

## EFFECTS OF THE ABORTION LAW IN CHILE

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In Chile, on September 14, 2017, the former President of the Republic, Mrs. Michelle Bachelet Jeria, enacted Law No. 21030 which regulates "The decriminalization of voluntary termination of pregnancy in three cases<sup>2</sup>", a rule that legalized abortion in Chile in three cases.

In any other case, abortion is still today a punishable offense sanctioned by the Chilean Penal Code with imprisonment<sup>3</sup>.

This law not only decriminalized abortion, but also legalized it, by transforming it into a "medical benefit" that citizens can request to the institutions authorized to practice it in any of the following cases:

- 1) *The woman is at vital risk, so that the termination of pregnancy implies avoiding a danger to her life.*
- 2) *The embryo or fetus suffers from an acquired or genetic congenital pathology, incompatible with independent extrauterine life, in any case lethal.*
- 3) *Be the result of rape, provided that no more than twelve weeks have elapsed. In the case of a girl under 14, the termination of pregnancy can also be carried out, provided that no more than fourteen weeks have elapsed.*

After the law had been in force for a year, a national newspaper named *La Tercera* published an extensive article<sup>4</sup> balancing its effects.

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<sup>2</sup> Official Gazette of September 23, 2017, Law No. 21030, Regulates the decriminalization of voluntary interruption. Available in

<sup>2</sup> <https://www.leychile.cl/Navegar?idNorma=1108237&buscar=21030>

<sup>3</sup> Penal Code, Art. 352 to 356.

Available in: <https://www.leychile.cl/Navegar?idNorma=1984&idParte=0>

<sup>4</sup> G. SANDOVAL y E. L. CHEKH, (2018) "At least 45 minors aborted in the first year of the law of three causes", in *La Tercera* Journal, edition of December 30, 2018.

Available in : <https://www.latercera.com/nacional/noticia/al-menos-45-menores-edad-abortaron-primer-ano-la-ley-tres-causales/465455/>

To this effect, they requested information regarding abortions to the 69 public hospitals authorized to carry out abortions. This request of information was done under the Transparency Law's dispositions<sup>5</sup>.

Sixty-five hospitals sent information to the national newspaper, showing that during the analyzed period, 535 abortions were practiced in Chile. The procedures were divided into 277 abortions for the first cause, 165 for the second and 93 for the third.

According to the report, there were 702 pregnancies that met the requirements and the figure reveals that in 76% of the cases the pregnant women decided to abort.

To accompany women who seek an abortion is very important. According to Chilean law, free support should be given to pregnant women who are in one of the three causes to help them cope with complex pregnancies. An authorized institution in this matter is the Chile United Foundation and, according to its director, Mrs. Verónica Hoffmann, in 20 years of accompaniment to women in a situation of vulnerability, 82% of them decided to continue their pregnancy.

However, according to the report mentioned, only 24% of women who received information about the support provided by the law decided to continue with their pregnancy, which seems to confirm the criticisms that were made to the bill while it was in Congress, regarding the accompaniment. It is very precarious, poorly regulated and does not work as it should. Apparently, pregnant women are not being informed truthfully and in a timely manner about the accompanying programs to which they are entitled.

One of the causes that generated most controversy in the legislative debate was the one that allows abortion when a woman has suffered rape. Regarding this, the norm forces the directors of hospital establishments and private clinics to inform the Public Ministry of the commission of this crime in order to investigate the crime.

There is still no official information to assess the application of this cause, but preliminary information from the Ministry of Health to the date show that more than half of the crimes associated with this cause are not being investigated by the Prosecutor.

Unfortunately, there is an almost absolute lack of systematized data to be able to make a complete analysis of the effects of the law.

Likewise, this law is generating incipient discrepancies in its application. In some complex cases, some doctors have ruled that they fall within the three causes, but other specialists or institutions have had a different opinion, generating confusion among pregnant women regarding the situations included in the causes.<sup>6</sup> These were drafted in an intentionally ambiguous way regarding their scope<sup>7</sup>, generating confusion and giving rise to a constant

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<sup>5</sup> The objective of the Transparency Law is that citizens can access the content of administrative acts and other state documents, with some exceptions.

<sup>6</sup> Check on: [https://www.chvnoticias.cl/trending/aborto-rechazo-suprema-pdi\\_20190623/](https://www.chvnoticias.cl/trending/aborto-rechazo-suprema-pdi_20190623/)

<sup>7</sup> Check on: <http://viva-chile.cl/2019/06/vacios-de-la-ley-de-aborto/>

struggle of pro-choice groups to extend the application of the norm through an increasingly extensive interpretation, as has been the experience compared in the matter.

The discrepancies among physicians has led to the filing of requests to the courts to settle the controversies. One case has reached the Court of Appeals of Santiago, which rejected the appeal for protection deduced by Mrs. Candy Jamett Vollrath against the Carabineros Hospital. The case is based on the fact that the woman intended to abort her 25-week-old son for suffering from trisomy 21 (down syndrome) and a cardiac malformation. The pregnant woman invoked the cause No. 2 of the law, considering that the pathology would be lethal and that her son was unviable. It was based on the opinion of a recognized physician on the subject, supporter of abortion. However, the Court determined that two medical reports are required prior to the intervention that demonstrate that the pathology is lethal, and that the child is unfeasible, a circumstance that was not accredited, unanimously rejecting that the actions of the said assistance centre were arbitrary or illegal.

This court ruling was recently confirmed by the Third Chamber of the Supreme Court that considered that the actions of the Carabineros Hospital had been according to law and that the cause in question should be applied restrictively.

This dramatic case continues with widespread media coverage. Less than a year after this law was passed, a bill has been filed in Congress a bill that would enable abortion on demand. This bill has no citizen support<sup>8</sup> and does not have the votes to be approved. Basically, it provides unlimited abortion until 14 weeks of gestation, regardless of whether the unborn is the result of a consented relationship, viable and implies no risk to the life of the mother.

Until now, the low number of children who were not allowed to be born under the application of the current law shows that Chile remains a country that respects life, but this could vary since the same opinion studies<sup>9</sup> show that rejection abortion is much higher among people over 45 than those under that age who show more support for this brutal practice influenced, perhaps, by an ideological debate that has obviated how an abortion is actually done and the potential physical and psychological effects that this can cause to women who choose to end the lives of their children during gestation.

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<sup>8</sup> Check on: <http://www.humanas.cl/?p=18128>

<sup>9</sup> Idem.