Abortion in Andalusia: Women's Rights after the Gallardón Bill

Susana Rostagnol[1]

Abstract

The aim of this article is to examine the current situation of abortion in Andalusia, especially taking into account the effects deriving from the debates on the Gallardón bill on voluntary pregnancy termination. It is based on fieldwork carried out in Andalusia in two periods of time in 2015 and 2016, including in-depth interviews with gynaecologists working in public hospitals and certified private clinics, as well as with pro-abortion and feminist activists and Andalusian Health Service staff.

It reviews the situation before 1985, when abortion was not legal; it then examines the changes in abortion healthcare with the implementation of the Organic Law and with the Law approved in 2010, which allowed the termination of pregnancy on women's request. Rajoy's government promoted the re-criminalization of abortion. The article examines the discourses that took place during the Gallardón's bill debate. Finally, it describes the current situation of abortion in Andalusia, focusing on the effects of that debate on the role played by conscientious objection and the stigma of abortion. It concludes by questioning what lies behind the current situation.

Keywords: abortion; women's rights; Spain; conscientious objection; stigma.

1. Introduction

The aim of this article is to examine the current situation of abortion in Andalusia, especially taking into account the probable effects of the debates on the "Gallardón" bill on voluntary pregnancy termination (VPT).

The choice to carry out my research in Andalusia came from the fact that in this autonomous community, abortion is practised in 16 certified private clinics and in only one public health centre. Besides Andalusia, only Madrid has more private clinics than public health centres providing abortion care – the ratio there being 7 to 1.

1 susana.rostagnol@gmail.com

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In order to have more elements to understand the current situation, I review the history of abortion since the 1930s, with a special emphasis on the last decades. I consider the context of the approval in 1985 of the Organic Law, which allowed abortion under certain circumstances, and its implementation. In 2010 a new law allowing abortion on woman's request up to 14 weeks of pregnancy was passed. This law radically changed the status of abortion that, since 2010, had been considered a woman's right. The approval of the Law immediately raised opposition. The bill presented by Minister Ruiz-Gallardón in 2014 aimed at re-criminalizing abortion. In this article, first I review the Spanish situation in the early 1980s when the first Organic Law was approved; I provide a brief account of the 2010 Law; and I discuss public speeches on the abortion issue by activists, the media and politicians during the debates on the Gallardón bill. Secondly, I present the current situation of voluntary pregnancy termination in Andalusia and the characteristics of women seeking abortions, highlighting the roles played by public hospitals and certified private clinics run by healthcare professionals and abortion providers. The Andalusian Health Service (AHS) refers women seeking an abortion to certified private clinics, which are subsidized by the state, so women do not have to pay for abortion care. Most abortions take place in private clinics, while the practice of abortions in public hospitals is very rare. This means that only a very low percentage of doctors at public hospitals perform abortions. In order to understand this situation, I question the role of conscientious objection and the stigma of abortion. The legal status of abortion is still vulnerable and has an inherent fragility, implying that reproductive and sexual rights must continually be reaffirmed.

This article is based on field research carried out in Andalusia in two periods of time, from February to April 2015 and from September to November 2016. It presents information obtained from bibliographical and statistical sources, participant observation at healthcare centres, including public hospitals and certified abortion clinics in Granada, Malaga and Seville; 15 in-depth interviews with two staff members of the Andalusian Health Service (AHS), five healthcare staff members from public health centres in Granada and Seville, four physicians working in certified private clinics from Granada, Seville and Malaga, and four abortion legalization activists from Seville and Granada.

2. Background

Voluntary termination of pregnancy has been an issue in feminist literature since the 1970s (Petchesky 1984). Abortion and gender relations are deeply intertwined. In my previous work (Rostagnol 2016) I argued that the analysis of the representations and practices of elective abortion offer an

insight on the mechanisms of gender domination and resistance. Abortion (its practices and its representations) is at the core of women's bodies and reproduction surveillance; its control acts as a male dominance mechanism. Any time that abortion is under debate, what is actually being discussed is the "patrimonial control of the [female] body" (Tamayo 2001), even when the arguments against abortion refer to moral, religious or scientific issues. There is a strong cultural connection between biological reproduction and the control of women's bodies; sexuality and reproduction; abortion and gender relations (Meillasoux 1975; Petchesky 1984; Ginsburg, Rapp 1991; Tamayo 2001). Feminist theorists have argued that male dominance is exercised through the control of women's body and reproduction (Héritier 1996; Fraisse 1999). Sexuality and reproduction play a key role in shaping social organization, and kinship, religion and the state have always sought to regulate them. During the 1990s topics such as abortion and contraception were discussed in different international political arenas[2], showing their relevance as global political issues, and not just as medical or moral ones.

Foucault (1976) argued that the body is subject to surveillance and control and that sex is, above all, a political issue. Focusing on abortion in Andalusia, I am concerned with the degree of freedom – or constriction – that women experience within the symbolic and material circumstances in their lives.

Repressive and permissive abortion laws change with time showing that the right to abortion is never a firmly established one. As it has been underscored by De Zordo, Mishtal and Anton (2016, p. 6), since the 1990s, three major social, political and economic shifts have influenced abortion rights in Europe: the fall of Communist regimes in Central and Eastern Europe; the dramatic demographic changes; and the spread of neoliberal economic policies and "austerity measures" across the New Europe. Elective abortion is closely intertwined with social and economic issues. Far from being a mere public health or social justice issue (although it also is that), it is political. The fragility of reproductive rights makes it clear that what is at play in the control of reproduction are power relations.

3. Andalusia and abortion in the 20th century

Abortion Law covers the whole Spanish state but its implementation differs from one autonomous community to the other. We should remember that the Spanish state, according to the decentralization established by the 1978 Constitution, is divided into 16 autonomous communities and one *foral* community (Navarra); each of them is responsible for health in its territory.

2 ICPD (International Conference of Population and Development) in Cairo, 1994 and WWC (Word Women Conference) in Beijing, 1995 are milestones in this process.

3.1 From clandestine to legal abortion

During the Second Republic (1936-1939), under President Francisco Largo Caballero, abortion was legalized for a short time in Catalonia and the territories loyal to the Republic (Cambronero-Saiz *et al*. 2007). Yet, once Francisco Franco came to power, abortion was criminalized again. During his long dictatorship, abortion and contraception were restricted and prosecuted (Beadman 2002). Reproductive policies were openly pro-natalist and promoted the idea that maternity and the family were not only the natural destiny of all women, but also the only way towards their personal fulfilment (Nash 1991). The 1941 Law aimed "at protecting the birth rate, against abortion and contraception propaganda." Legal abortion was seen as a problematic issue of the Republican regime and associated with the "enemy" (Ignaziuk, Ortiz-Gómez 2016, pp. 28-29).

Franco died in 1975 and was succeeded by King Juan Carlos de Borbón and President Adolfo Suárez. In 1978, a consensus-based Constitution was voted and one of its most debated issues was abortion. A parliamentary monarchy was established and the *transition* (1975-1985) began. According to perceptions at that time, Spain was no longer a "backward" country but could be considered a European country on the world scene.

The political transition is also known as *destape* – uncovering. Spanish population had suffered harsh repression in different areas, including sexuality. For this reason, after Franco's death many demonstrations against repressive values and strict sexual moral standards took place.

During the 1970s, Franco's moral restrictions were softened. Contraceptives, although still forbidden, could be obtained from abroad and some doctors prescribed them in Spain for hormonal problems. Activists for sexual and reproductive rights started to organize family planning centres where information on sexuality and reproduction was provided. By the end of the 1970s, some groups committed to sexual and reproductive rights began to perform clandestine abortions using the manual vacuum aspiration (MVA) technique – also known as the Karman method – which was brought in by French feminists. Before the 1985 Organic Law was passed, the Seville Los Naranjos Family Planning Centre played a key role in Andalusia.

> We were part of a political movement. One of our aims was to increase the rights of men and women. Abortion was one of those rights, so we started performing abortions. (Male activist, Seville).

Los Naranjos was founded in 1980 to provide information and abortion care. However, as a former member I interviewed told me, at first none of them was a physician.

> In October 1981, the police broke into the clinic under a judge's search war-

> rant. We told them we only provided information to women who wanted to have an abortion, particularly on MVA, and gave them addresses abroad where they could have the operation.[3] (Male activist, Seville).

The clinic's staff was jailed and the first trial of an abortion clinic took place in democratic Spain. According to an activist I interviewed:

> Los Naranjos had support from many groups from different regions of Spain, there were groups all over the country struggling for the legalization of abortion. We were not the only organization, there were others that, just like Los Naranjos, performed MVA on women seeking an abortion. (Male activist, Seville).

At that time, the trial of the Bilbao´s eleven women was vividly present in people´s minds. In 1976, eleven women were detained in Basauri (Basque County, very close to Bilbao) on charges of clandestine abortion and condemned to six years plus one day for the women who underwent abortions and 60 years plus one day for those who performed them (Cambronero-Saiz *et al.* 2007). This issue provoked a strong reaction from women and sharply divided Spanish society. While the trial was taking place, more than 1,000 women released a statement declaring that they had had abortions in the past and requesting the reform of the country's stringent abortion law (González Manrique 2010). A similar strategy was followed in the Los Naranjos trial, where many people declared they had undergone or practised abortions. The arrests in Andalusia coincided with election time, so abortion was propelled to the centre of political discussions. In fact, the arrest of the Los Naranjos staff was brief, but attracted public attention on the social movement agenda. If the right wing party got 11,000 signatures against the legalization of abortion, feminists from all over Spain supported the Los Naranjos staff[4]. As in other European countries, the trial put abortion at the centre of public debates (Lozoya Gómez 2014).

A male gynaecologist from Malaga, who today works for a certified private clinic, told me that in the early 1980s some gynaecologists, following their convictions, performed abortions at their private clinics at affordable prices, and even free of charge for poor women. Some of them were also jailed for a short time, but then released thanks to the pressure of social groups supporting legalization.

In 1983, a serious debate began on a bill that would allow women to interrupt their pregnancies. Negotiations among different political parties in-

3 From 1974 to 1985 an estimated 240,000 Spanish women terminated their pregnancies in the United Kingdom and in the Netherlands (Carbonero-Saiz *et al.* 2007, p. 86)

4 Even Dolores Ibárruri "La Pasionaria" sent a note supporting the staff of Los Naranjos and their struggle, as one male activist told me.

creased. The feminist movement took the lead and was able to place the topic on the public agenda giving visibility to the trials, the jailing, the abortion charter flights to London[5][6] and women's deaths due to unsafe procedures.

3.2 The 1985 Organic Law

Law 9/1985 decriminalized abortion in certain circumstances. It was the first legal instrument to regulate abortion in Spain (Requeijo 2011; Rodriguez Ruiz 2012). Enabling women to terminate their pregnancies only in cases of rape, serious health risks or foetal malformations, it preserved Article 15 of the Constitution, which states: "All enjoy the right to life". The wording of this article suggests "a conscious effort not to leave the unborn constitutionally unprotected" (Rodríguez Ruiz 2016, p. 704). The circumstances considered acceptable for abortion show that the Constitutional Court saw abortion from the foetus' perspective and obliged the state to ensure its protection. The three cases in which abortion could be performed were exceptions to that obligation. Abortion was not a woman's constitutional right and the law did not posit a constitutional base for that right. "The question was rather whether women's constitutional rights allow for the exceptional de-criminalization of abortion in the three cases under examination" (Rodríguez Ruiz 2016, p. 704). The Law took almost a year to be implemented.[7] Nevertheless, there were clinics that started practising abortions beforehand. In this period, in some cities the police raided places suspected of practising abortions. The intention was correctional, but the raids had no serious consequences.

The Law stated that any woman could terminate her pregnancy due to health risks, including psychological ones. Health risk assumptions could be wide and comprehensive.[8] Psychological health risks had been interpreted as risks for the general wellbeing of the pregnant woman (Requejo 2011, p. 401). This idea was strongly defended by the clinics performing abor-

5 An article written by the Italian journalist Neliana Tersigni in 1985 offers an account of the 'abortion charters' to London, where Spanish women used to go, paying around 20,000 pesetas for the flight, the abortion itself, hospital and hotel fares. https://elpais.com/diario/2011/11/27/eps/1322378810_850215.html

6 According to the historic abortion statistics in Spain, in 1984 (one year before the Organic Law was approved) 20,060 women went abroad to terminate their pregnancies. https://elpais.com/diario/2011/11/27/eps/1322378810_850215.html

7 José Maria Ruiz Gallardón, Alberto Ruiz Gallardón's father, of the Popular Party, then Popular Alliance (*Alianza Popular*), filed an appeal that postponed the implementation of the law.

8 According to the WHO definition, "health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity", https://www.who.int/about/mission/en/

tions, grouped together in the Association of Accredited Clinics for Voluntary Termination of Pregnancy (*Asociación de Clínicas Acreditadas para la Interrupción Voluntaria del Embarazo,* ACAI), which covered the whole of Spain.[9] As the report of psychological harm to the woman had to be provided by a psychiatrist, these clinics had interdisciplinary staff to assist women.

> Most health problems arose from the life and social circumstances that women went through. Under the 1985 Organic Law, we certified that those women needed an abortion due to health circumstances. We needed a psychologist or a psychiatrist for that certification. We were not afraid of doing so, everything was legal, besides ACAI had its own lawyers just in case we had to face any legal problem. (Certified private clinic male gynaecologist, Malaga).

This attitude increased the possibilities for women to terminate their pregnancies. So much so, that the great majority of the 115,000 abortions performed in 2009 all over Spain, were performed in private clinics under the assumption that the pregnancy implied a psychological risk for women (Govan 2012, in Albadejo Suárez, Banink 2016, p. 351). Before the 2010 Law, neither abortion nor family planning were integrated into the public health system in Spain (Lete, Martínez-Etayo 2004). Abortions for health risks, interpreted in wide and flexible terms, could be performed at any time during pregnancy. Around 96% of legal abortions were performed under these circumstances, mostly within the first 12 weeks of pregnancy – around 87% of all legal abortions[10] (Rodríguez-Ruiz 2016, p. 708).

However, the 9/1985 Law was inaccurate and triggered ambiguities, which allowed the word "health" to be interpreted both in a strict sense, as a lack of illness, or in an integral sense, as complete physical, mental and social well-being. Whereas authorized clinics understood women's health as bio-psycho-social well-being, public hospitals interpreted the law in restrictive terms, allowing abortions only when the foetus had a serious pathology or a severe malformation, or when the woman's life was at risk. Public healthcare staff qualified the termination of pregnancy under these circumstances as "legal pregnancy termination" (LPT). As a woman gynaecologist told me, in this context, some hospitals created ethics committees – usually with a chaplain as chair – in charge of defining whether the circumstances allowed a LPT. According to a member of the Andalusia Health Service I interviewed, conscientious objection by health care professionals, fearing involvement in court cases due to the ambiguities of the Law, should be taken into account to understand why hospital personnel refused to perform

9 There are ACAI clinics in Andalusia, Aragón, Asturias, Madrid Community Castile-La Mancha, Castile and León, Catalonia, Valencian Community, Galicia and the Murcia Region.

10 Information from the Secretary of Health for 2011.

elective abortions and only performed LPT.

Because of the ambiguity of the Law, despite legal backing, clinics sometimes were subject to attacks from anti-abortion activists.

> During several years in the 1990s and even in the first years of this century, anti-abortion activists gathered in a demonstration every December 28th in front of some clinics in Madrid. (Pro-abortion rights female activist, Seville).

According to the Catholic tradition, that day is the celebration of the "Innocent Saints", infants who have died without baptism and, as a feminist pro-abortion rights activist told me in Granada, "anti-abortion activists were always around".

In the first decade of the 21st century, as discussions on possible modifications of Law 9/1985 took place, pro- and anti-abortion movements took to the streets. According to a feminist activist I interviewed, between 2007 and 2010, a pro-abortion rights committee was active within the feminist local movement in Granada. Feminists demonstrated on the streets in other Andalusian towns as well, showing divergent positions on the bill under discussion. Meanwhile the Catholic Church implemented its anti-abortion campaign (*Campaña del lince*).

3.3 The 2010 Organic Law

After a year of long debates in the Spanish parliament, the "Sexual and Reproductive Health and Voluntary Termination of Pregnancy" Law, proposed by the socialist government led by José Luis Rodríguez Zapatero, was finally approved on April 3, 2010, shortly before the end of Zapatero's term in power. This Law recognized abortion as a women's right, and marked a radical change from the previous Law, substituting special circumstances to terminate a pregnancy with abortion on woman's request up to 14th weeks of pregnancy (de Lago 2010), thereby adopting the so-called time-limit model (Requejo 2011). Thus, Spanish legislation became aligned with that of most European countries. Twenty one out of 28 countries in the European Union have laws that allowed abortion on women's requests – although the time limits differ from one country to another (Noguera Domínguez 2014). As mentioned before, the 2010 Organic Law allowed abortion up to the 14th week of pregnancy, extended up to the 22nd week in cases of physical and/or psychological health risk for the woman, or in cases of a severe foetus malformation or impairment diagnosed by two physicians (who cannot be the one performing the abortion). There is no gestational age limit at all in cases of incompatibility with extra-uterine life or an incurable foetal disease declared by a clinical committee.

4. Discourses in the Spanish state from 2010 to 2014

The approval of the new law was followed by arguments and discussions. In the 2011 elections, the Popular Party gained an absolute majority. It then had to keep the promises made during the campaign, questioning the abortion law. On December 20, 2013, the Council of Ministers approved an Organic Law bill for the protection of the rights of the "conceived" and of pregnant woman, proposed by the Minister of Justice, Alberto Ruiz-Gallardón. If approved, this bill would have put a drastic end to the women's right to make their own decisions. The proposed bill allowed abortion up to 12 weeks only in cases of rape, and up to 22 weeks in cases of permanent or long-lasting health risk for the woman. In this second case, the diagnosis had to be made by two professionals of different hospitals and different from the one who would perform the termination. In cases of underage women, the authorization of parents or guardians would become compulsory (the 2/2010 Law allowed women aged 16 or over to terminate their pregnancies freely). The freedom provided by President Rajoy to Gallardón to continue with his plan of recriminalizing abortion was the result of a political pact between them, stemming from the electoral compromise (Casado 2014).

Gallardón's bill raised many opposing voices, especially from the feminist movement, with demonstrations taking place in every city and town. Yet anti-abortion discourses spread throughout the media. Within these discourses, the woman who aborted was considered a victim: even though her choice was condemned, she was not held fully responsible for her action. During this time the sentence "abortion harms women" became common in public speeches by the so called pro-life activists.

Standing against these anti-abortion arguments, Catholics for a Free Choice[11], a group led by Mar Grandal, stated that the Gallardón bill was a "terrorist attack against women."[12]

Some politicians delivered more carefully worded speeches, being aware that the topic was a very sensitive one and the border between conservatives and progressives was unclear – none of them wanted to lose voters. Among Popular Party (PP) representatives, there were strong discussions about the fact that the "Gallardón bill" did not contemplate abortion due to foetal malformation. Some of them agreed, while others would have preferred a bill inclusive of this issue. When the PP representative Beatriz Escudero defended the "Gallardón Bill" in Congress, some members of her own Popular

11 Catholics for a Free Choice is a worldwide organization created in 1994 during ICPD in Cairo by a group of Catholic women who were pro-choice and were backed by some feminist theologians. It is widespread in Latin America and North America, and in Europe it is mainly present in Spain.

12 "Catholics who are against abortion are atheists," interview published on April 29, 2014: http://e-mujeres.net/los-católicos-que-están-en-contra-del-aborto-son-unos-ateos

Party joined the generalized indignation of the Socialist bench.[13]

In some of the many so-called TV debates on the subject, the interview became a platform for interviewees to elaborate on their proposals. The lack of critical questions meant there was no need for defending positions. For example, in an interview in the TV programme "El gato al agua", analysed by Albadejo Suárez and Bannink (2016), Ruiz Gallardón was not questioned when he referred to the foetus as "the conceived", a word with Catholic roots appearing in such expressions as *Immaculate Conception,* or *Ave Maria Purisima conceived without sin*. He also presented the woman as "the mother", not considering her as an individual independent from the foetus, and at the same time, transferring to her all the responsibility for the foetus.

To protest against Catholic arguments and the conservative abortion bill, three activists broke into Congress in October 2013 shouting sarcastically "Abortion is sacred!" Their protest showed that women had a loud voice, despite Gallardón's efforts to silence them by denying them an active role in the debate (Albadejo Suárez, Bannink 2016). Casado summarized the effects that Gallardón's restrictive bill could have caused with these words: "to say that this bill, restricting the women's rights, is meant to 'protect life' would be completely laughable should it not have such severe consequences. It is well known that the abortion ban does not prevent abortion but makes it clandestine, illegal" (2014, p. 17).

The Catholic Church was present in one way or another in all pro-abortion right debates and demonstrations. The cry "Get your rosaries out of our ovaries!" resounded every March 8th in Andalusian towns and in all gatherings to defend sexual and reproductive rights, as I witnessed during my fieldwork.

Feminists organized a "Freedom train" that collected women from all over Spain. The initiative was launched through social networks in January and on February 1st 2014 the train arrived in Madrid with the participation of thousands of women[14].

During a few months in 2014 there were demonstrations against the Gallardón bill all over Spain. Rajoy, together with the Catholic Church and conservative groups, kept backing the proposal. But then, even some people from PP became critical. Opinion polls suggested that most Spaniards did not want to change the law. Finally, the President decided to shelve the bill, given that it had not found sufficient consensus to be continued. Immediately after that, in September 2014, Gallardón resigned.

Although the bill was shelved, the debates around it had consequences.

13 An abstract is available at: https://www.youtube.com/watch?v=D.RDA-UX94k

14 *Yo decido. El tren de la libertad* (I choose. The Freedom train) is a film by feminist Spanish film makers, which shows the process.

One of them is that now 16-year old girls need their parents' or guardian's authorization to terminate their pregnancies. No doubt this is a step backwards, considering that adolescents can decide for themselves about other types of surgery. On practical grounds, however, this does not seems to be a problem, as we will see in the next section.

Opposing the Gallardón bill, feminists developed a strong discourse to defend women's rights. The name "Freedom train" chosen for their main action is highly symbolic. It conveys, in the first place, the idea of collective action. Secondly, it establishes a link between abortion and freedom. Train is the most common way of transportation and is also a space of sociability. Historically, the train has brought together people from different backgrounds and different places. Therefore, the "freedom train" can be seen as a "material metaphor" uniting different people. The word "freedom" clearly refers to the slogan "my body, my choice." As stated in the first pages, male dominance has long been exercised through the "patriarchal control of women's bodies". Feminists wanted to stop that control, also focusing on the Catholic Church as one of the main "enemies" in the abortion struggle.

5. Andalusia and abortion

In this section I will first focus on the general situation of abortion in Andalusia, referring to bibliographical and statistical sources. I then consider the role of certified private clinics and public hospitals in abortion care, based on the information provided by the persons I interviewed during fieldwork.

5.1 Women undergoing voluntary pregnancy termination

The implementation of Law 2/2010 did not change women's access to abortion, since the health risk circumstances were already widely and comprehensively understood with the 1985 Organic Law. Nor were any differences detected after the discussion of the Gallardón bill.

Quantitative data show that in Spain the abortion rate per thousand women aged 15 to 45 was 10.62 in 2006 and 10.46 in 2014. In Andalusia, there were 17,683 abortions in 2005 and 18,032 in 2014 – a difference that is insignificant. This shows that under the previous Law, women did have access to elective abortion. Therefore, we can say that the 2010 Law just came to call things by their actual names.

According to AHS data, in Andalusia the VPT rate for every 1,000 women aged from 15 to 44 was 9.65 in 2015, with substantial differences among different provinces. When analysing the ages of the women who terminated their pregnancies in 2005 and in 2014, we find a decreasing tendency in the number of abortions among teenagers and young women; only the 25-29

year-old group maintained the same number of abortions, while among women between 30 and 44 years the tendency went up. This shows a change in reproductive behaviours. The presence of a partner at the time of the abortion is a negligible variable for both 2005 (47% with, 49% without) and 2014 (48% with, 51% without).

Andalusia welcomes an important number of migrants, 24% of women who had VTP in 2013 were non-Spanish nationals (Board of Andalusia's AHS). However, the study by Ruiz-Ramos, Ivañez-Gimeno and García León (2012) shows that there are no substantial differences in the socio-demographic characteristics of foreign and local women who terminated their pregnancies.

Regarding abortions among teenagers it should be remembered that, after the Gallardón bill debates, 16-year old girls need their parents' or guardian's authorization to terminate their pregnancies. This was not mentioned as a problem in the interviews I had with staff members of the Andalusian Health Service as well as with gynaecologists working in certified private clinics in Malaga, Seville and Granada.

> The number of teenagers who interrupt their pregnancies is very low. Actually there is a low rate of pregnancies among teenagers. (Female AHS staff).
> Girls used to come with their mothers or even with both parents to terminate their pregnancies before Gallardón, and the same thing happens these days. People do not even realize that something has changed. (Female certified private clinic gynaecologist, Seville).

According to the interview data, the problem arises only in the case of migrant teenagers whose parents are not in Spain, or teenagers whose parents are in prison. If we only consider teenagers aged 15 or below, the number of abortions is higher than that of deliveries (Ruiz-Ramos, Ivañez-Gimeno, García León 2012, p. 508), which is not surprising, given the low Spanish fertility rate, especially among teenagers.

> Girls have a very easy access to EC (emergency contraception) since it is sold over the counter. However, it is expensive, which makes it financially difficult for them to actually obtain it; anyway somehow they get the money. (Female public hospital gynaecologist, Granada).

The easy access to EC as well as to different kinds of contraceptives is pointed out as the main reason for the low fertility rate among teenagers.

During my two periods of fieldwork in Andalusia, access to abortion was not an issue for Spanish women. The steps to be taken in order to have a VTP were well-known by everybody. Any woman who decided to have an abortion could do it quite easily. It was a little more difficult for Roma women. According to my interviewees, abortion was as accessible to Roma

women as for any other Spanish woman, and difficulties in access derived from this group's economic constraints and social discrimination.

5.2 Certified private clinics and public hospitals

The legal status of abortion does not necessarily have a direct relationship with its medical one. Today, a healthcare professional might be against abortion for what they perceive to be moral reasons, although it is legal; vice versa, there were pro-abortion gynaecologists when it was not legal.

The current procedure for pregnancy termination is the one proposed by the 2010 Law. The woman goes to the nearest healthcare centre where a family doctor or a social worker receives her and certifies her decision to terminate her pregnancy. She receives a sealed envelope with all the necessary information to make an informed decision. Three days later they make an appointment to perform the abortion in a certified clinic. These clinics are subsidized by the state, therefore, the termination of a pregnancy is free of charge for the woman. The Law establishes a three-day waiting period to reconsider the decision, but in practice those three days are taken as the time needed to make the appointment with the clinic. The fact that the Law guarantees access to the abortion service on a free basis contributes to its acceptance.

The large majority of abortions in Andalusia are performed by certified private clinics. As stated previously, these clinics played a key role in relation to abortion access under the 1985 Law, by widening the "health circumstances". Even though Law 2/2010 removed the ambiguities the previous one had, so healthcare professionals would not get unintentionally involved in criminal proceedings, the Andalusian Healthcare Centres keep sending women to certified private clinics. The enforcement of the new Law has not modified the way the AHS manages pregnancy terminations.

> With the new law, we decided to continue outsourcing certified private clinics just like before. We wanted to assure the access of all women to termination of their pregnancies, thereby exercising their reproductive rights. We were afraid of a high resistance in the public sector to performing abortions. They only wanted to practice LPT with the 1985 Organic Law, we thought they were going to be very reluctant to practice abortions upon women's request. And most of all, we did not want to create a debate that could have gone against women's rights. (Female physician, AHS).

As several physicians working at public hospitals in Granada and Seville told me, compelling public hospital personnel to perform abortions would probably have resulted in unhappy physicians doing something they did not want to do.

> Probably they would apply obstetric practices when performing an abortion, instead of the specific techniques for abortion care. (Male public hospital gynaecologist, Seville).

This is an interesting point. With proper training, any physician may provide good abortion care. Medical abortion, as ICMA (International Consortium of Medical Abortion)[15] states, can be carried out by nurse-midwives, pharmacy workers and other professionals with specific training (Puri *et al.* 2014; Tamang *et al.* 2015). The problem clearly lies in the lack of interest in practising abortion in public hospitals.

The 2010 Law allows women to request an abortion up to 14 gestational weeks, but in cases of foetal impairment or severe health problems for the woman, termination can take place at a later stage in the pregnancy. In 2014, 88.91% of all abortions in Spain were carried out on women's requests and the remaining 11.09% were due to risks to the women's health or foetal impairments. This means that the vast majority of terminations are made in early pregnancy: 70.18% before the 8th week (Miranda Lucas, Comas D'Argemir 2016, p. 43). In order to perform second trimester abortions, clinics must have special equipment, including an operating theatre. Due to the high costs involved, only a few certified private clinics perform abortions of this kind. One could suppose, that public hospitals would take over, yet only two of them perform abortions after 14 gestational weeks.

> Gynaecologists are reluctant to practise abortions even when there are serious health problems for the woman or foetus. They are afraid of being reported to the Ethical Committee. (Female public hospital gynaecologist, Granada).
> We receive women in their second trimester, mostly when there are foetal impairments. (Male certified clinic gynaecologist, Malaga).

In Andalusia, abortion healthcare policy depends on certified private clinics. One of the reasons why I chose to study the situation of abortion in Andalusia was precisely this imbalance between private clinics and public hospitals. When interrogated, all the interviewees pointed out that public hospital staff would be reluctant to practice VTP as the main reason for keeping its practice in the private realm. Spain does not have a directory of conscientious objectors so that it is hard to find clear evidence to support this claim.

Different people I was in touch with during fieldwork associated private clinics with pro-legal abortion activists and in some cases with feminist medical activists. Informal talks with physicians working at public hospitals did not prove medical staff there were more conservative. I wondered if

15 www.medicalabortionconsortium.org

conscientious objection and abortion stigma played a role in public hospital resistance to provide abortion care.

6. Healthcare professionals: the impact of conscientious objection and abortion stigma

Since its legalization, healthcare professionals became the leading actors in abortion provision. As Miranda Lucas and Comas D'Argemir argue, legalization "strips the meaning of abortion from its former clandestinely, illegality, immorality and shame, to metaphorically re-signifying it as disease" (2016, p.47). However, to associate abortion with a disease – which it is not – involves the risk of downplaying women's agency: a disease is not chosen whereas abortion is. By the time Law 2/2010 was enforced, there was a group of healthcare professionals (general medical doctors, gynaecologists, midwives, social workers, psychiatrists) working at certified private clinics which were already reliable in providing VPT, due to their continuous practice, specialized training and involvement in research on abortion. These professionals had good knowledge of the different methods to terminate a pregnancy – MVA and medical abortion. They also knew the risks a woman could face and all the aspects of abortion procedures. Public hospital staff, on the contrary, did not always know the appropriate methods. According to a gynaecologist I interviewed in Seville, they usually turn to obstetric knowledge to perform abortions. Besides, they lack specific units.

> It is terrible because, since there are no specialized units for patients who undergo elective abortion at public hospitals, those women have to share the same wards as the ones in labour. This situation is bad for both groups. (Male gynaecologist, Granada).

Medical school curricula at the Seville, Granada and Malaga Universities do not include specific training on abortion care. Moreover, the degree programme in obstetrics and gynaecology of Granada University's Medical School includes a chapter entitled "the foetus as a patient." It should be noted that while a foetus is considered a patient, a woman requesting abortion is not.

According to a male gynaecologist I interviewed in Granada, today the majority of young gynaecologists are reluctant to perform abortions and several certified private clinics are having trouble recruiting personnel. Physicians explained this issue as follows:

> Young gynaecologists do not want to get involved in performing abortions because their medical school lecturers are objectors, so they do not encourage abortion practice. In fact, it is most likely that they have even threatened those interested in becoming abortion providers, telling them that if they go on with that idea, they would not successfully complete training as doctors. (Male certified private clinic gynaecologist, Seville).
> Nowadays, there is no training in pregnancy termination at medical schools; it is not a topic It seems it is not considered part of the medical practices during college education. Shouldn't be so, but it is. (Female public hospital gynaecologist, Granada).
> You know, one of the reasons why gynaecologists do not want to be abortion providers is the lack of prestige. People want to be admired, especially by their colleagues. If you are an abortion provider you might be appreciated by women, but not by your colleagues. (Male certified private clinic gynaecologist, Malaga).
> The main problem I see is that as there are few gynaecologists who perform abortions, we end up being full-time abortion providers, and nobody wants to do the exact same thing all day long, every single day. (Female certified private clinic gynaecologist, Granada).

Professionals working at public hospitals tend to differentiate LPT (legal pregnancy termination) from VPT (voluntary pregnancy termination), stating that LPT refers to an event where medical reasons determine the procedure. While LPT requires a medical diagnosis, VPT does not. This is an interesting point. Despite the fact that according to the current Law all abortions are legal, many healthcare professionals distinguish them, still applying the term *legal* only to those due to bio-medical causes. These medical statements show that the woman's choice, despite being authorized by the current Law, is somehow delegitimized. A double power axis is at play here: on the one hand medical know-how versus woman's will (diagnosis vs. request); on the other, a gender system undervaluing women's words and choices. "Medical diagnoses, as professional criteria is more valued than a woman's decision over her own body" (Miranda Lucas, Comas D'Argemir, 2016, p. 48). At public hospitals, however, gynaecologists are reluctant to provide an abortion even with an LPT diagnosis.

> Here at the hospital, it is very difficult to find a gynaecologist willing to perform an abortion on a woman in her second trimester because there is, let's say, a serious problem with the foetus. They are afraid that anatomical-pathological tests on the foetus might not provide definite proof of its incompatibility with extra-uterine life, or might not detect an extremely serious malformation. So, they end up excusing themselves, and leave it to the certified private clinic. (Public hospital gynaecologist, Granada).

Gynaecologists I interviewed said they were not conscientious objectors,

but in fact none of them was performing abortions, and none of them was willing to do so, which seems quite contradictory. A very small percentage of healthcare professionals are willing to be abortion providers; those who are, are associated with certified private clinics and somehow isolated from the rest of their colleagues.

> You know, we are quite isolated. It's a good thing that ACAI is a strong association, so we can count on each other. (Certified private clinic gynaecologist, Seville).

The fact that only a small group of gynaecologists performs abortions requires an interpretation. According to information I gathered through interviews with certified private clinics, public hospitals, healthcare centres and AHS staff, there is a widespread belief that if abortions were performed at public hospitals, a large number of conscientious objectors would appear. In fact, as healthcare professionals from the public sector do not face the need to perform abortions, conscientious objection does not need to be expressed. Although conscientious objection is not a visible issue[16], it has a phantom effect.

Law 2/2010 limits conscientious objection to professionals directly involved in abortion procedures "provided that access to the public service of abortion and its quality are not undermined as a consequence of that action" (Requejo 2011, p.410). Despite the clarity of the Law, in practice it is not easy to define which behaviours can be covered by the conscientious objection and which cannot, which attitude can be considered conscientious objection and which cannot. Opinions on these matters are highly different. One thing is certain: since the approval of Law 2/2010, the AHS has continued to handle abortions in the same way it did under the previous one, that is, outsourcing them to certified private clinics.

> We had decided not to change in order to ensure the continuity of the service and to avoid problems at the hospitals, should doctors reject these procedures. At the same time, we were concerned with making it easy for women to terminate their pregnancies: our main interest is to avoid barriers for women. Women do not have to go to their family doctor if they don't want to, they can go to any doctor. We have paid attention to easing the process of getting a VPT for women who want it. (Female physician, AHS).

AHS' decision was taken immediately after the approval of the 2010 Law, but it was only with the Gallardón debates that conscientious objection became a public issue. In April 2013, a few months before the Gallardón bill was presented, the Andalusian Supreme Court of Justice (ASJC) denied

16 There are no public data or statistics on this issue in Spain.

a Malaga physician the right to plea conscientious objection to justify his refusal to provide a woman with information on VPT.

The sentence answered the appeal presented by the Andalusian Health Service (AHS) against a judge's decision that accepted the objecting doctor's plea. According to ASJC, conscientious objection in these cases "is not a fundamental right" protected by Art. 16 of the Constitution. Conscientious objection is the object of an ordinary legal regulation by which the person involved should abide in specific cases. It excludes medical care provided before and after the actual termination of pregnancy.[17]

In July 2015, after the Gallardón bill was shelved, the Constitutional Court filed a writ of protection on a Seville pharmacy owner who had been sanctioned by the Andalusia Board for not having emergency contraceptives available, on the grounds that he was a conscientious objector as part of his ideological and religious freedom. His ideological position against abortion included emergency contraceptives. Despite scientific evidence that emergency contraceptives are not abortive, his plea was accepted.[18]

The Gallardón proposal was discussed between these two acts. It is hard to detect how far this bill reinforced conservative and ultra-conservative positions. Nevertheless, the hypothesis that the discussion on abortion re-criminalization could have empowered conservative forces does not sound too farfetched.

The case of the pharmacy owner, as well as a case in Galicia related to a hospital's refusal to perform an abortion,[19] allows us to think that conscientious objection by health professionals became a real obstacle for the actual exercise of sexual and reproductive rights.

> At public hospitals, if healthcare professionals don't want to be in contact with VPT, they just avoid it. There are many gynaecologists that do not have religious or moral reasons to present conscientious objection, yet they prefer not to do so for other reasons, like they don't want to be singled out, "Hey, that guy is an abortion provider". I do not perform abortions either, but I

17 The law foresees conscientious objection only for the performance of VPT, not for the pre- or post-procedure care.

18 This act results from the STC 145/2015, 25 June, signed by Justice Ollero, which grants pharmacists the right to conscientious objection on the issue of emergency contraceptives (Rodríguez Ruiz 2016, p. 710).

19 Galician hospitals used to practice therapeutic abortions only up to the 22nd week of pregnancy, due to conscientious objection. From that week on, women had to be sent to Madrid. A woman in her 25th week of gestation had a test showing a foetus with serious anomalies. The hospital first delayed abortion provision and then refused to perform it. The woman, already in her 32nd week, was sent to Madrid – travelling on her own. Complications derived from the delay plus the trip, ended in an operation that included hysterectomy. The woman presented a claim against the hospital, which was accepted. Source: http://www.eldiario.es/sociedad/aborto-Sergas-sentencia denuncia-negligencia_0_570443537.html

> don't have any problem with it; if I have to, I'll do it. (Female public hospital gynaecologist, Seville).
> There are some important gynaecologists here at the hospital, I mean the elders with an important career behind them, who are lecturers, and they are conservatives, very attached to the Catholic Church. They are against abortion. They're powerful, so some young people don't want to have them as enemies, which could mean closing doors in their search for better jobs. So, they just avoid abortion care, and that's it. (Female public hospital gynaecologist, Granada).
> Some people think that only certified private clinics should perform abortions. Actually that makes it easier for everybody. (Male public hospital gynaecologist, Granada).
> When one of my patients comes requesting an abortion, I directly send her to a clinic where I know she will get the best possible care. I know the gynaecologists who work over there, they are my friends; they know how to do it much better than we do here at the hospital. But I have to tell you, most of my colleagues at the hospital don't think as I do. (Female public hospital gynaecologist, Seville).

Professionals' practices and choices are strongly influenced by their training in obstetrics, where the main mission is "to save foetuses" and in which abortion appears as a transgression, a deviation from their "normal" routine.

The picture emerging from my interviews shows that healthcare professionals believe that performing abortions may bring problems with colleagues and co-workers, and may jeopardize access to new jobs. At the same time, residents[20] interested in abortion provision are discouraged, or even discharged, by lecturers. As stated before, gynaecological training does not include abortion care. Performing termination of pregnancies does not provide prestige, on the contrary, it reduces it. The removal of this practice from public hospitals towards private clinics restricts possibilities for professional advancement, although it does help women to go through their abortions in a qualified and friendly environment.

Abortion stigma is a complex topic and not fully understood. It has been studied more in relation to women who get abortions (Kumar *et al*. 2009). Abortion stigma is usually considered "concealable", because it is unknown to others, unless disclosed. However some authors have underscored that abortion stigma does not only affect women, but also abortion providers, who can hardly keep their activities hidden in a country where abortion is legal (Quinn, Chaudior 2009 in Norris *et al.* 2011). There are many differences between the women's and the abortion providers' stigmas: for women stigma can be an episodic and time limited experience, while for providers it is continual and can affect their social role, as their work identity is directly

20 Students taking gynecology and/or obstetric post-graduate degrees.

linked to abortion care.

Stigmatized people "do not have full social acceptance and are constantly striving to adjust their social identities"; the effect of stigma is "an attribute that is deeply discrediting", just as "a stereotype" is (Goffman 1963, pp. 3-4). Relying on Goffman's definition, Norris *et al.* point out the existence of two components of stigmatization: the perception of negative characteristics and the global devaluation of the possessor (2011, pp. S49-S50). Abortion providers' activity is discredited by the majority of the medical community. This negative perception seems to come from abortion being considered contaminating and dirty. Abortion provision is seen as a dirty job on physical, social, and moral grounds (Harris *et al.* 2011). As Norris *et al.* point out "the concentration of the abortion burden on a relatively small number of providers suggests that abortion and its associated stigma may be consistently integrated into the identities of abortion clinic doctors and staff" (2011, p. S51). A quantitative study on abortion providers in the United States (Martin *et al*. 2014) showed that 89% felt unappreciated by society; simultaneously they felt they were providing a positive contribution to society (92%) and took pride in their work (98%).

> All the members of ACAI form a pretty close community. We share many activities: conferences, trainings; we have bulletins. We have closer ties with colleagues abroad than with those living in the same city. (Male certified private clinic gynaecologist, Malaga)
> I'm a feminist, and I participate in many sexual and reproductive rights workshops with immigrant women. (Female certified private clinic gynaecologist, Granada).

My study does not delve into the consequences of the stigma on abortion providers. The fact that they try to support each other, creating a circle separate from their colleagues working in the public sector, can be interpreted as an effect of abortion stigma. In Andalusia, however, abortion providers seem to be well accepted by society at large. During the debates on the Gallardón bill, feminists came very close to them.

> During those months where the PP [*Partido Popular*], not even all the PP, Rajoy, Gallardón and the [Catholic] Church wanted to re-criminalize abortion, I went to several meetings also attended by abortion providers in order to talk about it, to talk about the importance of women's sexual and reproductive rights. (Feminist activist, Granada).
> Abortion is taken for granted, mostly by young people, it has been legal since 1985. Some girls have grown up knowing that they have the right to terminate a pregnancy. They know that abortions are performed in private clinics

> and never wondered why public hospitals don't do it. You know, many women realized that they couldn't take it for granted only when Gallardón came up with that idea of re-criminalizing it. (Feminist activist, Seville).

Interviews with physicians at public hospitals and at certified private clinics show that there is a distance between public and private systems, but also that within society abortion providers enjoy acceptance.

The concept of stigma allows us to understand some behaviour by abortion providers, professionals in the healthcare system and society at large. At the same time, it hides other important elements. As Kumar warns, "as research on abortion stigma grows it is starting to suffer from ' conceptual inflation' and is in danger of becoming so large and all-encompassing […] that it may mask deeply rooted inequalities" (2013, p. e329).

During my fieldwork, stigma appeared more as a fear than as a reality, affecting public hospital health professionals. Abortion providers working at certified clinics feel that they are carrying out an important task, that they are helping women exercising their reproductive and sexual rights. ACAI provides its associates with training courses and connect them to international networks supporting sexual and reproductive rights.

7. The fragility of sexual and reproductive rights

Voluntary pregnancy termination is definitely not a closed issue. Throughout Spanish history, abortion has had different legal status: the 1985 Law allowed women to terminate their pregnancies under certain circumstances, and the 2010 Law placed abortion among women's sexual and reproductive rights. As the Gallardón bill has shown, however, a woman's right to terminate her pregnancy is always fragile. Feminists and pro-abortion rights activists, as well as of those opposing legalization – led by the Catholic Church – have mobilized not only during legislative discussions, but also due to greater or lesser repression on clinics throughout the last quarter of the 20th and the 21st centuries.

One of the main purposes of AHS is to ensure that all women exercise their sexual and reproductive rights. In order to accomplish this goal, it manages VPT procedures through certified private clinics, avoiding possible conflicts with public hospital personnel. AHS directors know that there are healthcare professionals who do not want to be involved in abortion provision; colleges that do not consider VPT as a part of medical practice and omit specific training from their curricula; pharmacy workers who refuse to sell emergency contraceptives claiming conscientious objection. These facts have to be taken into consideration when planning reproductive and sexual health policies. AHS offers regular training courses on sexual and reproduc-

tive health to the staff of public healthcare centres as a way of increasing their involvement in women's rights. However, only two hospitals in Andalusia perform what they call *legal pregnancy termination*, that is abortions after the 14th week of pregnancy when women's lives are at risk or when foetal impairment or malformations are detected.

The reluctance of healthcare professionals to perform abortions in public hospitals drew my attention. Undoubtedly there might be a few of them who refuse to perform abortion for moral and religious reasons, yet many others just want to avoid abortion provision. Looking for possible explanations, I considered the weight of abortion stigma. I have pointed out that the notion of stigma does not seem to provide a full understanding of the current situation, raising a question whether something related to gender hierarchies based on sexual and reproductive control is still at play in contemporary biopolitics. This opens up a new avenue of enquiry to continue to study and think about abortion. So far, based on the Andalusian case, we can only conclude that sexual and reproductive rights are extremely fragile and can never be taken for granted.

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