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**FRANCE**

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## **Introduction**

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name "Alliance Defending Freedom"), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Cooperation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why France must recognise and protect the rights of parents and legal guardians with respect to their children, as well as the right of all individuals to freedom of expression, especially in light of restrictions on both of these in light of a so-called right to abortion.

### **(a) Sanctity of Life and Freedom of Expression**

3. Abortion is permitted on very broad grounds in France, being legal on demand up to 12 weeks after conception. Abortion continues to be allowed after that point in cases in which two doctors certify that the continuation of the pregnancy would cause permanent injury to the physical or mental health of the mother, that the life of the mother is at risk, or that the child will suffer from an incurable severe illness.
4. Since 2001, girls under the age of 18 have not been required to attain parental consent for an abortion, and may be accompanied to an abortion clinic by any adult, who is legally prohibited from informing anyone about the abortion. Mandatory week-long waiting periods were abolished in April 2015, and all costs relating to abortion are publicly funded under the national health insurance scheme.
5. Article 5 of the Convention on the Rights of the Child provides that "States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, [...] legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance" to the child.
6. The notion that parents have no right to be informed about or be involved in decisions with respect to their children, especially in light of the fact that there is no internationally-recognised right to abortion (particularly in light of paragraph 8.25 of the Programme of Action of the International Conference on Population and Development), is a clear violation of the right of parents to provide such appropriate direction and guidance to their children.
7. In January 2017, the Senate adopted a bill, to be sent to the National Assembly, which seeks to extend the definition of the crime obstruction to abortion, which imposes a potential two years' imprisonment or €30,000 fine for "exercising, by any means, moral

or psychological pressures, threats or any act of intimidation against people seeking information on a voluntary termination of pregnancy.”<sup>1</sup>

8. Concerns had already been raised that an earlier version of this law passed by the National Assembly could have been used to effectively criminalise the operation of pro-life websites and other sources of pro-life information, as it prohibited the provision of “misleading” information despite giving no definition, and it would presumably have been a matter upon which the authorities and judiciary would decide.
9. The fact that the French minister for women’s rights, Laurence Rossignol, stated in the Assembly that abortion does not end a human life, and that “freedom of expression does not signify a right to lie,” appears to indicate a view on the part of the government that any information which assumes that a unborn child is in fact a human life is, by definition, “misleading.” The same government minister also stated that activists still have the liberty to voice their opposition to abortion, but that it was “under the condition they openly state who they are, what they do and what they want.”<sup>2</sup>
10. The Senate version of the bill does not appear to make any provision for a defence that “moral and psychological pressure” exerted reflects the truth, which may lead one to wonder whether or not it would be legally forbidden to publish photographs of aborted fetuses, statistics on the medical consequences of abortion, or of testimonies by women who had negative experiences as a result of abortion. The ECLJ has described this as an attempt at using the crime of obstruction in order to violate freedom of speech.<sup>3</sup>
11. A salient example of the sort of speech on the topic of abortion already not welcome in France was that of an advertisement entitled in English “Dear Future Mom.” This video, first released in March 2014 and broadcasted on a number of French TV channels, features a number of children with Down syndrome reassuring expectant mothers that her Down syndrome child has and will have just as valuable, happy, and fulfilling a life as any other child.<sup>4</sup>
12. To date, the video has almost 7.8 million views on YouTube, and has been broadcast in numerous other forums, including at the United Nations and on nationally

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<sup>1</sup> European Centre for Law & Justice, Crime of Obstruction to Abortion: The Modified Text Is Still Deeply Liberticidal, available at <https://eclj.org/free-speech/french-institutions/dlit-dentrave--livg-le-texte-modifi-demeure-gravement-liberticide>, accessed 17<sup>th</sup> June 2017.

<sup>2</sup> Catholic Herald, France bans pro-life websites that do not ‘openly state’ they are pro-life, available at: <http://www.catholicherald.co.uk/news/2017/02/17/france-bans-pro-life-websites-that-do-not-openly-state-they-are-pro-life>, 17<sup>th</sup> February 2017.

<sup>3</sup> European Centre for Law & Justice, Crime of Obstruction to Abortion: The Modified Text Is Still Deeply Liberticidal, available at <https://eclj.org/free-speech/french-institutions/dlit-dentrave--livg-le-texte-modifi-demeure-gravement-liberticide>, accessed 17<sup>th</sup> June 2017.

<sup>4</sup> CoorDown, DEAR FUTURE MOM | March 21 – World Down Syndrome | #DearFutureMom, 13 March 2014, available at: <https://www.youtube.com/watch?v=Ju-q4OnBtNU>.

broadcasted channels in other countries, including Croatia, Germany, Ireland, Italy, New Zealand, Russia, Spain, the United Kingdom, and the United States.

13. Following two complaints from viewers in June 2014, however, the French *Conseil supérieur de l'audiovisuel* (Superior Council of the Audiovisual, CSA) ordered that the TV spot be taken off the air, due to its view that “the message is susceptible to disturb the conscience of women who have lawfully made different personal choices” with respect to terminating a pregnancy after receiving a prenatal diagnosis of Down syndrome, and that there was no general public interest in the message being broadcast.<sup>5</sup>
14. On appeal by the Jérôme Lejeune Foundation to the Administration Tribunal of Paris and subsequently the Council of State, the decision of the CSA was upheld in November 2016 on the grounds that the message of the advertisement was liable to cause disturbance and distress to a particular class of person (i.e. women who have had abortions or who are considering abortion due to a prenatal diagnosis of Down syndrome) without a general interest being served.<sup>6</sup> A further appeal was filed with the European Court of Human Rights in May 2017.
15. Article 10 of the European Convention on Human Rights (ECHR) protects the right to freedom of expression and information in an analogous manner to Article 19 of the International Covenant on Civil and Political Rights (ICCPR). This right can be limited by law in cases of need to protect national security, public order and health or morals, the reputation or rights of others, or other limited scenarios. It does not, however, provide a basis for this right to limited in cases where the expression or information in question is subjectively “disturbing” or causes shock and offence, nor on the grounds that it questions the choices or convictions of the viewer.
16. In the case of this advertisement, the question of abortion itself is not even directly addressed, as it simply asserts the value of the lives of children with Down syndrome and leaves it up to the viewer to draw conclusions from that. It also arguably discriminates against persons with Down syndrome under Article 10 of the ECHR and Article 26 of the ICCPR, given that it effectively forbids such persons from appearing on television in France on the same terms as persons without Down syndrome and exercising their right to freedom of expression in order to communicate being happy with their lives.
17. For this reason, France must cease its attempts to unlawfully limit such expression and information, as well as repeal all laws and abandon all bills which seek to stop persons from legitimately making their point of view on the moral issues with abortion known.

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<sup>5</sup> George Will, The Sensitivity Police Strike Again, National Review, 3 December 2016, available at: <http://www.nationalreview.com/article/442735/dear-future-mom-down-syndrome-anti-abortion-video-ban-france>.

<sup>6</sup> Ibid

**(c) Recommendations**

18. In light of the aforementioned issues raised, ADF International suggests the following recommendations be made to France:

- a. Ensure that the responsibilities, rights, and duties of parents and legal guardians to provide appropriate direction and guidance to their children are respected by the State in accordance with the Convention on the Rights of the Child, and that laws abolishing the need for parental notification and consent to abortions being performed on their children are reversed;
- b. Abandon all legal reforms, present and future, which criminalise or otherwise prohibit the full exercise of the right to freedom of expression in line with Article 19 of the ICCPR, and to this end that citizens active in the pro-life movement are not unduly restricted in their speech or communications of their positions; and
- c. Reverse all unfair and unlawful administrative decisions prohibiting the broadcast of pro-life oriented audiovisual communications, in line with Articles 10 and 14 of the ECHR and Article 19 of the ICCPR, and in doing so recognise that subjective disturbance or offence is not by itself a sufficient basis to limit the right to freedom of expression.



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