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ARTICLE

On Interpretation and Appreciation. A European Human Rights Perspective on *Dobbs*

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Abstract

In June 2022, the Supreme Court of the United States overturned *Roe v. Wade*. The European Court of Human Rights is also expected to decide on several abortion cases. In this paper, the interpretative approaches of both courts are compared. Whereas the U.S. Supreme Court in *Dobbs v. Jackson Women's Health Organization* decided on an originalist approach to the Constitution, the highest European court has always regarded the European Convention on Human Rights as a living instrument. As a result, domestic laws regulating the interruption of pregnancy are seen by the Strasbourg court as interferences with a fundamental right, the right to respect for private life. Although member states of the Council of Europe enjoy a wide margin of appreciation with regard to the circumstances in which abortion will be permitted, its highest court put forward the state's positive obligation to secure pregnant women's right to effective respect for their physical and psychological integrity in several landmark judgments. In this way, it ensures the existence of effective mechanisms in countries with a poor record of implementing the right to a lawful abortion. Albeit at a minimum, the Strasbourg court offers protection, whereas the U.S. Supreme Court no longer does.

Keywords: abortion; Supreme Court of the United States; *Dobbs*; European Court of Human Rights; interpretation; living instrument; margin of appreciation; privacy

Introduction

On June 24, 2022, the Supreme Court of the United States issued its decision in the case of *Dobbs v. Jackson Women's Health Organization*,[1] a ruling that stirred up strife in Europe, too. In this paper, I want to shed some light on the U.S. Supreme Court's decision from a European human rights perspective. To this end, I will analyze it and dwell on some elements that stand out for European human rights lawyers. I will then compare the decision with the European Court of Human Rights (ECtHR) case law on abortion.

One Issue, Two Courts

Although the highest European human rights court differs from the U.S. Supreme Court in countless respects, reflecting on two essential points of difference will be helpful. Of course, where fundamental rights are concerned, the legal frameworks of the two courts are entirely different: the ECtHR reviews against standards of the European Convention on Human Rights (ECHR; formally the Convention for the Protection of Human Rights and Fundamental Freedoms) and its Protocols, whereas for the highest U.S. court, the framework is constituted by the standards of the Constitution of the United States and its Amendments. But, although one court operates on the basis of an international treaty and the other on

the basis of a national constitution, both have to relate to these sources of law in a certain way. Both courts must approach them interpretatively. To properly understand the ECtHR's position on abortion, it is essential to examine its interpretative approach to the ECHR, the so-called "living instrument" doctrine.

Another relevant doctrine to consider is the so-called "margin of appreciation" doctrine. The ECtHR interprets the ECHR in relation to states parties to that treaty, sovereign states, accused of violating fundamental rights enshrined in the treaty. However, not all ECHR rights are absolute; the exercise of certain rights may be restricted by contracting parties, provided that certain conditions are met. Whether a state has gone too far in limiting such a right depends on the acceptance by the Court of a margin of appreciation and its width. In its judgments in abortion cases, the ECtHR recognizes a margin of appreciation. Its width appears to be determined by several factors. To properly understand the ECtHR's stance on abortion, it is also essential to examine these factors.

Laws in Europe on the termination of pregnancy vary from country to country, and they vary considerably. These laws are also subject to change. Although most treaty parties have gradually moved toward more liberal legislation in this area, some are moving in the opposite direction, Poland in particular.[2] That country's Constitutional Court recently placed further restrictions on women's access to lawful abortion. On October 22, 2020, a statutory exception for legal termination of pregnancy in cases of fetal abnormality was held unconstitutional.[3] That judgment came into force on January 27, 2021, thus limiting access to lawful abortion to cases with pregnancy as the result of a criminal act (rape and incest) or when the continuation of pregnancy threatens the mother's life or health. On October 30, 2020, Poland's president submitted to the *Sejm* a bill amending the law and reintroducing the possibility of terminating a pregnancy due to fetal abnormalities, although only limited to "lethal" defects.[4]

Since the publication of the judgment, more than 1,000 women have turned to the ECtHR to vindicate their rights, alleging that following the judgment, certain hospitals refused to perform abortions in cases with fetal abnormalities and claiming that the judgment violates their right to respect for private life and freedom from degrading treatment. The Court subsequently asked Poland to submit its responses to 12 of these applications.[5]

On June 24, 2022, the U.S. Supreme Court dealt with what in international human rights law is commonly referred to as a *retrogressive measure*:[6] the passing of the so-called Gestational Age Act by the Mississippi Legislature in March 2018, banning any termination of pregnancy after the first 15 weeks of pregnancy, with exceptions for a medical emergency or severe fetal abnormality but none for cases of rape or incest,[7] whereas states were prevented from banning abortion before fetal viability, generally within the first 23 or 24 weeks, based on another Supreme Court decision. In *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), the Court held that laws restricting abortion before the fetus is viable create an undue burden on women seeking abortions; such laws were deemed unconstitutional on the basis that a woman's choice for abortion during that time is protected by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.[8]

Because of the Polish Constitutional Court's decision in 2020, the ECtHR will also have to rule on a retrogressive measure. What outcome is likely, given its case law on abortion and the abovementioned doctrines? And how will these decisions compare to the one taken by the U.S. Supreme Court?

Dobbs et al. v. Jackson Women's Health Organization et al.

The Mississippi Gestational Age Act provides that "[e]xcept in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform … or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks."[9]

Within a day of the Act's passage, its constitutionality was challenged by Mississippi's only abortion clinic, Jackson Women's Health Organization, and one of its physicians, by suing two state officials, among whom Thomas Dobbs, health officer with the Mississippi State Department of Health. The clinic performed surgical abortions up to 16 weeks of gestation.

In November 2018, the U.S. District Court for the Southern District of Mississippi ruled for the clinic, writing that based on evidence that viability of the fetus begins between 23 and 24 weeks, Mississippi had "no legitimate state interest strong enough, prior to viability, to justify a ban on abortions," and placed an injunction on the state enjoining it from enforcing the Act.[10] The state appealed to the U.S. Court of Appeals for the Fifth Circuit, which affirmed the District Court's ruling in December 2019 by referring to Supreme Court's abortion rulings that "have established (and affirmed, and reaffirmed) a woman's right to choose an abortion before viability. States may regulate abortion procedures prior to viability as long as they do not impose an undue burden on the woman's right, but they may not ban abortions."[11]

In June 2020, Mississippi petitioned its appeal of the Fifth Circuit decisions to the U.S. Supreme Court. In its petition, the state asked the Court to revisit the viability standard based on its inflexibility and inadequate accommodation of present understandings of life before birth. Since it was claimed that fetuses could detect pain and respond to it at 10- to 12-weeks' gestational age, the Court was also asked to allow the prohibition of "inhumane procedures." The petition also contended that the viability standard inadequately addresses protecting potential human life. The Court was asked to consider this a state interest from the "onset of the pregnancy" onward.[12]

In its opinion, the U.S. Supreme Court reversed the Fifth Circuit's decision. The majority opinion held that the Constitution does not confer a right to abortion. It overturned *Roe v. Wade* (1973) and *Planned Parenthood v. Casey*, and returned the authority to regulate abortion to "the people and their elected representatives."[13] Its primary consideration was that *Casey* skipped over the critical question of whether the U.S. Constitution confers a right to obtain an abortion. *Casey* reaffirmed *Roe v. Wade* solely on the basis of *stare decisis* and failed to assess the strength of the grounds on which that ruling was based. According to the *Dobbs* majority, those grounds do not support the conclusion that the Constitution confers such a right.[14]

"Egregiously Wrong"

One aspect that should fascinate European lawyers immensely is the Supreme Court's qualification of its precedents. Europe's highest courts are not likely to assert the following about their decision-making, "occasionally, the Court issues an important decision that is *egregiously wrong*."[15] For example, by its own standards, the decisions of the ECtHR are always correct. Since the appropriate interpretation and application of the ECHR is continually assessed "in the light of present-day conditions," it never feels any need to disqualify its previous rulings in retrospect.

According to the majority opinion in *Dobbs*, the U.S. Supreme Court did not interpret the Constitution correctly in *Roe v. Wade* and *Planned Parenthood v. Casey*. With *Dobbs v. Jackson Women's Health Organization*, it aims to correct these mistakes, and it does so by providing what it claims to be the correct interpretation. In *Dobbs*, the majority explains how the Constitution *should* be interpreted.

Most of what it considers the proper interpretative approach to the Constitution is put forward in its examination of the grounds on which *Roe v. Wade* rests. According to the *Dobbs* majority opinion, that decision was not only egregiously wrong but also deeply damaging. Errors were made, so it notes, which were perpetuated by *Casey*, by short-circuiting the democratic process by closing it to the large number of Americans who dissented in any respect from *Roe*;[16] errors stemming from an analysis that was "far outside the bounds of any reasonable interpretation of the various constitutional provisions to which it vaguely pointed."[17]

The majority's analysis starts with the text of the Constitution. "The language of the instrument" is said to offer a fixed standard for ascertaining what the founding document means.[18] But since express references to the right to obtain an abortion cannot be found in the text, it must be seen whether such a right is somehow implied.[19] In *Roe*, the Court held that the right is part of the right to privacy, a right which is also not mentioned but is said by *Roe* to spring from various constitutional provisions.[20] According to the *Dobbs* majority, this "unfocused analysis" was not defended in *Casey*. Instead, the right to obtain an abortion was said to be part of the "liberty" protected by the Fourteenth Amendment's Due

Process Clause, which prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law."[21]

In interpreting what is meant by this reference to "liberty," the majority opinion in *Dobbs* points out that the Court ought to guard "against the natural human tendency to confuse what that Amendment protects with our own ardent views about the liberty that Americans should enjoy."[22] "Freewheeling judicial policymaking" based on policy preferences of members of the Court should be avoided, "respect for the teachings of history" is essential.[23] The Court has always been "reluctant" to recognize fundamental rights not mentioned in the Constitution, and rightly so, according to the opinion.[24] Therefore, in deciding whether a substantive right is indeed part of liberty, it must be made clear that it is "objectively, deeply rooted in [United States] history and tradition."[25]

The "clear answer" that the Fourteenth Amendment does not protect the right to an abortion is provided by a historical exposé, stretching from the works of thirteenth-century legal scholar Henry de Bracton and "eminent common-law authorities" (Blackstone, Coke, and Hale) to the "overwhelming consensus" by the end of the 1950s as expressed in state laws prohibiting abortion "however and whenever performed, unless done to save or preserve the life of the mother."[26] The *Dobbs* majority notes that this consensus endured until the day *Roe v. Wade* was decided. At that time, 30 states prohibited abortion at all stages except to save the mother's life. That the right to obtain an abortion is not deeply rooted in the history and traditions of the United States is an "inescapable conclusion."[27] What the Court should have said in *Roe*, according to *Dobbs*, is that, although attitudes toward abortion have changed since Bracton, state laws have consistently condemned, and continue to prohibit, that practice.[28] But it did not. Instead, the Court engaged in "unrestrained imposition of its own extraconstitutional preferences" and came up with an opinion that "read[s] like a set of hospital rules and regulation."[29] In *Roe*, to summarize *Dobbs*, the Court at the time did something only legislators are constitutionally entitled to do.

According to *Dobbs*, matters did not improve with *Casey*, which retained *Roe*'s central holding that states may not regulate pre-viability abortions to protect fetal life. In addition, it substituted *Roe*'s trimester scheme with an "undue burden" test; state laws regulating those abortions may not impose an undue burden on the woman.[30] This test is not only considered unworkable by the *Dobbs* majority, but it is also said to lack firm grounding in constitutional text, history, or precedent.[31]

In *Dobbs,* the Court's interpretative approach to the Constitution is characterized by (1) the reverence for its literal wording and (2) the weight given to historical evidence. The inquiry is said to be similar to surveys undertaken in other cases. The majority opinion recalls, *i.a.,* the inquiry carried out by the Supreme Court to determine whether the Fourteenth Amendment protects the right to keep and bear arms. That inquiry led to the conclusion that "the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty."[32] In other words, interpreting a constitutional provision is retrieving its authors' intention; wording and history provide the clues.

From an outsider's point of view, it would be presumptuous to reflect on the relationship between the U.S. Supreme Court's interpretative approach in *Dobbs* and its positioning vis-à-vis the parties whose actions are constitutionally challenged. Is the latter determinant of this "textualist" and "originalist" approach? Or is it its result? In terms of cause and consequence, things are more straightforward as far as the ECtHR is concerned. Two of its doctrines need explanation first.

The Convention as a Living Instrument

Of course, the ECHR is not a constitution but an agreement between sovereign states. States can choose not to join such a multilateral agreement, and contracting states may decide to withdraw at any time. Although the Convention is a human rights treaty providing access to an international court, the ECtHR only has jurisdiction if the state concerned is a contracting party. In the end, the protection offered by the ECHR depends on state consent.

The ECHR is a European treaty aiming to protect human rights and political freedoms for all residents of contracting states. The treaty entered into force on September 3, 1953. It was drafted within the Council of Europe (CoE), following the United Nations Universal Declaration of Human Rights (1948). Sixteen Protocols have since expanded it. The ECHR has significantly influenced the law in CoE member states. Because of its robust enforcement mechanism, it is widely considered the most effective international treaty for human rights protection.

The CoE is not to be confused with the European Union. It is an international organization founded in 1949 to uphold human rights, democracy, and the rule of law in Europe. It currently has 46 member states, with a population of approximately 675 million. All CoE-member states are party to the ECHR, and new members are expected to ratify it at the earliest opportunity.

Monitoring compliance with the ECHR lies with the CoE's best-known body, the ECtHR in Strasbourg. The ECHR provides for both state and individual applications. Any party who feels their rights have been violated under the ECHR can take a case to the Court, which is permanent and composed of full-time judges. The ECtHR decides whether the application should be considered on its merits. If it is admitted, a judgment finding violations is binding on the member state concerned, which is obliged to execute it. The execution of the Court's judgments is monitored by the Committee of Ministers, composed of government representatives of all the member states. Since the Court was established in 1959, it has delivered 24,511 judgments. Approximately 70,150 applications were pending on December 31, 2021.[33]

Judging from the majority opinion in *Dobbs*, the U.S. Supreme Court is at present holding on to what it sees as the intention of the Constitution's authors. By contrast, the (much younger) ECtHR has always embraced the idea that the ECHR is a living instrument.

According to Article 32 (1) ECHR, the jurisdiction of the Court extends to all matters of interpretation and application of the Convention and its Protocols. Furthermore, the states parties to the ECHR undertake to abide by the Court's final judgment in any case to which they are parties.[34]

Therefore, the ECHR itself grants the ECtHR interpretative authority, and the states must adhere to its interpretation of its text. However, the Convention provides no clear indications of the kind of interpretative approach the Court should employ, nor do the *travaux préparatoires.* Nevertheless, treaties must be interpreted according to the rules on the interpretation of treaties, as they are found in the Vienna Convention on the Law of Treaties. The basic rule is that a treaty "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[35]

Since its early days, the ECtHR has consistently sought to realize "the object and purpose" of the ECHR. By reference to its object and purpose, the Court has extended the reach of the ECHR in many contexts. Consistently with this emphasis, the ECHR has been given an interpretation referred to as "dynamic" or "evolutive."[36] However, the expression "living instrument" first appeared in the judgment of *Tyrer v. United Kingdom* (1978). In that case, the ECtHR decided that judicial corporal punishment of juveniles (bare-skin birching carried out by a policeman at a police station, prescribed by law and practiced on the Isle of Man) amounted to degrading punishment within the meaning of Article 3 of the ECHR. It considered such punishment an institutionalized assault on a person's dignity and physical integrity, precisely what—according to the Court—Article 3 aims to protect.[37]

Unlike the U.S. Constitution, the ECHR does mention the right to privacy, "everyone has the right to respect for his private and family life, his home and his correspondence." Article 8 (1) has proved to be its most elastic provision. None of the four interests covered is defined in the treaty; their content is a matter of interpretation, by the ECtHR exclusively, since "private life," "family life," "home," and "correspondence" are so-called "autonomous concepts." Following the former European Commission on Human Rights, the Court interprets them "as having an autonomous meaning in the context of the Convention and not on the basis of their meaning in domestic law."[38] Moreover, because it tends to define these concepts broadly, the scope of the provision's protection has increased considerably over the past decades.

A brief overview of court rulings on issues covered only by "private life" shows that the living instrument doctrine enabled the Court to keep pace with social and technological developments. Under

this heading, it has dealt with issues as diverse as gender identity, the regulation of names, genealogical information, home births, assisted reproductive technologies, donation of embryos conceived with in vitro fertilization to scientific research, surrogacy, assisted suicide, access to experimental therapies, consensual sadomasochistic activities, data protection, and so forth. Cases of abortion have also been adjudicated in this context.

The ECtHR's approach to Article 8 (1) of the ECHR has been expansive but not unrestricted. Once it had recalled how the Convention is to be understood, the Court pointed out in *Tyrer* "that [it] cannot be but influenced by the developments and commonly accepted standards in the penal policy of the Members of the Council of Europe in this field."[39] The following year, the ECtHR decided on a landmark case concerning family life. In *Marckx v. Belgium*, the applicants (a child born out of wedlock and his unmarried mother) complained that Belgian law violated, *i.a.,* their right to family life because it did not follow "mater semper certa est," thus denying maternal affiliation on birth to children born out of wedlock. The Court concluded a breach after having noted that "[t]he domestic law of the great majority of the member States of the CoE has evolved and is continuing to evolve, in the company with the relevant international instruments, towards full recognition of the maxim 'mater semper certa est'."[40]

George Letsas noticed that the ECtHR displayed a particular pattern when employing the living instrument doctrine. First, applicants ask the Court to rule on an issue that is morally sensitive in the state concerned. Second, the Court acknowledges the relevance of the prevailing moral climate within that state to the interpretation of the ECHR. And third, it appeals to broader developments within and outside the CoE (international treaties and trends of evolution in societal beliefs) as a counterweight to that prevailing moral climate.[41]

One can imagine that in response to the applications on abortion, Poland will refer to a prevailing moral climate. In the absence of such a counterweight, when there is no commonly accepted standard, the ECtHR is likely to grant it a wide margin of appreciation.

The Margin of Appreciation and Its Width

Broadly speaking, "margin of appreciation" refers to the room for maneuver the ECtHR is willing to grant national authorities in fulfilling their ECHR obligations. The margin of appreciation has never been invoked against Articles 3 (the right not to be subjected to torture or inhuman or degrading treatment or punishment), 4 (1) (the right not to be held in slavery or servitude), and 7 (the right not to be convicted for conduct which was not an offense at the time it occurred and the right not to have a heavier penalty imposed for an offense than the one applicable at the time it was committed). It has had a minimal role in relation to Article 2 (the right to life), but as it happens, that particular ruling (*Vo v. France*) has proved to be essential in the case law on abortion. Concerning the freedoms enshrined in Articles 8–11 (the rights to respect for private and family life, home and correspondence, freedom of thought, conscience and religion, freedom of expression, and freedom of assembly and association), the doctrine is very often invoked in ECtHR rulings.

These freedoms are more or less similarly drafted. The first paragraph states the right, whereas the second lists the conditions interferences must meet. Article 8 (2) of the ECHR states that "[t]here shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Three factors thus determine the margin of appreciation available to "public authorities." First, the interference must be in accordance with the law ("lawfulness"). An explanation of what "law" means in this context is unnecessary for present purposes.[42] Second, it must be necessary in a democratic society ("necessity"). In ECtHR case law, "necessity" amounts to a "pressing social need" for the interference in question.[43] And third, the interference must be in pursuance of one or more of the aims listed ("legitimate aim"). In addition, the interference has to be proportionate to the legitimate aim pursued.

Proportionality is a core interpretative principle of the ECHR, and it is this principle that allows for variable margins of appreciation.[44]

The ECtHR tends to grant a wide margin of appreciation regarding interferences with exercising the right to respect for private life on the ground of health protection. For example, the Czech prohibition of home births and the Czech scheme of compulsory vaccination of children against common childhood diseases were not considered violations of Article 8 (1) of the ECHR.[45] On such issues, a wide margin is usually granted, primarily when very different views are held within the CoE.

Concerning the protection of morals, ECtHR case law presents a mixed picture. In general, states are afforded a wide margin of appreciation regarding matters which raise delicate ethical questions on which there is no consensus at the European level.[46] For example, according to the Court, "an individual's right to decide by what means and at what point his or her life will end… is one of the aspects of the right to respect for private life within the meaning of Article 8 of the Convention."[47] However, in *Haas v. Switzerland* (2011), the Court added, "the research conducted by the Court enables it to conclude that the member States of the Council of Europe are far from having reached a consensus with regard to an individual's right to decide how and when his or her life should end. … It follows that the States enjoy a considerable margin of appreciation in this area."[48] Consequently, the Swiss restrictions on the right of individuals to decide by what means and at what point their life will end did not exceed the limits set by Article 8 (2).

On the other hand, no margin was granted in *Dudgeon v. the United Kingdom* (1981). In this case, the applicant complained that the right to respect for his private life had been interfered with because the law in Northern Ireland criminalized homosexual activities in private by consenting adults. In *Dudgeon* and later rulings, the Court took the view that even a solid national abhorrence of such behavior cannot prevail against the intrinsic importance of the right to respect for private life.[49] In this case, the ECtHR relied on the *developing* European consensus toward removing criminal sanctions against adult, private, and consensual homosexual relations. Interestingly, George Letsas noticed an increased reliance on the part of the Court on *evolving* trends and *emerging* consensus in international law as a justificatory basis for finding interferences to be in breach of the ECHR. According to this author, the ECtHR has considerably loosened its test for the existence of a common, present-day standard over the years, so loose "as to make one wonder whether the Court is paying lip service to the idea of common ground."[50]

How did the ECtHR apply both doctrines in its rulings on abortion?

ECtHR Case Law on Abortion

By its own admission, the number of relevant rulings by the ECtHR on abortion is limited.[51] In most cases, Poland was the respondent state, with Ireland as a close second. However, the first case was an Italian one.

In *Boso v. Italy* (2002), the Court considered the involvement of the presumed father in the decision-making process. The applicant complained that the Italian law enabled women to decide on abortions independently and did not consider the presumed father's opinion. The applicant's wife terminated her pregnancy against his will. Although the ECtHR recognized the applicant as a victim, given the degree to which he was affected, it rejected his claim under Article 8, holding that "any interpretation of a potential father's rights under Article 8 of the Convention when the mother intends to have an abortion should above all take into account her rights, as she is the person primarily concerned by the pregnancy and its continuation or termination."[52] The Court held that the complaint under Article 8 was manifestly ill-founded.

Regarding the complaint under Article 2 ECHR (the right to life), the Court noted that the evidence showed that the applicant's wife had terminated her pregnancy in conformity with Italian law. It recalled that the relevant national legislation authorizes abortion within the first 12 weeks of pregnancy if there is a risk to the woman's physical or mental health. Beyond that point, it may be carried out only where the continuation of the pregnancy or childbirth would put the woman's life at risk or where it has been established that the child will be born with a condition of such gravity as to endanger the woman's

physical or mental health. In the Court's opinion, such provisions strike a fair balance between, on the one hand, the need to ensure the protection of the fetus and, on the other, the woman's interests. It did not find that the respondent state had "gone beyond its discretion in such a sensitive area."[53] Clearly a reference to the margin of discretion, which—in the opinion of the Court—Italy had not overstepped.

In *D. v. Ireland* (2006), the applicant, an Irish national, complained about the lack of abortion services in Ireland in the case of lethal fetal abnormality. As to Article 8, she argued that there was a disproportionate interference with an intimate and personal aspect of her private and family life and/or a failure to fulfill a positive obligation to protect those Article 8 rights. In these respects, she pointed out that she was the person primarily concerned with the pregnancy, that the State might have had a certain margin of appreciation but not an unfettered discretion in this area, and that grave reasons were required to justify an interference with "a most intimate part of an individual's private life."[54] The applicant stated that "by denying the few women in her situation an abortion in Ireland through the overall ban on abortion, the State put an unduly harsh burden on such women: it was arbitrary and draconian…"[55] Ireland was, the applicant maintained, "in a minority of European countries in these respects."[56]

Clearly, the applicant tried to persuade the Court to allow the respondent state only a narrow margin of appreciation. In this case, however, the parties disagreed as to whether the applicant had complied with the requirement to exhaust domestic remedies laid down in Article 35 (1) of the ECHR. The Court accepted that a constitutional remedy had been available to the applicant, which she had failed to seek.[57] Therefore, the application was declared inadmissible.

In *Tysiąc v. Poland* (2007), the applicant had severe myopia for many years. On becoming pregnant for the third time, she sought medical advice, as she was concerned that her pregnancy might affect her health. Although the physicians she consulted concluded that there would be a severe risk to her eyesight if she carried the pregnancy to term, they refused to issue a certificate authorizing the termination of her pregnancy. The applicant was, therefore, unable to have her pregnancy terminated. Following the delivery, her eyesight further deteriorated due to a retinal hemorrhage.

The Court also examined the complaints under Article 8, concluding that there had been a breach. The ECtHR began by reiterating that "legislation regulating the interruption of pregnancy touches upon the sphere of private life since whenever a woman is pregnant, her private life becomes closely connected with the developing fetus."[58] When it considers the applicability of Article 8 in the context of abortion, it almost always produces this sentence. Subsequently, it reiterated that "'private life' is a broad term."[59] Although the ECHR "does not guarantee as such a right to any specific level of medical care, it held that "private life includes a person's physical and psychological integrity and that the State is also under a positive obligation to secure to its citizens their right to effective respect for this integrity."[60] The Court noted that in case of a therapeutic abortion, regulations must "also be assessed against the positive obligations of the state to secure the physical integrity of mothers-to-be."[61] It also emphasized the need for transparent and clearly defined procedures for determining whether the legal conditions for a therapeutic abortion were met in individual cases. Such decisions had to be timely to limit or prevent damage to the mother's health.[62] Since such preventive procedures were absent, the Court found that Poland had not complied with its positive obligations to safeguard the applicant's right to respect her private life.

In *A., B., and C. v. Ireland* (2010), the applicants, three women living in Ireland, had traveled to the UK in 2005 to have abortions after becoming unintentionally pregnant. For various reasons, they decided not to keep their pregnancies to term. At the time, abortion was prohibited under Irish criminal law for any pregnant woman or any third party who undertook any unlawful act with the intent to provoke a miscarriage. Lawful abortion was only possible if there was a real and substantial risk to the mother's life, which could only be avoided by termination of her pregnancy. At that time, the ban on traveling abroad for abortion had already been lifted, and it was allowed to disseminate information in Ireland about lawfully available abortions in other countries. Nevertheless, all applicants complained that the impossibility of having an abortion in Ireland made the procedure unnecessarily expensive, complicated, and traumatic.

All three complaints under Article 3 were rejected. The ECtHR found that the physical and psychological burden had not been sufficiently grave to represent inhuman or degrading treatment.[63]

However, it also found that the prohibition on the termination of the first and second applicants' pregnancies had represented an interference with their right to respect for their private lives. At this point, the Court reiterated that the Convention is "'a living instrument' to be interpreted in the light of present-day conditions."[64] Furthermore, it noted that "[c]onsensus [had] therefore been invoked to justify a dynamic interpretation."[65] Subsequently, it confirmed that there was indeed a consensus among a substantial majority of CoE states toward allowing abortion on broader grounds than accorded under Irish law. It noted that both applicants could have obtained an abortion on request in some 30 states, on health and well-being grounds in approximately 40 states, and on well-being grounds in some 35 states. It also pointed out that at that time, only three states had more restrictive access to abortion services than Ireland (Andorra, Malta, and San Marino prohibited abortion in all circumstances). Moreover, in recent years, it noted, certain states had extended the grounds on which abortion can be obtained (Monaco, Montenegro, Portugal, and Spain). The Court admitted that these trends and views leaned toward broader access to abortion. However, it considered that they did not decisively narrow the wide margin of the state since the question of when the right to life begins is also within the margin of appreciation.[66]

At this point, the Court referred to its ruling in *Vo v. France* (2004). Owing to a mix-up caused by the fact that two patients attending the same hospital department shared the same surname, a doctor carried out a medical act intended for another person, on the applicant, even though she was pregnant. The applicant had to undergo a therapeutic abortion. The fetus—at that stage aged between 20 and 21 weeks—was healthy and the applicant had intended to carry her pregnancy to term. She lodged a criminal complaint for involuntary homicide against her unborn child. The Court of Cassation held that a fetus was not considered a human being entitled to the protection of French criminal law. In this case, the ECtHR considered that given "the diversity of views on the point at which life begins, of legal cultures and of national standards of protection," states have been left with "considerable discretion." Curiously, that consideration is substantiated by a reference to the "extreme diversity of legal rules applicable to human embryo research."[67]

In *A., B., and C., v. Ireland*, the Court continued that since the rights claimed on behalf of the fetus and those of the mother are inextricably connected, the margin of appreciation accorded to a state's protection of the unborn necessarily translates into a margin of appreciation for that state as to how it balances the conflicting interests of the mother. The Court considered that "even if it appears that most CoE states may in their legislation have resolved those conflicting rights and interests in favor of greater legal access to abortion, this consensus cannot be the decisive factor in its examination of whether the impugned prohibition on abortion in Ireland for health and well-being reasons struck a fair balance between the conflicting rights and interests, notwithstanding an evolutive interpretation of the Convention."[68]

Yet, it added, this margin of appreciation is not unlimited. The balancing of the interests must be proportionate. A prohibition of abortion to protect unborn life is not, therefore, automatically justified under the Convention based on unqualified deference to the protection of prenatal life or because the expectant mother's right to respect for her private life is of lesser stature. Nor is the regulation of abortion rights solely a matter for the member states. The Court concluded that the Irish prohibition on health and well-being grounds was proportionate and, therefore, compatible with Article 8. Although it prohibited women from having abortions for those reasons, it allowed them to travel to another country for that purpose legally.[69] Having regard to the right to travel abroad lawfully for an abortion with access to appropriate information and medical care in Ireland, the Court concluded that the prohibition in Ireland of abortion for health and well-being reasons, "based as it is on the profound moral views of the Irish people as to the nature of life and as to the consequent protection to be accorded to the right to life of the unborn," did not exceed the margin of appreciation accorded in that respect to Ireland.[70]

As regards the first two applicants ("A" and "B"), the Court found that the interference was "in accordance with the law and pursued the legitimate aim of the protection of profound moral values of a majority of the Irish people as reflected in the 1983 referendum."[71] *A* was an unemployed single mother. Her four young children were in foster care, and she feared that having another child would jeopardize her chances of regaining custody. *B* did not want to become a single mother. Although she had also received medical advice that she was at risk of an ectopic pregnancy, that risk had been discounted before she had the abortion.

The third applicant ("C"), a cancer patient, could not find a doctor willing to advise whether her life would be at risk if she continued to term or how the fetus might be affected by contraindicated tests undergone before discovering she was pregnant. In C's case, the Court found that neither the medical procedures nor the litigation options constituted effective and accessible procedures that would allow her to establish her right to a lawful abortion in Ireland. It noted a "striking discordance between the theoretic right to a lawful abortion and the reality of its practical implementation."[72] As in *Tysiąc*, the authorities were found to have failed to comply with their positive obligation to secure to this applicant effective respect for her private life. This part of the Court's judgment directly led to the adoption of the Protection of Life During Pregnancy Act 2013, which provided in a legal framework for establishing whether pregnant women qualify for lawful abortion in Ireland.

R.R. v. Poland (2011) involved a baby born severely disabled in 2003. A pregnant mother-of-two—carrying a child thought to be suffering from a severe genetic abnormality—was deliberately denied timely access to the genetic tests to which she was entitled by doctors opposed to abortion. Her daughter was subsequently born with Turner's syndrome. The Court found a violation of Article 3 as the applicant, who was in a very vulnerable position, had been humiliated and "shabbily" treated, the determination of whether she should have had access to genetic tests, as recommended by doctors, being marred by procrastination, confusion, and lack of proper counseling and information.[73] It also found a violation of Article 8. The Court reiterated that states enjoy a wide margin of appreciation "as regards the circumstances in which an abortion will be permitted."[74] Still, Polish law did not include any effective mechanisms which would have enabled the applicant to have access to the available diagnostic services and to make, in the light of their results, an informed decision as to whether or not to seek an abortion. Furthermore, given that Polish law allowed for abortion in cases of fetal malformation, there had to be an adequate legal and procedural framework to guarantee that relevant, complete, and reliable information on the fetus' health is made available to pregnant women.[75]

The facts in *P. and S. v. Poland* (2012) are gruesome. This case concerned the difficulties encountered by a teenage girl, who had become pregnant as a result of rape by a classmate, in obtaining access to an abortion, in particular due to—again—the lack of a clear legal framework, procrastination of medical staff, and also as a result of harassment by antiabortion activists and media exposure. Yet, she had obtained a certificate from the public prosecutor attesting that she could have an abortion because she was only 14 and sexual intercourse below the age of 15 was a crime. The Court held that there had been a violation of Articles 3 and 5 (1).[76] It also concluded that Article 8 was violated as regards the determination of access to lawful abortion because the applicants had been given misleading and contradictory information and had not received objective medical counseling. It was also violated because information about the case was disclosed to the general public.[77]

How Do Both Courts Compare?

The ECHR is an international treaty, whereas the U.S. Constitution is not. According to international law, a treaty must be "interpreted in good faith and in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." As a result, the intentions of the authors of the ECHR have always been of minor importance to the Strasbourg court. It is not originalist nor that textualist. The ECHR and the U.S. Constitution do not have provisions concerning the intentional termination of pregnancy. Unlike the latter, however, the right to respect for private life is enshrined in the ECHR. Moreover, although this right does not confer a right to abortion or guarantee a right to any specific level of medical care, the provision concerned is interpreted dynamically and applied to present-day conditions. Consequently, the ECtHR sees domestic laws regulating the interruption of pregnancy as interferences with a woman's right to respect for her private life. The Strasbourg human rights court and the present U.S. Supreme Court have fundamentally different starting points.

The contracting parties to the Convention are sovereign states. Such a state may interfere with some of its rights, including the right to respect for private life. Although the interference may not be such that its

exercise becomes merely "theoretical and illusory,"[78] the Strasbourg court tends to grant a wide margin of appreciation for interferences with the right to respect for private life for reasons to do with the protection of health and morals. Its width depends on the degree of consensus; the more consensus among CoE member states, the narrower the margin of appreciation. However, the ECtHR increasingly relies on evolving trends and emerging consensus—in Europe and elsewhere—for finding interferences in breach of the Convention.

Among CoE member states, the trend to extend the grounds on which abortion can be obtained has continued. On December 20, 2018, the Irish Protection of Life During Pregnancy Act 2013 was replaced by the Health (Regulation of Termination of Pregnancy) Act 2018. As of January 1, 2019, abortion is permitted in Ireland during the first 12 weeks of pregnancy and later in cases where the pregnant woman's life or health is at risk or in cases of fetal abnormality.[79] In San Marino, too, a referendum brought about changes in the law. Since September 12, 2022, abortion in San Marino has been legal for any reason in the first 12 weeks of gestation. It is also legal until fetal viability if the pregnancy poses a risk to the woman's life, if the fetus has an anomaly that threatens her health, or if the pregnancy resulted from rape or incest.[80] Furthermore, on November 21, 2022, the Maltese government proposed to lift the total ban on abortion by presenting a bill, which would allow a woman to have an abortion if the pregnancy puts her life at risk or her health in grave jeopardy.[81]

Developments within the United Nations (UN) regarding women's sexual and reproductive health and rights in the past three decades will undoubtedly confirm what the ECtHR sees as an evolving trend. According to UN human rights bodies, ensuring access to abortion services in accordance with human rights standards is part of a state's obligations to eliminate discrimination against women and to ensure women's right to health as well as other fundamental human rights.[82] UN treaty body case law has indicated that denying women access to abortion can amount to violations of the rights to health, privacy, and, in some instances, the right to be free from cruel, inhumane, and degrading treatment.[83]

By prohibiting abortion in cases of fetal abnormality, Poland has restricted access to legal abortion services. In fact, that country has become increasingly restrictive since 1993. Until that year, women had the right to terminate pregnancy on demand. Poland has been going against the overall trend for years. If it is ever going to consider the merits of the pending applications, the Court will undoubtedly refer to the broader European and international developments described above. Whether these will suffice as a counterweight to the prevailing moral climate in Poland remains to be seen. As the Court pointed out in *A., B., and C., v. Ireland*, the question of the beginning of the right to life is also within the margin of appreciation, and the diversity of views on the point at which life begins, of legal cultures, and of national standards of protection, is as wide as it ever was. Therefore, if the ECtHR decides to consider the applications on merits, it may not be inclined to narrow the margin of appreciation.

Nevertheless, interests need to be balanced, and a fair balance must be struck. The applicants complain that Polish domestic law obliges them to adapt their conduct. If pregnant, they are required to carry the child to term even when the fetus is shown to be defective.[84] If the claims are admissible, the Court will assess the necessity of the interference. At least, it will want to know what pressing social need necessitated such a balancing of public interest and privacy.

In addition, the prospect of being forced to give birth to an ill or dead child will cause pregnant women anguish and distress, which is very likely to have consequences for their mental and physical health. In *Tysiąc v. Poland*, *A., B., and C. v. Ireland*, and *P. and S. v. Poland,* the Court held that private life includes a person's physical and psychological integrity and that the State is also under a positive obligation to secure its citizens' right to effective respect for this integrity. Therefore, the ECtHR is very likely to assess the prohibition of abortion in cases of fetal abnormality against the positive obligations of Poland to secure the integrity of pregnant women. And, undoubtedly, it will once again emphasize the need for transparent and clearly defined procedures for determining whether the conditions for lawful abortion were met in individual cases to make timely decisions.

Because of its starting point, the ECtHR will always be concerned with the privacy interests of pregnant women. The U.S. Supreme Court has divested itself of that responsibility. However, due to the wide margin of appreciation it grants to the states subject to its jurisdiction, the Strasbourg court does not really question the grounds on which access to abortion services is permitted or limited in a CoE member

state. Nevertheless, in its most relevant rulings, the Court brought into position the state's positive obligation to secure pregnant women's right to effective respect for their physical and mental integrity. Logically, this would imply that contracting parties—in some way or another—should guarantee access to abortion for women with pregnancies endangering their life or health. Unfortunately, the Court has not yet been that outspoken. If, however, termination of pregnancy for these reasons is lawful in CoE member states, they better ensure that abortion services are effectively accessible to pregnant women.

Notes

1. Supreme Court of the United States; June 24, 2022 (*Dobbs v. Jackson Women's Health Organization*); available at https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf (last accessed 12 Nov 2022).
2. On September 15, 2022, however, the Hungarian government issued a decree obliging doctors to provide women with "a clearly identifiable indication of fetal vital signs," before carrying out any abortion. See Dyer O. Hungary requires doctors to present women with fetal vital signs before abortion. *BMJ* 2022;378:o2260.
3. Press release issued by the Registrar of the European Court of Human Rights; July 8, 2021; available at https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7074470-9562874&filename=Notification%20of%20applications%20concerning%20abortion%20rights%20involving%20Poland.pdf (last accessed 12 Nov 2022).
4. See note 3, Press release 2021.
5. See note 3, Press release 2021.
6. A retrogressive measure is one that, directly or indirectly, leads to a backward movement in the enjoyment of human rights. Strictly speaking, it is incorrect to use this terminology, as the concept is commonly used in the context of the protection of economic, social, and cultural rights, which must be realized progressively. For that reason, such measures are generally prohibited. The rights discussed in this paper are civil rights.
7. See note 1, Supreme Court of the United States 2022, at 1.
8. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).
9. See note 1, Supreme Court of the United States 2022, at 1.
10. *Jackson Women's Health Org. v. Dobbs*, 379F. Supp. 3d 549 (S.D. Miss. 2019).
11. *Jackson Women's Health Org. v. Dobbs*, No. 18-60868, at 1–2 (5th Cir. 2019).
12. The petition is available at https://www.supremecourt.gov/DocketPDF/19/19-1392/145658/20200615170733513_FINAL%20Petition.pdf (last accessed 12 Nov 2022).
13. See note 1, Supreme Court of the United States 2022, at 79.
14. See note 1, Supreme Court of the United States 2022, at 70.
15. See note 1, Supreme Court of the United States 2022, at 44.
16. See note 1, Supreme Court of the United States 2022, at 44.
17. See note 1, Supreme Court of the United States 2022, at 44.
18. See note 1, Supreme Court of the United States 2022, at 9.
19. See note 1, Supreme Court of the United States 2022, at 9.
20. See note 1, Supreme Court of the United States 2022, at 9.
21. See note 1, Supreme Court of the United States 2022, at 10.
22. See note 1, Supreme Court of the United States 2022, at 14.
23. See note 1, Supreme Court of the United States 2022, at 14.
24. See note 1, Supreme Court of the United States 2022, at 14.
25. See note 1, Supreme Court of the United States 2022, at 13.
26. See note 1, Supreme Court of the United States 2022, at 17–24.
27. See note 1, Supreme Court of the United States 2022, at 25.
28. See note 1, Supreme Court of the United States 2022, at 25.
29. See note 1, Supreme Court of the United States 2022, at 46, 54.

30. See note 1, Supreme Court of the United States 2022, at 56.
31. See note 1, Supreme Court of the United States 2022, at 56.
32. See note 1, Supreme Court of the United States 2022, at 13.
33. See *ECtHR*, *Overview 1959–2021*; Feb 2022; available at https://www.echr.coe.int/Documents/Overview_19592021_ENG.pdf (last accessed 12 Nov 2022).
34. *Convention for the Protection of Human Rights and Fundamental Freedoms,* Rome; Nov 4, 1950; available at https://www.coe.int/en/web/conventions/full-list (last accessed 12 Nov 2022).
35. *Vienna Convention on the Law of Treaties*, Vienna; May 23, 1969; available at https://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Ch_XXIII_01.pdf (last accessed 12 November 2022), Article 31 (1).
36. ECtHR July 11, 2002, appl. no. 28957/95 (*Goodwin v. United Kingdom*), §74; ECtHR May 28, 2002, appl. no. 46295/99 (*Stafford v. United Kingdom*), §68. All ECtHR decisions and judgments can be found in its database, available at https://hudoc.echr.coe.int (last accessed 12 Nov 2022); See also European Court of Human Rights. *The European Convention on Human Rights. A Living Instrument*. Strasbourg: Council of Europe/European Court of Human Rights; 2022; available at https://www.echr.coe.int/Documents/Convention_Instrument_ENG.pdf (last accessed 12 Nov 2022).
37. ECtHR Apr 25, 1978, appl. no. 5856/72 (*Tyrer v. United Kingdom*), §31.
38. EcommHR Mar 18, 1995, appl. no 29942/93 (*R.L. v. Netherlands*). See also Letsas G. The ECHR as a living instrument: Its meaning and legitimacy. In: Føllesdal A, Peters B, Ulfstein G, eds. *Constituting Europe. The European Court of Human Rights in a National, European and Global Context*. Cambridge: Cambridge University Press; 2015, at 113.
39. ECtHR Apr 25, 1978, appl. no. 5856/72 (*Tyrer v. United Kingdom*), §31.
40. ECtHR June 13, 1979, appl. no. 6833/74 (*Marckx v. Belgium*), §41.
41. See note 38, Letsas 2015, at 112.
42. Although the Polish applicants also complain under Article 8 that the restriction imposed by the Constitutional Court was not "prescribed by law" because its composition was said to be incorrect and in breach of the Polish Constitution. See note 3, Press release 2021.
43. Greer S. *The Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights*. Strasbourg: Council of Europe Publishing; 2000, at 14.
44. See note 43, Greer 2000, at 10.
45. ECtHR Nov 15, 2016, appl. nos. 28859/11 and 28473/12 (*Dubská and Krejzová v. Czech Republic*) and ECtHR Apr 8, 2021, appl. nos. 47621/13 and five others (*Vavricka and others v. Czech Republic*).
46. Arai-Takahashi Y. The margin of appreciation doctrine: A theoretical analysis of Strasbourg's variable geometry. In: Føllesdal A, Peters B, Ulfstein G, eds. *Constituting Europe. The European Court of Human Rights in a National, European and Global Context*. Cambridge: Cambridge University Press; 2015, at 62–105.
47. ECtHR Jan 20, 2011, appl. no. 31322/07 (*Haas v. Switzerland*), §51.
48. ECtHR Jan 20, 2011, appl. no. 31322/07 (*Haas v. Switzerland*), §55.
49. ECtHR Oct 22, 1981, appl. no. 7525/76 (*Dudgeon v. United Kingdom*), §§49 and 60.
50. See note 38, Letsas 2015, at 116.
51. European Court of Human Rights. *Guide on Article 8 of the European Convention on Human Rights*. Strasbourg: Council of Europe/European Court of Human Rights; 2022, at 36; available at https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf(last accessed 12 Nov 2022).
52. ECtHR Sept 5, 2002, appl. no. 50490/99 (*Boso v. Italy*).
53. ECtHR Sept 5, 2002, appl. no. 50490/99 (*Boso v. Italy*).
54. ECtHR June 27, 2006, appl. no. 26499/02 (*D. v. Ireland*), §59.
55. ECtHR June 27, 2006, appl. no. 26499/02 (*D. v. Ireland*), §59.
56. ECtHR June 27, 2006, appl. no. 26499/02 (*D. v. Ireland*), §59.
57. ECtHR June 27, 2006, appl. no. 26499/02 (*D. v. Ireland*), §§86–104.
58. ECtHR Mar 20, 2007, appl. no. 5410/03 (*Tysiąc v. Poland*), §106.
59. ECtHR Mar 20, 2007, appl. no. 5410/03 (*Tysiąc v. Poland*), §107.
60. ECtHR Mar 20, 2007, appl. no. 5410/03 (*Tysiąc v. Poland*), §107.

61. ECtHR Mar 20, 2007, appl. no. 5410/03 (*Tysiąc v. Poland*), §107.
62. ECtHR Mar 20, 2007, appl. no. 5410/03 (*Tysiąc v. Poland*), §118.
63. ECtHR Dec 10, 2010, appl. no. 25579/05 (*A., B., and C., v. Ireland*), §164.
64. ECtHR Dec 10, 2010, appl. no. 25579/05 (*A., B., and C., v. Ireland*), §234.
65. ECtHR Dec 10, 2010, appl. no. 25579/05 (*A., B., and C., v. Ireland*), §234.
66. ECtHR Dec 10, 2010, appl. no. 25579/05 (*A., B., and C., v. Ireland*), §§235 and 236.
67. ECtHR July 8, 2004, appl. no. 53924/00 (*Vo v. France*), §82.
68. ECtHR Dec 10, 2010, appl. no. 25579/05 (*A., B., and C., v. Ireland*), §237.
69. ECtHR Dec 10, 2010, appl. no. 25579/05 (*A., B., and C., v. Ireland*), §238.
70. ECtHR Dec 10, 2010, appl. no. 25579/05 (*A., B., and C., v. Ireland*), §241.
71. ECtHR Dec 10, 2010, appl. no. 25579/05 (*A., B., and C., v. Ireland*), §226.
72. ECtHR Dec 10, 2010, appl. no. 25579/05 (*A., B., and C., v. Ireland*), §264.
73. ECtHR May 26, 2011, appl. no. 27614/04 (*R.R. v. Poland*), §159.
74. ECtHR May 26, 2011, appl. no. 27614/04 (*R.R. v. Poland*), §186.
75. ECtHR May 26, 2011, appl. no. 27614/04 (*R.R. v. Poland*), §208.
76. ECtHR Oct 30, 2012, appl. no. 57375/08 (*P. and S. v. Poland*), §§144–9, 157–69.
77. ECtHR Oct 30, 2012, appl. no. 57375/08 (*P. and S. v. Poland*), §§100–12 and 114–9.
78. ECtHR May 13, 1980, appl. no. 6694/74 (*Artico v. Italy*), §33.
79. The Irish Health (Regulation of Termination of Pregnancy) Act 2018 is available at https://www.irishstatutebook.ie/eli/2018/act/31/enacted/en/html (last accessed 12 Nov 2022).
80. San Marino's Law No. 127—Regulation on the voluntary interruption of pregnancy is available at https://www.consigliograndeegenerale.sm/on-line/home/lavori-consiliari/verbali-sedute/scheda17177841.html (last accessed 12 Nov 2022).
81. The bill entitled An Act to further amend the Criminal Code, Cap. 9, is available at https://parlament.mt/media/119611/bill-28-criminal-code.pdf (last accessed 29 Dec 2022).
82. Several bodies supervising the implementation of United Nations human rights treaties have produced authoritative general comments and recommendations on women's sexual and reproductive health in the last 30 years. See, for example, the Committee on the Elimination of Discrimination against Women, General Recommendation 24 (1999) on women and health, §11; available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_4738_E.pdf (last accessed 12 Nov).
83. See United Nations Human Rights Committee, *Whelan v. Ireland*, CCPR/119/D2425/2014, §7.8; *Mellet v. Ireland*, CCPR/C/D/2324/2013, §7.7; *K.L. v. Peru*, CCPR/C/85/1153/2003, §6.4; *V.D.A. v. Argentina*, CCPR/C/101/D/1608/2007, §9.2. All CCPR decisions can be found at https://juris.ohchr.org/ (last accessed 12 Nov 2022).
84. See note 3, Press release 2021.

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