*, in *Cuadernos de Política Criminal*, 137, p. 155-159; O. Martínez Sanromà, *El acoso antiabortista: Herramientas interpretativas para el nuevo art. 172 quater CP*, en *Diario La Ley*, 10272, 21 April 2023.

⁹² C. García Arroyo, *El nuevo delito del 172 quater, el acoso para obstaculizar el aborto: a vueltas con la expansión del Derecho penal simbólico*, in *Revista Penal*, 53, p. 88; E.I. Colina, *op. cit.*, p.145-150; Martínez Sanromà, *El acoso antiabortista, cit.*; V. Magro, *Características del nuevo delito de acoso para no abortar del art. 172 quater por Ley Orgánica 4/2022*, de 12 de abril, in *Diario La Ley*, 10059, 2 May 2022.

⁹³ C. García Arroyo, *op. cit.*, p. 93; E.I. Colina, *op. cit.*, p. 142-144; Martínez Sanromà, *El acoso antiabortista, cit.*; C. Cuervo Nieto, *El nuevo Art. 172 quater CP: Estructura del tipo y problemas aplicativos*, in *Ars Iuris Salmanticensis*, 10, 2022, p. 208.

⁹⁴ Cuervo Nieto, *op. cit.*, p. 208.

⁹⁵ B. De Naeyer, *‘¿A la cárcel por rezar!’ ¿El Acoso Antiabortista como Límite Proporcional a la Libertad de Expresión?*, *Revista Española de Derecho Constitucional*, Forthcoming num. 136 (April 2026).

⁹⁶ Asociación de Clínicas Acreditadas para la Interrupción del Embarazo, *Estudio: Percepciones de las mujeres que interrumpen su embarazo frente al hostigamiento de los grupos anti derechos/anti elección en las puertas de los centros acreditados para la IVE*, October 2018, p. 11, acaive.com.

political will, enforcement would vary widely⁹⁷. In many Autonomous Communities, there would be no institutional support for creating and enforcing SAZs around clinics. In Andalusia, for instance, the local government allocated nearly €400,000 to anti-abortion groups between 2021 and 2023⁹⁸. One cannot reasonably expect authorities to sanction the same protesters they financially support. Similar concerns about regional disparity helped motivate Germany's nationwide law and enforcement (*supra*).

Lastly, the so-called symbolic criminal law has had concrete effects in the administrative sphere. Several regional governments have denied authorization for protests near clinics, directing organizers elsewhere. The protesters appealed these denials. In three⁹⁹ out of four¹⁰⁰ resolved cases, the administrative courts ruled that the denial of permits was a justified limitation of the right to assembly, explicitly referring to the novel criminalization of anti-choice harassment (Organic Law 4/2022)¹⁰¹. Moreover, Article 172 *quater* may not be merely symbolic: although no convictions exist yet, proceedings are ongoing in Madrid, Barcelona, and Gijón¹⁰².

On 3 December 2025, the Criminal Court of Vitoria-Gasteiz handed down its ruling in the first criminal case concerning Article 172 *quater* SPC. The Court absolved the 21 pro-life protesters for praying and protesting outside of abortion clinics¹⁰³, arguing that the defendants “always maintained correct and polite behavior [...] they did not interrupt access to the clinic, did not hinder traffic on the sidewalk, never addressed anyone personally, did not attempt to engage in conversation, did not offer pamphlets, did not make any kind of wild gestures, did not display photos of fetuses or abortions, their proclamations were never offensive, nor did

⁹⁷ STC, 16 November 2000, no. 276/2000; STC, 3 October 1983, no. 77/1983.

⁹⁸ R. Bocanegra, *Moreno Bonilla ha concedido casi 400.000 euros en tres años a Red Madre, entidad antiabortista que 'asesora' a embarazadas*, *Público*, 26 February 2024, [publico.es](#).

⁹⁹ AAP San Sebastián, 27 June 2023, no. 301/2023; STSJ Bilbao, 21 October 2022, no. 4126/2022; STSJ Barcelona, 26 February 2024, no. 1571/2024.

¹⁰⁰ STSJ Bilbao, 11 October 2022, no. 4056/2022.

¹⁰¹ STSJ Barcelona, 26 February 2024, no. 1571/2024, p. 13.

¹⁰² C. Barro, “El aval del TC contra el acoso a las mujeres que abortan, un muro de contención frente a la ola reaccionaria”, *Público*, 8 May 2024, [publico.es](#).

¹⁰³ *Comunicación Poder Judicial*, “Un juzgado de Vitoria-Gasteiz absuelve del delito de coacciones a 21 personas que se concentraron y rezaron ante una clínica donde se realizan interrupciones del embarazo”, 9 December 2025, [poderjudicial.es](#).

they proselytize”¹⁰⁴. Furthermore, the First Instance judge made reference to some ECtHR jurisprudence regarding Article 11 ECHR¹⁰⁵, citing that the “freedom of assembly includes the right to choose the time, date, place, and manner of assembly”¹⁰⁶. At the time of writing, it is unknown whether the decision has been appealed. However, the recent emergence of jurisprudence concerning anti-abortion protests still supports my argument that the enactment of Article 172 *quater* CP goes beyond mere symbolism and has practical effects as well.

While doctrinal debates¹⁰⁷ and jurisprudential developments continue, the Spanish Constitutional Court has upheld the law’s constitutionality. In STC 75/2024¹⁰⁸, the Spanish Constitutional Court declared that the law was sufficiently clear and did not disproportionately infringe the rights to freedom of expression and assembly.

In my earlier critique of STC 75/2024, I identified three main shortcomings in the Court’s reasoning. First, the Court made no reference to relevant ECtHR case law, which could have bolstered its conclusion that Article 8 may limit Article 10 ECHR¹⁰⁹.

Second, the Court compared anti-abortion harassment to other expression-related offenses¹¹⁰ such as crimes against religious feelings¹¹¹ and insults against Spain and its symbols¹¹² – even though ECtHR jurisprudence

¹⁰⁴ SJP 16/2025, Juzgado de lo Penal, Vitoria-Gasteiz, 3 December 2025, ECLI:ES:JP:2025:16, p. 14 (own translation).

¹⁰⁵ *Ibid.*, p. 21-22. More precisely, the Court mentioned: *Plataforma "Ärzte für das Leben" v. Austria*, 21 June 1988, § 32; *Stankov and United Macedonian Organisation Ilinden v. Bulgaria*, 2 October 2001, §§ 85 and 86; *Navalnyy v. Russia [GC]*, 15 November 2018, § 110; *Sáska v. Hungary*, 27 November 2012, § 2 and *Lashmankin e.a. v. Russia*, 7 February 2017, § 405. It also added some national Constitutional Court jurisprudence in the same vein. None of the jurisprudence mentioned in Section 2 of this article were mentioned.

¹⁰⁶ *Ibid.*, p. 22 (own translation).

¹⁰⁷ O. Martínez Sanromà, *¿Son típicas las manifestaciones ante los centros de interrupción voluntaria del embarazo? Comentario a la STC 75/2024 de 8 de mayo*, in *InDret*, 3, 2024, p. 617-630; *a contrario*: B. De Naeyer, *¿A la cárcel por rezar? ¿El Acoso Antiabortista como Límite Proporcional a la Libertad de Expresión?*, *Revista Española de Derecho Constitucional*, Forthcoming num. 136 (April 2026).

¹⁰⁸ Spanish Constitutional Court, 8 May 2024, no. STC 75/2024.

¹⁰⁹ The cases mentioned *supra* are indeed not the most well-known, but more commonly cited cases include: ECtHR, 24 June 2004, app. 59320/00, *Von Hannover v. Germany*; ECtHR, 4 June 2009, app. 21277/05, *Stadard Verlags GmbH v. Austria II*; ECtHR, 5 May 2022, app. 19362/18, *Mesić v. Croatia*.

¹¹⁰ STC 75/2024, para. II.4.b

¹¹¹ Articles 524 and 525 Spanish Penal Code.

¹¹² Article 543 Spanish Penal Code.

treats insults to symbols as categorically different from insults directed at persons (see ECtHR, *Fragoso Dacosta v. Spain*, §§26 j. 30)¹¹³. STC 75/2024 would have been the perfect opportunity to introduce this distinction in Spanish constitutional doctrine, especially taking note of the current legislative proposals to decriminalize insults to religious feelings and national symbols¹¹⁴. If these offences are repealed, doubts could be cast over the constitutionality of the “comparable” anti-abortion harassment crime.

My third, and main, critique concerned the absence of any territorial limit in Article 172 *quater* SPC. Although the appellants raised this issue, the Court ignored it. I previously argued the Court had three options: (i.) declare the offense unconstitutional for lack of territorial delimitation; (ii.) uphold it without such limits, as in France; or (iii.) interpret it as applying only near clinics, using the “conform interpretation”-technique. I was in favour of the third, since it was most consistent with the legislator’s intent to “guarantee a safety zone” around abortion providers, as laid out in the law’s preamble¹¹⁵.

5. Best Practices for a European Approach to Anti-Abortion Protests

If the Council of Europe is calling for a firmer stance against anti-abortion protests, it is useful to examine existing European legislation to identify best practices. How can we best balance pregnant persons’ right to access private abortions with protesters’ rights to freedom of expression, assembly, and religion? What is working; and what is not? This section focuses on three main points of concern: (i.) whether a territorial limitation should be foreseen; (ii.) what type of conduct should be targeted; and (iii.) which penalties are most appropriate.

¹¹³ ECtHR, 8 June 2023, app. 27926/21, *Fragoso Dacosta v. Spain*. Here, the Court noted that “the impugned statements were not directed at a person but at a symbol” (specifically, the Spanish flag; § 26). It held that “the present case is distinguishable from those where the right to freedom of expression has been weighed against the right to respect for a person’s private life [...] provocative statements directed against a national symbol may hurt people’s feelings, but the damage thus caused is of a different nature from that caused by attacking the reputation of a named individual,” (§ 30).

¹¹⁴ X. Hermida, “El Congreso estudiará de nuevo despenalizar las injurias a la Corona,” *El País*, 19 December 2023, elpais.com; C. Cué and X. Hermida, “El Gobierno eliminará el delito de ofensas religiosas pero aún discute sobre el de injurias al Rey,” *El País*, 16 September 2024, elpais.com.

¹¹⁵ For a more detailed account of all these considerations, please consult B. De Naeyer, “*¿A la cárcel por rezar? ¿El Acoso Antiabortista como Límite Proporcional a la Libertad de Expresión?*,” *Revista Española de Derecho Constitucional*, Forthcoming num. 136 (April 2026).

a) To buffer zone or not to buffer zone?

Whereas the United Kingdom, Ireland, and Germany have opted for the introduction of a specific perimeter (between 100 and 250 meters) around healthcare facilities where protest activities are restricted; France, Belgium, and Spain have chosen not to limit the offence territorially.

On the one hand, the latter approach seems better adapted to an increasingly digitalised society, where harassment is not confined to in-person encounters but often occurs online. However, as illustrated by the French Constitutional Court's decision, the application of anti-abortion harassment outside the immediate vicinity of clinics remains quite limited. General disinformation campaigns remain permissible. Only when a person is actively seeking abortion-related information (not opinions!) can the offence be committed by an expert – or by someone falsely presenting themselves as one. It seems that beyond the clinic's doorstep, the fundamental rights balance tilts more heavily toward freedom of expression and assembly¹¹⁶.

In my view, limiting the offence to the buffer zones surrounding clinics is preferable. Three main considerations support my argument.

First, although the ECtHR jurisprudence on the topic is limited, in one of its earliest cases regarding injunctions against pro-life protesters it justified the limitation because it was awarded in “a specified, limited area”¹¹⁷. Taking this qualification into account casts doubts on whether a territorially unlimited restriction to freedom of expression, religion, and assembly would survive Strasbourg scrutiny.

Indeed, on a second and related matter, the main justification for buffer zone legislation lies in the pregnant person's lack of alternatives. When access to abortion is time-sensitive and regionally sparse, daily protests can effectively deprive individuals of private, safe, and legal clinic access, thereby undermining their Article 8 ECHR rights. Protesters, by contrast, retain ample alternative venues for expression. As the UK Supreme Court aptly put it:

¹¹⁶ For an excellent analysis on the role of online platforms' policies in limiting access to information about abortion, see: A. Kuczerawy and L. Dutkiewicz, *Assessing Information about Abortion: The Role of Online Platforms Under the EU Digital Services Act*, *VerfBlog* 28 July 2022, [verfassungsblog.de](https://www.verfassungsblog.de).

¹¹⁷ ECtHR, 22 February 1995, app. 22838/93, *Van den Dungen v. The Netherlands*, § 2.

“They can write and distribute books, articles, and other texts; they can speak to individuals and groups in public forums and in any private venue that is willing to accommodate them; they can demonstrate peacefully in countless locations; they can appear on television and speak on the radio; they can post messages on social media and send emails. [...] They can do so wherever they please, except within the immediate vicinity of hospitals and clinics where abortion services are provided” (§ 132).

Lastly, how does one *know* that a pregnant person is considering an abortion? Either by seeing them enter a healthcare facility – hence the importance of guaranteeing privacy at that moment – or because this information was confided to them. If a pregnant person’s partner, friend, or family member tries to dissuade them from having an abortion, this should not constitute a criminal or administrative offence. The law should not enter each interpersonal moral disagreement or private persuasion. Where such conduct escalates into general harassment or threats, existing criminal law already provides sufficient remedies.

b) What type of conduct?

The question of whether to include a territorial limitation is closely linked to the question of what kind of behaviour may be restricted within that perimeter. If the buffer zone is narrow, a broader range of prohibited conduct may be justified. This also facilitates enforcement and reduces legal uncertainty as to whether specific actions – such as silent prayer or filming – fall within the scope of the prohibition. Indeed, SAZ legislation often covers a wide spectrum of conduct, including recording, distributing pamphlets, and even silent prayer, all of which have been upheld by courts (see *supra*).

By contrast, the scope of conduct prohibited under anti-choice harassment laws remains less clearly defined. This may help explain why such provisions have proven difficult to apply in practice. In Belgium, no relevant case law exists¹¹⁸. In Spain, the sole case that reached the courts resulted in an acquittal. Finally, existing French case law concerns individuals who physically entered abortion facilities (see *supra*).

The most significant novelty of the harassment-based approach lies in its attempt to address abortion-related disinformation and online harassment. However, as the French Constitutional Court has clarified, such conduct may be penalised only in very limited circumstances. With respect to online harassment more generally, it is well established that legal

¹¹⁸ Although this may also be explained by the absence of protests in the first place.

interventions have proven difficult to implement¹¹⁹. Instead, the reporting and blocking of accounts by online platforms have proven to be more agile and effective means of curbing abusive online behaviour than court proceedings.

Disinformation relating to abortion raises particularly sensitive issues. Statements such as “life begins at conception” are ideological rather than factual and therefore fall within the scope of protected opinion. While many (European) countries are adopting measures to combat online disinformation¹²⁰, this is not the central challenge in ensuring access to abortion. What matters most is ensuring that accurate information about the conditions and consequences of abortion is available; that individuals have localized access to abortion care within the applicable legal timeframe; and that they can access clinics in privacy and dignity. If protesters are absent from clinic entrances, they cannot distribute flyers – accurate or not.

c) What type of penalty?

Finally, there is notable divergence across Europe regarding penalties. The UK and Germany rely solely on financial sanctions, whereas Ireland, France, Belgium, and Spain also allow imprisonment, though usually at lower levels. The European Court of Human Rights has repeatedly held that prison sentences for expression crimes are compatible with Article 10 only in exceptional cases, such as hate speech or incitement to violence¹²¹. Imprisonment for expression-related offences should therefore, in my opinion, be avoided. Moreover, they may also backfire: short or symbolic sentences can fuel claims of persecution and turn offenders into martyrs. This was evident during Scotland’s buffer zone reform, when protesters

¹¹⁹ S. Kikon and J. Banerjee, *Preventing Online Harassment: Legal approaches to Cyberstalking, Cyberbullying and Defamation in Cyberspace*, IJHRLR 2025/4, p. 230-248.

¹²⁰ For an overview of disinformation measures’ impact on freedom of expression within the context of election interference, see: B. De Naeyer, *The Bradshaw Show: Disinformation and Election Influence under Strasbourg Scrutiny*, *Strasbourg Observers*, 16 January 2026, strasbourgobservers.com. For an empirical overview of different disinformation measures’ effectiveness, see: J. Bateman, and D. Jackson, *Countering Disinformation Effectively: An Evidence-Based Policy Guide*, Washington, DC: Carnegie Endowment for International Peace, 19 December 2024, carnegieendowment.org.

¹²¹ Council of Europe, *Guide on Article 10 of the European Convention on Human Rights: Freedom of Expression*, 31 August 2025, § 671; ECtHR, 15 March 2011, app. 2034/07, *Otegi Mondragón v. Spain*, § 59.

appeared outside the Scottish Parliament in orange prison jumpsuits and handcuffs, with tape over their mouths¹²².

6. Conclusion

Abortion is – and likely will remain – a deeply contentious issue. The visibility of pro-life groups outside clinics often correlates with the level of social acceptance of abortion rights. Data from IPSOS (2023) shows that while European support for abortion remains high overall, a striking divide is emerging among young adults. Unlike Boomers and Gen Z women, who continue to strongly back abortion rights, Gen Z men are significantly less supportive than both their female peers and older generations¹²³. This aligns with broader findings showing a growing ideological gender gap among younger generations¹²⁴.

Against this backdrop, this paper has analysed current European national legislation aimed at restricting protesters' rights to freedom of expression, religion, and assembly in order to protect the privacy of patients and clinic staff accessing abortion facilities. Two different approaches can be distinguished: the introduction of safe access zones, as seen in the United Kingdom, Ireland, and Germany; and the criminalization of anti-abortion harassment, as proposed in France, Belgium, and Spain.

After describing the differences and controversies the enactment of these laws has caused, I identified best practices for a future European approach to regulating anti-abortion protests. First, I argued in favour of the introduction of buffer zones or territorial limitations to better justify the restriction of freedom of expression and assembly. Second, I argued that within these parameters, a broader limitation of prohibited conduct can be justified, following the common law model and facilitating enforcement. Lastly, I argued against the use of symbolic prison sentences to punish such behaviours, as these acts generally amount to neither hate speech nor incitement to violence.

Regulating anti-abortion protests exemplifies the difficulties of balancing freedom of expression with the societal acceptance of contested moral issues. In such politicised contexts, it is often challenging to separate

¹²² E. Ottley, *The Delicate Balance*, cit., p. 561; X, *SPUC protests Scottish buffer zones law outside Holyrood*, SPUC, 24 September 2024, spuc.org.uk.

¹²³ IPSOS, *Global Views on Abortion 2023*, 22 August 2023, p. 5, ipsos.com.

¹²⁴ D. Milosav e.a., *The youth gender gap in support for the far right*, in *Journal of European Public Policy*, 2025, p. 1-25.

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legal analysis from ideological conviction. Bollinger's classic essay *Do Judges Defend the Speech They Hate?* shows that judges' views of the underlying message shape their tolerance for restricting it. In contemporary European constitutionalism, courts must often adjudicate cases where ideology and law are closely intertwined. Thus, legal doctrine should assist in this task by developing a coherent framework for balancing these rights and a refined proportionality analysis, providing judges with a solid foundation to avoid accusations of ideological bias. If that is the task, I hope this article can contribute to the effort.

ABSTRACT: This article examines how European states are responding to the revival of anti-choice narratives by prohibiting or limiting pro-life protests near abortion clinics. First, it traces the evolving Strasbourg framework regarding abortion in general, and anti-abortion protests in specific, highlighting the tension between Article 8 and Article 10 ECHR and the Court's rather fragmented case law. It then compares national approaches to buffer zones or safe access zones legislation in the UK, Ireland, and Germany. The fourth section contrasts this approach with France, Belgium, and Spain, which criminalizes anti-choice harassment instead of opting for administrative buffer zones. The analysis identifies the strengths and weaknesses of each model, mainly the differences in a) territorial limits, b) the scope of prohibited conduct, and c) the proportionality of sanctions. It concludes by outlining best practices for ensuring private, safe access to abortion without disproportionality infringing upon freedom of expression and assembly.

KEYWORDS: Abortion access; free speech; right to protest; anti-abortion harassment; European Convention of Human Rights (ECHR)

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