



Dobbs in the EU? Threats to access to abortion in the EU

Ivana Isailović, Dec. 6th, 2022, ERA seminar on Current reflections on EU gender equality law



This training session is funded under the 'Rights, Equality and Citizenship Programme 2014-2020' of the European Commission.



Regulation of abortion access: enforcing the sexual and gendered (legal) order

- An issue that concerns: gender equality, the right to decide over one's body, the right to health, pregnant person's right to life, right to be free from degrading and inhuman treatment, the right to privacy/private life, economic participation in the workforce ...
- U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* (2022)

“The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision....”

“[F]rom the very moment of fertilization, a woman has no rights to speak of. [O]ne result of today's decision is certain: the curtailment of women's rights and their status as free and equal citizens” [Breyer, Sotomayor & Kagan, JJ., dissenting]

The Devastating Implications of Overturning Roe Will Go Far Beyond Abortion Patients

Dobbs' devastating effects

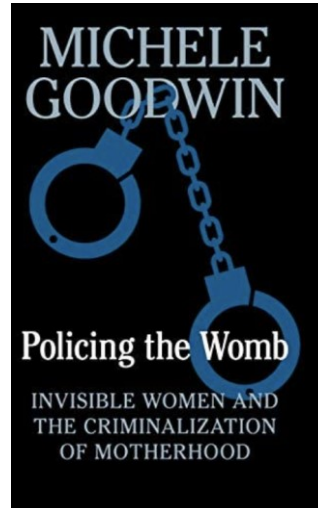
The Supreme Court Clearly Doesn't Care About Women's Lives

6/27/2022 by AZIZA AHMED

Even as we recognize the implications of *Dobbs* on everyone, it's time we start centering the voices of those who have always struggled to get abortion care.



The Gay Pride March in New York City on June 26, 2022. The march took on a new sense of political urgency after the Supreme Court overturned *Roe v. Wade*. (Andrew Lichtenstein / Corbis via Getty Images)



EU leaders' strong reactions to Dobbs



Alexander De Croo 🇧🇪 🇫🇷 🇵🇧 @alexanderdecroo · 24 juin

Very concerned about implications of @USSupremeCourt decision on #RoeWade and the signal it sends to the world.

Banning abortion never leads to fewer abortions, only to more unsafe abortions.

Belgium will continue to work with other countries to advance #SRHR everywhere.

451 742 2 992



Emmanuel Macron 🇫🇷 @EmmanuelMacron · 24 juin

Officiel du gouvernement - France

Abortion is a fundamental right for all women. It must be protected. I wish to express my solidarity with the women whose liberties are being undermined by the Supreme Court of the United States.

16,5 k 48,4 k 322,4 k



Xavier Bettel @Xavier_Bettel

Making abortions illegal isn't pro-life. It's anti-choice. It's anti-women. It won't save lives. It will kill women. It's a social & economic injustice. And just so, so wrong. Reproductive rights are not just women's rights. They are human rights. So let's all stand up for them.

Traduire le Tweet

5:03 PM · 24 juin 2022 depuis Luxembourg · Twitter for iPhone

332 Retweets 30 Tweets cités 1 612 J'aime



Prime Minister GR @PrimeministerGR

Really troubled by the decision of the US Supreme Court. It is a major step back in the fight for women's rights.

Traduire le Tweet

12:12 PM · 25 juin 2022 · Twitter Web App

319 Retweets 214 Tweets cités 2 323 J'aime

European Parliament's Resolutions

Resolution of 9 June 2022 on Global threats to abortion rights: the possible overturn of abortion rights in the US by the Supreme Court

2. Expresses its firm solidarity with and support for women and girls in the US, as well as to those involved in both the provision of and advocacy for the right and access to legal and safe abortion care in such challenging circumstances;
8. Encourages President Joe Biden and his administration to strengthen their efforts and to continue to support abortion rights, and urges him to ensure access to safe and legal abortion; encourages the US Government to make further efforts in order to ensure that abortion and contraception are integrated within the provision of age-appropriate and comprehensive SRHR information, education and services, and that they are accessible to all; welcomes the fact that US funding has been restored to the UNFPA, the UN's sexual and reproductive health agency, and calls on the US Government and/or other relevant US authorities to continue supporting SRHR and to do so at the UN and in other multilateral forums;
9. Urges the US Government and/or other relevant US authorities to ensure adequate federal, constitutional and statutory protections for the right to terminate a pregnancy and further urges the US Government to fully decriminalise abortion, which requires not only putting an end to the penalisation of women and girls and other pregnant persons, healthcare providers and others assisting with abortion services, but also removing abortion from state criminal law statutes and abolishing all other punitive laws, policies and practices;

Including a 'right to abortion' in the Charter of Fundamental Rights of the European Union

European Parliament Resolution of 7 July 2022 on the US Supreme Court decision to overturn abortion rights in the United States and the need to safeguard abortion rights and women's health in the EU

1. Strongly condemns once again the backsliding in women's rights and sexual and reproductive health and rights (SRHR) taking place globally, including in the US and in some EU Member States; recalls that SRHR are fundamental human rights which should be protected and enhanced and cannot in any way be watered down or withdrawn; calls on the governments of those states which have passed laws and other measures concerning bans and restrictions on abortion to repeal them and to ensure that their legislation is in line with internationally protected women's human rights and international human rights standards;

2. Proposes to include the right to abortion in the Charter; considers that a proposal should be submitted to the Council to amend the Charter as follows:

Article 7a (new): "Article 7a Right to abortion Everyone has the right to safe and legal abortion.";

3. Reiterates, in this context, its resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties; expects the European Council to convene to this end; proposes that in this process, the right to safe and legal abortion be included in the Charter; calls for the European Parliament to be involved in every step of the process;

Liberal frameworks and obstacles on the ground: the case of France

Law from March 2nd, 2022 reinforcing the right to abortion

Loi du 2 mars 2022 renforçant le droit à l'avortement

- Extension of the time limit for accessing abortion (from 12 to 14 weeks)
- Suppression of the medically unnecessary mandatory 2-day waiting period
- But, access to abortion still threatened, see the Report of the French Senate (2020).
 - limited number of health care facilities, especially in rural zones
 - limited number of doctors practicing abortion
 - a service which is poorly remunerated, leading to limited resources devoted to guaranteeing access to abortion

Access to abortion: a blindspot in EU law

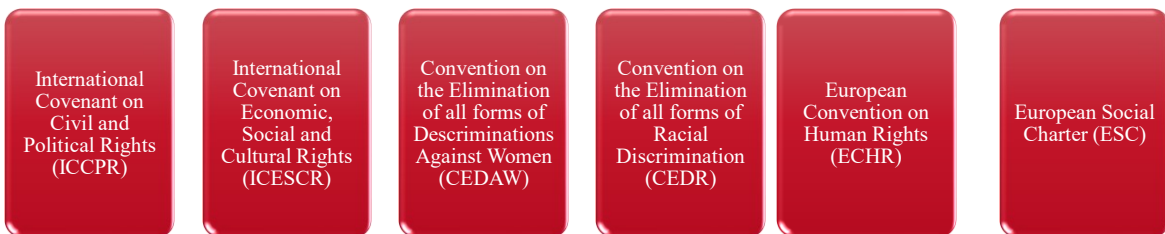
European Institute for Gender Equality, *The EU's Evolving Legal and Policy Approaches to Gender Equality* (Oct. 25, 2022)

“ [The EU] lags behind international human rights standards. ...[A]n obvious gap relates to sexual and reproductive health and rights, which have so far not been the object of any legislative intervention.”

Outline

1. Transnational legal and political context: solidification of sexual and reproductive rights, and the mobilization of transnational conservative ‘anti-gender ideology’ movements
2. Restrictive laws and practices in the EU: an overview
3. Possible solutions at the EU level? Some (very) tentative answers.

Solidification of a material understanding of the effective right to abortion: states need to guarantee a universal, equitable access to affordable and quality abortion care



- No “symmetrical balance” between the right of the woman/pregnant person, and the “right of the fetus”

Report of the Working Group on the issue of discrimination against women in law and in practice to the Human Rights Council (2018)

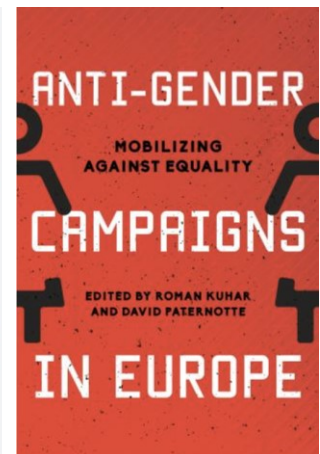
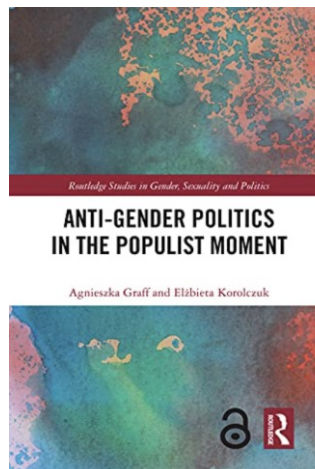
- Principle of ‘non-retrogression’

CESCR, General Comment no 22 (2016)

- Limits of the human rights framework: the case law of the European Court of Human Rights

See e.g., *P. and S. v. Poland* (2012); *R.R. v. Poland* (2010), *Tysiack v. Poland* (2005)

Conservative ‘anti-gender ideology’ movements’ transnational mobilizations



Barriers to abortion access

Restrictive laws: Poland & Germany

- Restrictive grounds for abortion
- Lack of procedural framework
- Criminalization of abortion
- Mandatory biased counseling
- Mandatory waiting periods

Restrictive practices: the problem of the ‘conscientious objection.’ Italy & Croatia

- > 70% of gynecologists in Italy
- at least 50 % of gynecologists in Croatia, see the report of the Croatian Ombudsman (2022)
- Discrimination against physicians who practice abortion
European Committee of Social Rights, Confederezione Generale Italiana del Lavovoro v. Italy (2016)



An intersectional approach: poor, rural and racialized communities are the most affected

Solutions at the EU level? Some very tentative answers

- Access to abortion related to fundamental rights protected by the EU Charter of Fundamental Rights
- EU is founded on the values of respect for equality, and human rights (art. 2 TEU), and aims to combat discrimination and promote equality between men and women (art. 3 TEU)
- Abortion as a ‘service’ see: C-159/90, Society for the Protection of Unborn Children Ireland Ltd., v Grogan (1991)
 - Racial Equality Directive (2000/43/EC)
 - Directive on prohibition of sex discrimination in relation to supply of services (2004/113/EC)?
- Abortion as healthcare: See art. 168 TFEU, Regulation (EU) 2021/522
- ‘Soft law’ instruments: Council conclusions on Gender in Development (2015), European Parliament’s Resolutions.

