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Reform on Sexual and Reproductive Health and Rights: at heart of women's life

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Abstract:

The area of sexual and reproductive rights has been a clear battleground for the feminist and women's movement in Spain in recent years. The movement has experienced a clear increase in its level of mobilisation, with the creation of new structures and greater coordination at national and regional level, something that had not happened in decades, given the high level of territorial fragmentation of the movement. The aim of this document is to present the historical process developed in Spain during the last 20 years and the recent policies and laws on sexual and reproductive health and rights, under debate, that will make a turning point for the real advance of women's rights, bodily autonomy and gender freedom.

1. Relevant country context

1.1 Historical legal framework

Eleven years ago, the current Organic Law 2/2010 on sexual and reproductive health and voluntary termination of pregnancy came into force, which was a milestone for the protection of sexual and reproductive health and rights (SRHR) in Spain, being the first legal instrument to specifically address them. However, its development and implementation over the years have revealed the existence of legal gaps and conflicts that jeopardise the effective enjoyment of these rights by the population. Furthermore, in recent years, the protection of SRHR has been the order of the day in international and regional human rights protection systems, whose protection mechanisms have developed new international instruments and standards and have refined the legal obligations of states in this area.

The Spanish legal system has been progressively regulating sexual and reproductive rights, moving from the total criminalisation of abortion, and even contraceptives, to a decriminalisation based on time limits and indicators. This has meant a before and after in terms of legal security, as abortion has always been a reality, even when it was totally criminalised. Articles 413 et seq. of the 1973 Penal Code completely criminalised abortion and even imposed penalties on those who practised and collaborated with the woman who was having an abortion. Likewise, all methods of contraception or methods that prevented reproduction were prohibited.

Later, in 1978, the Spanish Constitution decriminalised the use of contraceptive methods and in 1985 abortion was decriminalised in three cases (rape, malformation

of the foetus and danger to the physical or mental health of the pregnant woman). The social and institutional uproar was such that Organic Law 9/1985 was proposed in 1983, but was paralysed for two years due to a previous appeal of unconstitutionality filed by *Alianza Popular*, the conservative party. This regulation continued to consider the termination of pregnancy as a crime, with the exception of three very specific cases. In other words, it did not consider abortion as a full right of women, but as an exception, which in practice generated a lot of uncertainty and legal insecurity for women and people who assisted in the process.

Finally, in 2010 the current Organic Law 2/2010 on SRHR and voluntary termination of pregnancy came into force. In order to guarantee the autonomy of women and the protection of prenatal life, the legislation provides for the possibility of terminating a pregnancy on request through a system of deadlines in accordance with the previous system of indications and established that women aged 16 and 17 could give free consent. This law was modified 5 years later through Organic Law 11/2015, which established limits to informed consent since, according to the legislative text, the capacity to grant free consent to minors aged 16 and 17 prevented parents and guardians from complying with the obligations set out in the Civil Code for minors in their care. Therefore, Law 41/2002 was reformed again.

2. Policy debate

2.1 National Regulation of Sexual and reproductive health and rights

The national regulation of sexual and reproductive rights is materialised through different normative texts. **Organic Law 2/2010, on sexual and reproductive health and the voluntary interruption of pregnancy (LO 2/2010)** and Royal Decree 825/2010, of 25 June, which develops the regulation of Law 2/2010, contain the main issues regarding sexual and reproductive rights. However, there are other regulatory texts that are crucial.

Among these texts are **Organic Law 11/2015, of 21 September, which regulates the modification of the informed consent of minors** and persons with modified capacity; Royal Decree 831/2010, of 25 June, which establishes quality guarantees in relation to terminations of pregnancy; and, as health is a competence that has been delegated to the Autonomous Communities and Cities, it is important to mention Law 16/2003, of 28 May, which establishes the standards of cohesion and quality of the National Health System.

In relation to sexual and reproductive health services, it is necessary to mention **Law 14/2006, on assisted human reproduction techniques**, as well as **Organic Law 3/2020,** which modifies **Organic Law 2/2006** on Education, where affective-sexual education is contemplated and which we will develop further below.

Finally, the national regulation of termination of pregnancy is closed in articles 145, 145 bis and 146 of the Penal Code, which penalise terminations carried out outside the legally established cases in the aforementioned framework.

The **Organic Law on Integral Guarantee of Sexual Freedom**, in force since 7 October 2022, provides for the integration of contents on sexual education on equality and affective-sexual diversity for students (art. 7). Likewise, articles 49 and 50 foresee that in cases of women victims of crimes related to sexual violence, they have the right to reparation. And this reparation includes compensation for damages, which should assess, among others, therapeutic, social and sexual and reproductive health treatment.

The **Law for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people**, under debate in the Spanish Parliament, includes in its article 17 everything related to sexual and reproductive education, where it is worth highlighting that sexual and reproductive education campaigns and campaigns for the prevention and early detection of sexually transmitted infections will take into account the specific needs of LGTBI people, avoiding any kind of stigmatisation or discrimination. On the other hand, Article 52 states that health personnel must have sufficient, continuous and updated training that takes into account the specific needs of transgender people, paying special attention to (...) their sexual and reproductive health.

The policy debate around SRHR is focusing on reform of the law on sexual and reproductive health and voluntary interruption of pregnancy (under debate in the parliament) and on the already approved Law on Integral Guarantee of Sexual Freedom. Most important points included in these laws:

- Maintenance of the time limits for abortion: The law maintains the existing deadlines for abortion in Spain. Abortion is free until the 14th week of gestation, and until the 21st week, what is known as therapeutic abortion, that is, an abortion for medical reasons such as malformation of the foetus or danger to the mother's life, can be carried out.
- Autonomy from the age of 16. Pregnant women aged 16 to 18 will no longer need parental authorisation to have an abortion and will be entitled to prenatal paid leave from the 36th week of pregnancy until delivery, in addition to the 16 weeks of maternity leave, which will be maintained.
- Guarantee of access to abortion in public health care system. Conscientious objection by health care personnel will be regulated so that it does not impede access to abortion in public centres. Those who object will have to communicate their objection to a regional register so that the health authorities can organise gynaecology services and ensure that there are always specialists available to perform abortions.
- Abolition of the “reflection period” and other requirements. The three-day reflection period for women to meditate on their decision is removed. The obligation to

provide information on other alternatives to continue the pregnancy or other aids to continue the pregnancy is also removed.

- Promotion of pharmacological abortion. This method of abortion, which does not require surgical intervention, will be promoted. It is an underused method in Spain (85% are operations), which, due to its simplicity, would allow the service to be extended to outpatient care.
- Access to modern contraceptives: Modern contraceptives will be promoted on a co-payment basis. It was also planned to facilitate access to menstrual health products by lowering VAT, but the opposition of the Ministry of Finance has finally prevented the inclusion of this measure.
- Paid leave for painful menstruation. The law will regulate the right to menstrual health, providing for up to 3 days leave, extendable to 5 days, for painful menstruation.
- Prosecution of surrogacy. It is included as a form of violence against women and Spanish courts will be able to prosecute couples who resort to surrogacy abroad, a practice that is illegal in Spain.
- Sexuality education. Comprehensive sexuality education will be present in the classroom, addressing sexuality as a fundamental human dimension and diversity as a value. It will be aimed not only at preventing risks such as unplanned pregnancies, sexually transmitted infections and violence, but also at promoting equality and well-being. Both teachers and families will be provided with information and training to enable them to address sexuality education in their respective roles and areas.
- Against sexual violence. Non-partner violence will be recognised, and the focus will be on consent, an essential element in judging erotic encounters on the basis of what one wants to do, not what one does not want to do. This issue will go beyond criminal law and will have an educational approach. Victims of sexual violence will be accompanied and adequately compensated.

2.2 Most important challenges

One of the most important challenges in the implementation and effective access to health and exercise of right is the conscientious objection. Exercise of the individual right to conscientious objection must be regulated in such a way that it does not impede the exercise of the right to health and sexual and reproductive rights. A prior registration of objecting personnel, for example, would allow the administration to ensure the availability of the necessary personnel in each centre, while at the same time avoiding professional discrimination against non-objecting personnel, who would be relegated exclusively to certain services. Abortion is included in the portfolio of services of the National Health System, so it is a service that should be provided in a standardised manner, like others. And that, therefore, it should be a task and function included among those that health personnel carry out. Making this duty a reality

through training and standardisation of practice is what makes it possible to eliminate stigmatisation.

Another issue of particular importance for sexual and reproductive health are sexual and reproductive health services. The proposal reform of the law could be insufficient in this aspect, both in its commitment to ensure that this care is integrated into primary care (in various forms, in accordance with the regional health structures), and in the care for young people, which, due to various circumstances that international organisations such as the World Health Organisation have taken up very well, requires specific spaces that in our country are only testimonial.

Finally, these rights and benefits must be guaranteed universally, included for migrants and undocumented women, and free of charge through the public health system itself, with its own staff and direct management, ensuring the highest quality of care.

For the future to become the present, coordination with different Ministries (mainly Health and Education) is necessary; the recognition and development of both regulations by all regions and not only those that have demonstrated greater political will; the systematisation of processes that require resources, especially economic resources, and extensive pedagogical work.

3. Good practice examples

At national level: National Strategy for Sexual and Reproductive Health (ENSSR) is one of the public policy instruments of reference in the field of Sexual and Reproductive Rights. The Strategy covers sexual rights and reproductive rights in two autonomous blocks, considering it necessary to establish action strategies, programmes and projects focused on each of them. The ENSSR was approved in 2011 as a result of the consensus between scientific and professional societies, social organisations, users, experts and representatives of the Autonomous Communities. The group of people involved has been organised into an Institutional Committee, a Technical Committee, and various collaborating groups and experts. In addition, the whole Strategy has a General Coordination to evaluate the objectives and strategic lines in sexual and reproductive health. In terms of content, the Strategy develops in more detail reproductive health as opposed to sexual health. In fact, sexual health has four strategic lines, while reproductive health has twelve strategic lines.

In this sense, in the area of reproductive health, the Strategy focuses on promoting health in pregnancy, childbirth and the postpartum period. In the area of sexual health, the strategy addresses issues related to the prevention of sexually transmitted diseases and contraception. In view of this imbalance between sexual health and reproductive health, in July 2019, the need arose to look more closely at the sexual health of the general population and, in particular, of young people. Consequently, the Directorate General for Public Health, Quality and Innovation of the Ministry of Health, Consumer Affairs and Social Welfare developed the Sexual Health Strategy - Operational Plan for 2019 - 2020.

This Operational Plan includes eight specific measures that have been considered a priority within the framework of the four strategic lines established in the ENSSR. These measures include strengthening coordination with the education sector, raising awareness among health care professionals and promoting equitable access to contraceptives, among others. The Strategy has not been fully implemented as well as the implementation plan. It is expected to be developed a new strategy and implementation as soon as the reform of the law will be approved.

Initiative and good practices that show the coordination among civil society, public opinion and government is the consultation process to nourish and feed the reform of the law. This is the result of the alliance among women and feminist organisations and movements working on SRHR. This group played an integral role in drafting the reform law. Other additional good practise it the communication strategies and digital advocacy to connect the process in parliament with issues around CSE and sexual rights, via social media, blog posts, and through commentaries that were published online.

4. Transferability aspects

Among possible transferable practices, it is important to highlight in relation to the reform of the Spanish law on SRHR, two interesting issues:

- Abolition of the reflection period and other requirements: The three-day reflection period for women to meditate on their decision is removed. The obligation to provide information on other alternatives to continue the pregnancy or other aids to continue the pregnancy is also removed.
- Paid leave for painful menstruation: The law will regulate the right to menstrual health, providing for up to 3 days leave, extendable to 5 days, for painful menstruation.

Policies and good practises from other countries, such as Belgium and France, will be excellent references leading towards future necessary changes in Spain. I am referring to:

- Access to contraception free of charge for all women under 25 years as well as for person living in vulnerable situation (Belgium).
- Creation of national toll-free line on “Sexuality, contraception, and abortion” (France).

5. Conclusions and recommendations

Abortion law and policy have always been the central points in the regulation of sexual and reproductive rights in Spain. Despite its exhaustive regulation in Title II of the LO 2/2010, in practice, access to abortion still faces many obstacles such as conscientious objection, the 3-day reflection period before being able to access abortion, or the authorisation of third parties in the case of 16 and 17 year old girls

and women with functional diversity. These issues have been widely addressed by international human rights law as violations of SRHR. Currently, in addition to the aforementioned, Spain is beginning to consider access to this health service through telematic means, such as pharmacological abortion, always under safe conditions.

With regard to sexuality education, international standards are clear in establishing the human right to comprehensive, non-discriminatory, evidence-based, scientifically rigorous and age-, gender-, linguistic-, educational-, disability-, sexual orientation-, gender identity- and all aspects of SRH, should be established at all levels of education and should be part of teacher training. Although with the recent entry into force of the new Education Act, SRH education is once again playing a relevant role, it is not possible to assess the degree of alignment with international standards, as the regulations implementing the Act that establish the basic content of the educational curriculum have not yet been issued. Furthermore, as a consequence of the decentralisation of competences in the field of education, without a state regulation that establishes minimum content, regional education policies will continue to address SRHR in an unequal manner, which prevents the full effectiveness of the right to sexual and reproductive health education from being guaranteed.

On the other hand, it is clear that the Spanish State is violating its international obligations by not contemplating obstetric violence (OV) in its domestic legal system. In this sense, not only it is not in line with international human rights standards that clearly establish that obstetric violence is a form of gender-based violence that must be made visible and addressed by public policies, but Spain has been expressly condemned by the CEDAW Committee in its first pronouncement on OV at the global level.

Finally, with regard to the region’s framework, the conclusions, after a brief analysis of the systematisation of regulatory and non-regulatory instruments, lead us to focus, above all, on the existing inequality between the different regions. This is why there is a need for strong development at the national level so that it can be properly implemented in all the Autonomous Regions. Nevertheless, it is important to highlight the work of some regions where SRHR have been developed through interesting regulations and public policies.