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***Abortion by the woman's request:
The limits of the Portuguese law***

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Abstract

Background: Access to safe abortion is a part of women's human rights. It has been clearly shown that access to legal abortion improves physical and mental health outcomes both for women and for children.

Objectives: Discuss the main differences between the Portuguese law and other European laws on access to abortion by the woman's request.

Methods: Descriptive and comparative analysis from the abortion laws and policies data from 3 main sources: Global Abortion Policies Database; World Abortion Laws Map and Abort report.

Results: In Europe, only 3 countries did not permit abortion at all: Andorra, Malta and San Marino; and 3 others had highly restrictive laws: Liechtenstein, Monaco and Poland. Portugal was one of the last countries where abortion by the woman's request was legalized and where the gestational age limit for abortion was the lowest (10 weeks) within the countries in study. Every other country presented a time limit, the longest being 22 weeks. An ultrasound (or other suitable method for conforming the gestational age) must be performed by a doctor other than the one performing the abortion. Only one other country required a medical certificate for this purpose. Women under sixteen years old or psychologically unable required the consent of a third party. 19 countries had this condition, 8 with sixteen as the age limit and 11 with eighteen. A minimum of a 3-day waiting period was mandatory. 11 more countries also required a waiting period, the shortest being 2 days and longest 7 days. A first appointment was required to give information about the abortion and contraceptive counselling. And a post abortion appointment was mandatory for the verification of the procedure. Psychological and social counselling was not mandatory. In some countries, the information was biased and directive, influencing the decision of the woman. Conscious objection was allowed in Portugal and every other country except for Sweden and Switzerland and, like in the majority of countries, was a strong barrier to the access to abortion.

Conclusions: In Portugal, liberalization of the abortion was determinant for the protection of the woman's life. The main barriers found to be harmful to the safe practice of abortion in Portugal were the conscious objection, the low gestational age limit, the waiting period and the required consent for minors.

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Keywords

Abortion; Abortion Law; Maternal Mortality and Abortion; Morbidity related with Abortion; Illegal Abortion.

List of Abbreviations

WHO – World Health Organization; EU – European Union; LMP – Last Menstrual Period.

Background

Abortion in the World

Pregnant individuals, including women, girls and those with varying gender identities, and who seek medical abortion care should be provided with all of the necessary information to make an informed decision to ensure the promotion of their health and human rights, including sex and gender equality and non-discrimination. With this information, they can decide freely and responsibly the number, spacing and timing of their children. It is the right of every person, regardless of marital status, to enjoy the benefits of scientific progress and its applications. [1]

After the International Conference on Population and Development held in 1994, legal grounds for abortion have gradually become less restrictive. In most countries of the world, abortion is legal at least to save the mother's life and more than two thirds have one or more additional grounds for legal abortion [2]. In 2017 only four countries in the world did not permit abortion on any grounds and 34% of world countries allowed abortion on request, an increase from the 24% in 1996. [3]

In Europe, only 6 countries continue to have highly restrictive laws that do not allow abortion on request or on broad social grounds (Figure 1). Abortion when the woman's life or health is at risk and in case of sexual assault is allowed in Liechtenstein, Monaco and Poland, with the last two also allowing abortion if severe foetal anomaly. Abortion is not permitted at all in Andorra, Malta and San Marino. [4]

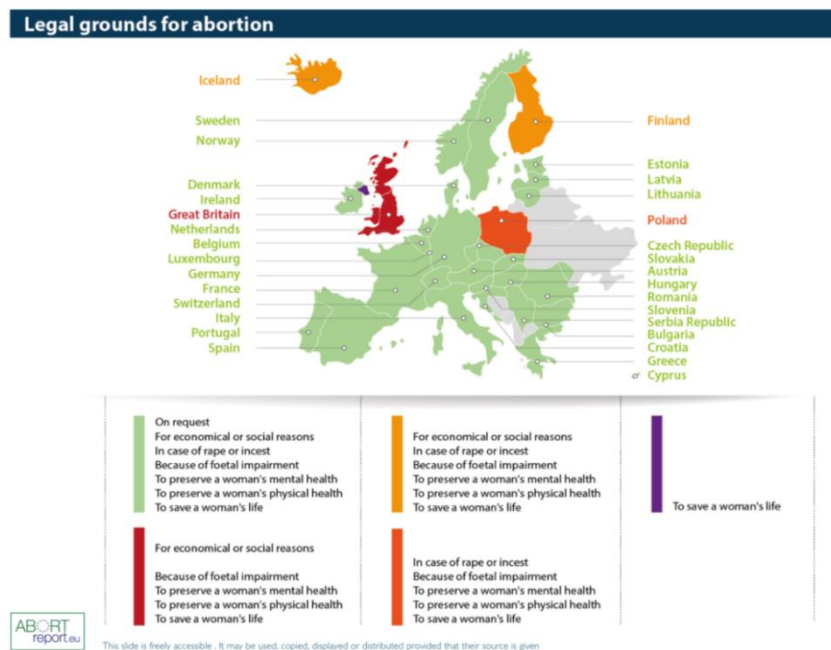


Figure 1 – Legal grounds for abortion in European countries. [5]

The impact of abortion on maternal mortality

Maternal death is the death of an individual while pregnant or until 42 days post-childbirth, regardless of the duration or location of the pregnancy, due to any cause related to or aggravated by the pregnancy or interventions related to the pregnancy, which was not accidental or fortuitous. [6]

75% of all maternal deaths occur because of one of five complications: severe bleeding, infections, pre-eclampsia and eclampsia, complications from delivery and unsafe abortion. Most of these complications are preventable or treatable when the women have access to antenatal care during the pregnancy, skilled care during childbirth and proper support in the weeks after. Poverty, long distances to health facilities, lack of information, poor skills and quality of health services and cultural beliefs and practices, are the main barriers for adequate care. [6]

The prevention of unwanted pregnancies is also one of the main pillars to reduce maternal mortality. This includes sexual education, access to contraception, safe abortion and quality post-abortion care.

Unsafe abortion remains an important health concern with negative effects on maternal mortality and health and social and financial strains. Every year, at least 22800 women die worldwide from complications related to abortion, most of these due to unsafe practices. According to WHO, the number of women who are in need of abortion does not decrease in countries where legal access is restrictive, but the number of unsafe abortions is likely to increase. [3]

In countries with restrictive abortion laws, the average unsafe abortion rate (number of abortions per 1000 women between 15 to 44 years old) is 26.7, whereas in countries with liberal abortion laws it is 6.1. In countries with restrictive laws, maternal mortality ratio (number of maternal deaths per 100000 live births) is 223, whereas in countries with liberal abortion laws it is 77. [7]

Abortion by women request in Portugal

With the introduction of the law no.16/2007 which resulted in the change of the article 142nd of the Criminal Code, Portugal became one of the many countries in Europe where abortion by the woman's request is allowed. [8]

This legislation allowed the practice of abortion in safe and regulated conditions with the objective of decreasing the maternal mortality and morbidity related to illegal and unsafe abortion. However, there are limitations which can constitute barriers to the access to safe procedures.

The Portuguese law states that abortion performed by a doctor, or with its direction, in an official or officially recognized health facility and with the consent of the pregnant woman, is not punishable by law when executed, by the woman's request, in the first 10 weeks of pregnancy. A medical certificate is required to verify the gestational age, following an ultrasound or another suitable method in accordance to *leges artis*. This document must be written and signed before the procedure by a physician other than the one performing or supervising the abortion. [8]

A written consent must be signed by the woman, or at her request, and delivered to the health facility before the intervention. In the case of minors under sixteen years old or psychologically unable women, respectively and subsequently, depending on the case, consent is provided by their legal representative, a parent or an offspring or, if needed, any collateral line relative. [8]

A waiting period is mandatory, with a minimum of three days, starting from the date of the first abortion appointment. Psychological and social assistance services should also be offered in facilities that perform abortions, as well as a family planning consultation. [8]

Doctors and health professionals reserve the right of conscious objection towards any act related to the abortion and the government must ensure that this practice does not interfere with legal deadlines. [8]

The impact of the liberalization of abortion by women request in Portugal

The number of abortions in Portugal increased steadily from 2008 (18607 abortions in total, 18014 on request), until 2011 (20480 abortions in total, 19921 on request). Since then, the number decreased every year with 14928 abortions (14306 on request) in 2018. The average national index was 171.6 abortions per 1000 live births in 2018, which is still below the European average (203 abortions per 1000 live births). [9]

With unsafe abortion being one of the main reasons for maternal deaths worldwide, it is important to take account maternal mortality in Portugal. Between 2001 and 2007 there were 92 maternal deaths, 14 of these due to abortion or abortion-related complications. In contrast, from 2011 to 2014 there were 16 maternal deaths none related to abortion. [10,11,12]

Objectives

Describe the main differences between the Portuguese law on access to abortion by the woman's request and laws in other European countries.

Discuss how the differences could contribute as barriers to the access and promotion of safe abortion.

Materials and Methods

To compromise the overview of cross-nationality comparable information about European abortion laws, we first built a corpus that combined information from 3 main sources presented below.

Global Abortion Policies Database (GAPD), launched in 2017 by WHO in partnership with the Population Division of the United Nations Department of Economic and Social Affairs, which is a tool that presents information on abortion laws and policies beyond the legal categories of abortion and includes additional access requirements and information related to service provision and conscientious objection for all WHO member states. We used data available in the GAPD in April 2020 [2,3].

The World Abortion Laws Map that is the definitive record of the legal status of abortion in countries across the globe. Since 1998, the Center of Reproductive Rights has produced this map as a resource for advocates, government officials, and civil society organizations working to advance abortion rights as human rights for women and girls around the globe. The map categorizes the legal status of abortion on a continuum from severe restrictiveness to relative liberality. It is updated in real time, reflecting changes in national laws so human rights advocates can monitor how countries are protecting – or denying – reproductive rights around the world. We used data from European countries available in April 2020 [4].

Abort Report Website, which was created in 2018 by Exelgyn and produced in collaboration with several gynaecologists/obstetricians in order to select and collect clinical and practical information on abortion, fertility and contraception statistics. The data presented is from official and referenced sources and has been collected and checked by each country's correspondents, from all the countries members of the EU in addition to Iceland, Norway, Serbia and Switzerland. The website is updated every year, taking into account the changes occurred within the previous year. We used data available in April 2020 [5].

Bearing in mind the Portuguese 2007 law [8], the differences that we elected for in-depth study were the gestational age limit, the medical certificate required to verify it, the written consent and its specifications for minors, the waiting period and mandatory counselling for the abortion and the conscientious objection of healthcare workers. 24 of the countries represented are from the EU: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. The other 3 have close relationships with the EU and are: Norway, Serbia and Switzerland.

Results

There are several differences between European countries' national laws regarding abortion.

Below are presented the limitations in the Portuguese law and general comparisons with the laws in force within the other 23 countries in the EU and 3 countries with close relationships with the EU (Norway, Serbia and Switzerland), where abortion on request is legal.

1. Gestational age:

According to Portuguese law, abortion is permitted by the woman's request, within the first ten weeks of pregnancy. [8]

Two other countries in Europe, Slovenia ^a and Serbia ^a, have the same gestational age limit, which is also the lowest limit within the countries in study. The latest that a woman is allowed abortion on request is 22 weeks from the LMP, in Netherlands ^b (Table I). [5]

Table I. Gestational age limit for abortion on request in European countries where it is legal [5]

Gestational Age in weeks	European Countries
10	Portugal; Serbia ^a ; Slovenia ^a
12	Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Greece; Hungary ^c ; Ireland; Italy ^d ; Latvia; Lithuania; Norway; Slovakia; Switzerland ^c
14	Belgium ^c ; France; Germany; Luxembourg; Spain; Romania
16	Austria
18	Sweden
22	Netherlands ^b

^a Women must have clear judgement when requesting abortion.

^b "An abortion may be performed up to the time when the foetus is viable outside the mother's body. Under the Criminal Code, this is 24 weeks. In practice, doctors apply a two-week margin of error, and stick to a time limit of 22 weeks." [13]

^c Provided a state of distress is identified by the woman.

^d Specifically 12 weeks and 6 days. Although abortion on request is not specified in the law, it is interpreted as allowed when the woman indicates that she is in one of the situations described by the law.

2. Medical certificate of gestational age:

In Portugal, the verification of the gestational age must be written and signed in a medical certificate by a physician other than the one performing or supervising the abortion. This physician must perform an ultrasound or another suitable method in accordance to *leges artis*, in order to confirm that the gestational age is within the ten-week limit approved by the law. [8]

Apart from the Italian law, which states that the physician performing the examination must issue a certificate notifying the pregnancy and the woman's request for an abortion [14], no other European country appears to have specific indications for this practice. [5]

3. Written consent and specific conditions for minors:

In Portugal, a written consent must be signed by the pregnant woman, or at her request, and delivered to the health facility before the intervention. [8]

Most countries in Europe require a written consent before an abortion by the woman's request, with a few exceptions. In Austria, Bulgaria and Sweden it is not a prerequisite defined by the national law. In Denmark it is only mandatory up to 12 weeks from LMP. [5]

The Portuguese law states that if the pregnant woman is a minor under sixteen years old or psychologically unable, respectively and subsequently, depending on the case, consent is provided by their legal representative, a parent or an offspring or, if needed, any collateral line relative. [8]

Specific legal counselling for minors is mandatory in a few European countries, such as: Bulgaria, Croatia, Czech Republic (under sixteen years old), Ireland, Italy (only for minors without parental agreement) and Latvia. An appointment with a social worker is held in France (with the exception of emancipated minors) and Luxembourg, with the latter also requiring a confirmation appointment and a written consent by the minor. In Switzerland, abortion specific counselling with a certified physician ("*kantonsarzt*") is necessary for minors under sixteen years old. [3,5]

The age required for parental or guardian's consent in each country is shown below (table II).

Table II. Age required for parental or guardian's consent in European countries where abortion on request is allowed. [3,5]

Age in years	European Countries
Under 16	Ireland ^a ; Latvia; Lithuania ^b ; Netherlands; Norway; Portugal; Serbia; Slovakia; Switzerland ^c
Under 18	Bulgaria; Croatia; Cyprus; Denmark ^d ; France ^{e,f} ; Germany ^g ; Greece; Hungary; Italy ^h ; Luxembourg ^f ; Spain

^a Consent is required except where discretion is given by health care professionals (for example a mature 15-year-old). It is also mandatory for underage sex to be reported (minors under 17 years of age) where there are concerns that a minor may be at risk of abuse.

^b Parents must attend the abortion.

^c Only in minors incapable of discernment.

^d Consent only required for unmarried minors with the possibility of dispensation (for example in case of religious minorities).

^e Emancipated minors excluded.

^f The minor can keep the abortion a secret from her parents or guardian, provided she is accompanied by an adult of her choice.

^g Except if the minor is considered to have sufficient decision-making ability.

^h "In a case where the parents deny such permission, or when the direct parent consultation is deemed unfeasible, the abortion procedure can be authorized by the juvenile judge." [5]

Not applicable in Austria, Belgium, Czech Republic (parents or guardians of minors under 18 should be informed after the procedure), Estonia, Slovenia and Sweden (parents or guardians should be informed of the abortion but the procedure not delayed). [5]

4. Waiting period:

Portuguese women must abide by the law of a waiting period with a minimum of three days that starts from the date of the first abortion appointment. [8]

Within the European countries in study, eleven specify a waiting period before the abortion (table III). The least amount of time required is in Slovakia^a, with two days, and the longest time is of seven days, in Italy^f. [4,5]

Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, France, Greece, Lithuania, Norway, Romania, Serbia, Slovenia, Sweden and Switzerland do not require a waiting period.

France was the most recent European country to abolish this requirement. [4]

Table III. Required days for waiting period before abortion in European countries where abortion on request is allowed. [5]

Days after consultation	European Countries
2	Slovakia ^a
3	Germany; Hungary; Ireland ^b ; Latvia; Luxembourg; Portugal; Spain
5	Netherlands ^c
6	Belgium ^d
7	Italy ^e

^a From the moment the doctor sends a notification to the National Health Information Centre.

^b Only for abortion on request.

^c This period can be reduced to prevent imminent danger to the health or life of the pregnant woman, in case of intense pregnancy symptoms or severe psychosocial problems. Wait time does not apply if LMP was less than 17 days before the appointment. [3,13]

^d This period can be added to the 14 weeks of gestation limit when the woman requests the abortion late in her pregnancy.

^e Unless abortion is urgently required.

5. Mandatory counselling:

In Portugal, 3 appointments at different times are mandatory for the abortion procedure [5]:

- An appointment to determine the gestational age and for counselling on abortion and contraception, where 2 doctors are requested;
- After the waiting period for performing the abortion, either medical or surgical;
- Afterwards to verify the accomplishment of the procedure and for additional contraceptive counselling and contraceptive supplies.

Seven other countries in study require mandatory counselling or receive mandatory information in an abortion appointment: Belgium, Germany, Hungary, Italy, Lithuania, Netherlands and Slovakia. [4] In Belgium it has to be done in the same place as the abortion, whereas in Germany it must take place at a state-approved centre, which differs from the abortion centre. Irish law states that an abortion examination should be performed only for abortion on request. [5]

Some of these countries, including Germany and Hungary, have laws that require biased counselling with the intention of directing the decision of the woman and dissuade them from having the abortion. Biased information and mandatory counselling undermine human rights and WHO advises against them. However, information must be given to the woman without delaying the procedure and it should always be unbiased, non-directive and medically accurate. [4]

A confirmation appointment is required in Belgium, Czech Republic, Denmark, France, Hungary, Italy, Latvia, Lithuania, Portugal, Slovenia and Spain and, in case of minors, in Luxembourg. Being that in Lithuania this consultation is mandatory one week after the procedure. [5]

Portugal is the only country in Europe where abortion laws include contraceptive counselling (which is not mandatory) and free access to contraception methods. This is a positive feature and in advance of other European countries.

6. Physicians' conscious objection:

The 2007 law states that doctors and health professionals reserve the right of conscious objection towards any act related to the abortion. However, the professionals who object may not partake in the first abortion appointment or in any support service provided during the waiting period. Once the conscious objection is evoked it produces its effects regardless of the nature of the health facility on which the objector is of service. A signed document must be presented to the clinical or nursing director of every health facility where the professional works and abortions are performed. The Portuguese government must ensure that this practice does not interfere with legal deadlines. [8]

When the abortion is not performed in a public hospital due to conscious objection of the physicians, the woman must be referred to a different public hospital or to a private facility where the National Health System will still support the procedure. [5]

In Portugal, most regions have higher nativity rates in resident women than abortion rates. However, Lisbon and Tagus Valley and Algarve have a higher abortion rate than the nativity rate of resident women, which might indicate that women resort to performing abortions outside of their area of residence due to facilities where conscientious objection prevents abortions to be performed and an overload of those that do. [9]

With the exception of Sweden and Switzerland, every country in study allows conscientious objection regarding abortion. Some laws specify an exception to this right when the life of the pregnant woman is in danger: Austria, Germany, Italy and Slovenia. Many countries require the health professional to inform the woman of such decision and to refer her to another professional who can perform the abortion: Belgium, Croatia, Czech Republic, Denmark, France, Ireland, Luxembourg, Portugal, Romania, Serbia and Slovenia. [3,5]

In France, health professionals are entitled to refuse to practice elective abortion but must not oppose colleagues who do so. Private facilities may refuse to perform on request abortions, but public facilities are obliged to accept the provision of the abortion, in order to ensure public health. [2,3,5]

Italian and Spanish laws require conscientious objection to be declared in advance. However, in Italy, 71% of physicians conscientiously objected in 2015 and state authorities are failing to ensure proper care to pregnant women seeking abortion. Health care professionals in Lithuania have the right to refuse to perform surgical abortion stating Catholic beliefs. [5]

7. Other:

There are limitations in the abortion laws of other countries that are not present in the Portuguese legislation:

- Some countries only offer the surgical approach: Bulgaria, Hungary and Lithuania. [11] And, although Portugal allows surgical procedures, in 2018 67.6% of the terminations were medical and 28.1% were surgical. In public facilities only 1.9% were surgical, mainly due to lack of skills and resources. [9]
- Many countries allow medical abortion but have time restrictions for when this procedure is no longer an option. [5]
- In Czech Republic there is a mandatory period between two abortions of at least six months, except for women with 35 years or older or that have had at least two births. [5]

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- Abortion on request is only allowed for resident women in Czech Republic and Hungary. [5]
- In 14% of the countries in the world, spousal consent is required before the abortion if the woman is married. Although no country in Europe has this specific condition, it applies in 46% of the countries in Northern Africa and Western Asia. [3]

Discussion

Portugal is one of three countries where the gestational age limit for abortion on request is ten weeks, which is the lowest limit within the countries in study. Every other country presents a time limit, the longest being twenty-two weeks [2,3,8].

This lowest gestational age limit for abortion may create pressure and have a harmful impact in the decision of the woman and in the ability to receive proper care. This may be particularly harmful for adolescents, women in marginalized communities (including migrants) and women resident in cities where abortion is not offered (due to conscious objection or other reasons). These women may not be able to obtain care within the time limit. Some of these situations result in women seeking abortion care in other countries, which has important concerns regarding economical support for Portuguese women and is a step for illegal and unsafe procedures [4].

The determination of the gestational age (generally by ultrasound) and the abortion procedure or counselling requires two different health professionals. This requirement results in extra consultation time and human resources needed before the procedure. The lack of resources in Portugal, specifically in relation to abortion, is aggravated by the necessity of 2 separate doctors to perform this examination. This practice, of a doctor supervising another doctor, is ethically banned and controversial and may create doubt and distrust within the medical community.

Portuguese women are required to sign a written consent, which agrees with most countries' requirements. Moreover, women under sixteen years old or psychologically unable need the consent of a third party. Portuguese law does not require parental consent for minors for access to contraception. The justification being that open access to contraception is essential to prevent unintended pregnancies, particularly in minors. The consent requirement regarding minors, women with disabilities or from marginalized groups might result in a barrier to the access to abortion and a restriction of their human rights. This can be critical in religious or conservative countries and in places with high emigration rates, where differences in moral beliefs and opinions may lead to a stalemate between the woman and the third party and consequently delay the abortion and place the woman at risk. Another problem might surge if a litigious divorce resolves in contrasting opinions regarding the decision of abortion. [4]

By Portuguese law, a minimum of a three-day waiting period is mandatory. According to WHO, laws should not cause unnecessary delays. There is no scientific study that demonstrates the advantages of a waiting period. These might restrict women's rights and autonomous decision-making. [4] Recent studies indicate that most women that are certain of their decision before requesting the abortion remain certain after the waiting period. However, some women, mostly in minorities, are uncertain of their decision and those women benefit from a waiting period and proper counselling. [15] The majority of women were found to have logistical and/or financial challenges regarding this requirement and only a small minority found it beneficial [16]. From a Portuguese expert's opinion, for the women who need a reflexion period it should be permitted but for the general women it reduces access to timely and affordable care due to added visits to the facility, which includes costs and time away from work, could aggravate stress levels and pregnancy symptoms that might interfere with women's rights and could have a negative impact on the attendance to the last appointment, which is very important for contraceptive counselling and choice. [17]

In Portugal, 3 appointments at different times are mandatory for the abortion procedure. Although social and psychological support is not mandatory, it is important to guarantee the availability of these services in the health facility. The appointments are required to provide relevant information to the pregnant woman in order for her to make a free, conscious and responsible decision. [8] In some countries the information is biased and directive, influencing the decision of the woman. However, delays in the procedure and increase in the number of appointments are disadvantages that should be taken into account for the organization of the services.

Conscious objection is allowed in Portugal and every other country except for Sweden and Switzerland. And, like in the majority of the countries, is a strong barrier to access to abortion. In Portugal, when abortion is not performed in a public hospital due to conscious objection, the woman is referred to a different hospital (mainly private facilities) and the National Health System will still support the procedure. This involves added travels, costs and less access to medical abortion and could be a step for the continuation of illegal and unsafe abortions. [9] Refusal to participate in the procedure due to conscience or religion beliefs should be a right to health professionals. However, when no physician is willing to provide care in one facility this might cause delays, inconvenience, and costs to the woman. The objection must not prevent health professionals from providing adequate care before and after the abortion. [4]

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Most countries have specific rules about gestational age, waiting periods, mandatory counselling, medical certificates, and written statements by the women. We must work to improve laws on abortion and to extinguish the barriers that contribute to unsafe or delayed abortions even in countries where the practice is legal. [18]

Conclusion

In Portugal, liberalization of the abortion was determinant for the protection of the woman's life. Although the Portuguese law have restrictions that are rarely seen in other European countries, such as a medical certificate of gestational age or a ten week gestational age limit, it is in the median range on the most practical aspects.

The main barriers found to be harmful to the safe practice of abortion in Portugal were the conscious objection, the low gestational age limit, the waiting period and the required consent for minors.

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