

## WHY ABORTION IS PERFORMED IN SPAIN UNTIL 26 WEEKS

[www.ACAI.es](http://www.ACAI.es)

[www.atochaginecologica.es](http://www.atochaginecologica.es)

Mike Vidot & Santiago Barambio. Spain

1.<sup>a</sup> when the pregnancy presents a serious danger for the physical or psychological health of the mother. Such circumstances should be justified previously by a Medical Report previously emitted by a doctor in this specialized field. The doctor who performs the abortion cannot write this report.

En cases whereby there is urgency for the mothers' health, this Medical Report or the Informed Consent of the patient may not be necessary.

2.<sup>a</sup> if the pregnancy is a consequence of rape (article 429), this should always be performed during the first 12 weeks and that the case is denounced before a judge.

Spain is one of the last European countries which incorporated in its Legislation the law 9/1985, which reforms the actual Penal Code of Conduct in its Article 417, whereby it legalizes partially Provoked Abortion, if it is being performed by a doctor or under his/her supervision. In further modifications the Spanish Code of Conduct has maintained this law:

Organic Law 9/1985, 5th July which states that:

1. Abortion shall not be penalized if performed by a doctor or under his supervision in an accredited public or private sanitary establishment, with the consent of the pregnant woman, when any of the following circumstances are justified:

3.<sup>a</sup> when it is presumed that the foetus will be born with serious physical or psychological abnormalities.

A prior Medical report emitted and certified by 2 specialists who will not participate in the abortion is required. Under these circumstances abortion can be performed until 22 weeks.

2. In the circumstances mentioned previously (3.<sup>a</sup>), the conduct of the mother shall not be punishable even if the abortion is not performed in an accredited public or private center or if the required medical certificates have not been emitted.

As you can see, that in order to abort, the law establishes there should be a motive and that there are also limits regarding the gestational age. But maybe the intention of the legislators is to leave open the gestational age limits, when the mothers' health is at stake.

This law, created confrontation between the political parties and the conservatives up to an extent whereby its constitutionality was questioned, but the Spanish Constitutional Court ratified it as being legal.

It had to be groups of professionals, mostly in the private sector, socially, politically and specially sensible with the subject, those who founded institutions, normally of minor or major ambulatory surgery, in order to practice abortion.

These groups of specialists' sought legal protection on the definition of abortion made by the WHO which defines health as:

A state of physical, psychological and social wellbeing, not the mere absence of diseases.

Basing themselves on this text, they decided that there was sufficient motive to perform an abortion as long as a certificate emitted by a psychiatrist certified that the mothers' psychological health was at risk.

Even the most liberal part of the society criticised this law because its text did not reflect implicitly the right of the pregnant woman to decide by herself if she wanted to continue or not with her pregnancy and that instead she needed a documented motive from third parties. Therefore they stated that Voluntary Interruption of Pregnancy (IVE) did not exist.

The law also establishes that the clinics that perform provoked abortion, must accredit before the Competent Authorized Sanitary Board, special requisites in order to practice abortion until 12 weeks or more. Under such legislative circumstances, basically no public or private hospital has put into practice the requirements needed in order to practice Provoked Abortion.

Within this ambiguous legal frame, abortion was initiated. In the beginning most of these Spanish Accredited Clinics for Abortion joined together to form what is actually known as Association of Accredited Clinics for Interruption of Pregnancy (ACAI), which has propitiated the interchange of information, progressive unification of criteria's concerning surgical techniques of abortion, as well as juridical positioning based on an accumulated experience.

Actually ACAI has sufficient entity to assess, influence in decisions taken both in the accredited clinics as well as in governmental institutions, and as a consequence of this, a repercussion in politics related to abortion.

Some of these professional groups even made another juridical interpretation of the Spanish Law, based on the Technical Resolution 461 of the WHO which defines:

Abortion as the interruption of pregnancy before the viability of the foetus.

Given the fact that in natural conditions foetal viability is accepted between 24 to 26 weeks and taking into consideration that the margin in determining the gestational age by ultrasound is  $\pm 2$  weeks, it was considered, that when a pregnancy passed the limit of 26 weeks, it could be interpreted that it was no longer an abortion, since it went beyond what is established by law.

Taking into consideration this legal concept, when a foetal abnormality incompatible with extra uterine life is diagnosed, and considering that maternal risk increases during delivery as gestational age increases, termination of pregnancy can be considered an adequate option.

This same concept can be extended whereby the physical, psychological or a dignified life of the foetus is concerned. In the cases mentioned above, some specialized clinics prefer to make their own evaluation of the foetus before interrupting the gestation.

This interpretation has been generalized between the groups of Accredited professionals who perform abortion above 12 weeks. Actually more and more professionals perform abortion up to 26 weeks in normal foetuses if there is a Psychiatric report which considers that the mother's psychological health is at risk.

Until now nobody has found a judicial reason to make demands against such a practice, not even the antiabortion organisations.

Modern technology allows foetal welfare and viability to be studied prior birth, with a very small margin of error, determining if the foetal health in the extra uterine period will be adequate in terms of quality and dignity.

In all cases the authorization of the mother is of vital importance in order to perform the abortion. Previously she is being informed about the surgical technique which will be used, the possible complications.

Special attention is taken regarding the credibility of the Medical Report emitted by the 2 specialists regarding the viability of the foetus, when the gestational age is above 26 weeks.

The Spanish laws are not restrictive towards women regarding their legal situation when requesting an abortion as long as she is in Spanish territory.

These special legal circumstances, together with the experience and prestige of the Spanish clinics highly specialized in interruption of pregnancy even at a late stage, has made it possible that actually the Private clinics are the ones who practice the majority of the abortions in Spain, as recognized by the Spanish Ministry of Health.

Only some Public Hospitals accept to perform abortion until 22 weeks in cases whereby the foetal health and viability is compromised. In cases of rape, abortion is done up to 12 weeks. Exceptionally it is performed due to mothers' health with a normal foetus and basically none for psychological reasons.

Also Spain absorbs a lot of cases from neighbouring countries such as France, Italy and Portugal, countries with more restrictive laws once the gestational age is above 12 weeks.

As you can observe, according to the statistics of the Spanish Ministry Of Health between 1997 and 2004 the percentage of provoked abortions below 12 weeks has been stable, with a slight decrease regarding those below 8 weeks, whilst there is a significant increase in cases above 12 weeks.

**Tabla 1**

**Total percentage of abortions performed nationally according to the type of Health Center**

Fuente: Ministerio de Salud y Consumo

Year	Public centers			Private centers		
	Total (%)	Hospital (%)	Non hospital (%)	Total (%)	Hospital (%)	Private clinics (%)
2004	3,57	3,56	0,00	96,44	9,72	86,73
2003	2,86	2,41	0,44	97,15	10,13	87,02
2002	2,47	2,09	0,38	97,53	8,87	88,66
2001	2,43	2,16	0,28	97,57	8,85	88,72
2000	2,37	2,11	0,26	97,63	8,34	89,29
1999	2,53	2,24	0,29	97,46	7,78	89,68
1998	2,64	2,33	0,31	97,37	7,65	89,72
1997	2,68	2,39	0,29	97,32	8,58	88,74
1996	2,77	2,47	0,30	97,24	7,98	89,26
1995	2,67	2,39	0,28	97,33	7,13	90,20

**Tabla 2**

**Total percentage of abortions performed nationally in Spain according to gestational age.**

Fuente: Ministerio de Salud y Consumo

Year	≤ 8 weeks (%)	9-12 weeks (%)	13-16 weeks (%)	17-20 weeks (%)	21 + weeks (%)	unknown Wks (%)
2004	61,43	26,50	6,33	3,69	2,02	0,03
2003	63,52	25,36	5,57	3,62	1,92	0,01
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1996	64,98	26,60	4,24	2,75	1,12	0,31
1995	66,40	26,10	3,85	2,38	0,77	0,49

**Tabla 3**

**Total percentage of abortions performed nationally in Spain according to the cause.**

Fuente: Ministerio de Salud y Consumo

Year	Maternal Health	Foetal Risk	Rape	Various motives	Unknown
2004	96,70	3,06	0,02	0,22	0,00
2003	96,89	2,83	0,02	0,26	0,00
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2001	97,16	2,53	0,09	0,22	0,00
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1999	97,22	2,47	0,04	0,19	0,09
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In Spain we interpret that:

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2003	96,89	2,83	0,02	0,26	0,00
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2001	97,16	2,53	0,09	0,22	0,00
2000	97,16	2,57	0,05	0,14	0,06
1999	97,22	2,47	0,04	0,19	0,09
1998	97,32	2,27	0,03	0,28	0,10
1997	97,79	2,08	0,03	0,03	0,07
1996	97,83	2,05	0,02	0,03	0,06
1995	97,91	1,64	0,01	0,10	0,33

Members ACAI have come to a consensus in not performing provoked abortions above 26 weeks, since its practice could legally be questioned.

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**CONCLUSIONS:**

Even though in Spain there isn't a law which contemplates abortion as a Woman's Voluntary Right, our legislation allows this medical procedure to be practiced in all cases in which they do not wish to prolong their pregnancy, since the law permits it on grounds of maternal psychological risks.

In Spain we interpret that:

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## WHY ABORTION IS PERFORMED IN SPAIN UNTIL 26 WEEKS

[www.ACAI.es](http://www.ACAI.es)

[www.atochaginecologica.es](http://www.atochaginecologica.es)

Mike Vidot & Santiago Barambio. Spain

1.<sup>a</sup> when the pregnancy presents a serious danger for the physical or psychological health of the mother. Such circumstances should be justified previously by a Medical Report previously emitted by a doctor in this specialized field. The doctor who performs the abortion cannot write this report.

En cases whereby there is urgency for the mothers' health, this Medical Report or the Informed Consent of the patient may not be necessary.

2.<sup>a</sup> if the pregnancy is a consequence of rape (article 429), this should always be performed during the first 12 weeks and that the case is denounced before a judge.

Spain is one of the last European countries which incorporated in its Legislation the law 9/1985, which reforms the actual Penal Code of Conduct in its Article 417, whereby it legalizes partially Provoked Abortion, if it is being performed by a doctor or under his/her supervision. In further modifications the Spanish Code of Conduct has maintained this law:

Organic Law 9/1985, 5th July which states that:

1. Abortion shall not be penalized if performed by a doctor or under his supervision in an accredited public or private sanitary establishment, with the consent of the pregnant woman, when any of the following circumstances are justified:

3.<sup>a</sup> when it is presumed that the foetus will be born with serious physical or psychological abnormalities.

A prior Medical report emitted and certified by 2 specialists who will not participate in the abortion is required. Under these circumstances abortion can be performed until 22 weeks.

2. In the circumstances mentioned previously (3.<sup>a</sup>), the conduct of the mother shall not be punishable even if the abortion is not performed in an accredited public or private center or if the required medical certificates have not been emitted.

As you can see, that in order to abort, the law establishes there should be a motive and that there are also limits regarding the gestational age. But maybe the intention of the legislators is to leave open the gestational age limits, when the mothers' health is at stake.

This law, created confrontation between the political parties and the conservatives up to an extent whereby its constitutionality was questioned, but the Spanish Constitutional Court ratified it as being legal.

It had to be groups of professionals, mostly in the private sector, socially, politically and specially sensible with the subject, those who founded institutions, normally of minor or major ambulatory surgery, in order to practice abortion.

These groups of specialists' sought legal protection on the definition of abortion made by the WHO which defines health as:

A state of physical, psychological and social wellbeing, not the mere absence of diseases.

Basing themselves on this text, they decided that there was sufficient motive to perform an abortion as long as a certificate emitted by a psychiatrist certified that the mothers' psychological health was at risk.

Even the most liberal part of the society criticised this law because its text did not reflect implicitly the right of the pregnant woman to decide by herself if she wanted to continue or not with her pregnancy and that instead she needed a documented motive from third parties. Therefore they stated that Voluntary Interruption of Pregnancy (IVE) did not exist.

The law also establishes that the clinics that perform provoked abortion, must accredit before the Competent Authorized Sanitary Board, special requisites in order to practice abortion until 12 weeks or more. Under such legislative circumstances, basically no public or private hospital has put into practice the requirements needed in order to practice Provoked Abortion.

Within this ambiguous legal frame, abortion was initiated. In the beginning most of these Spanish Accredited Clinics for Abortion joined together to form what is actually known as Association of Accredited Clinics for Interruption of Pregnancy (ACAI), which has propitiated the interchange of information, progressive unification of criteria's concerning surgical techniques of abortion, as well as juridical positioning based on an accumulated experience.

Actually ACAI has sufficient entity to assess, influence in decisions taken both in the accredited clinics as well as in governmental institutions, and as a consequence of this, a repercussion in politics related to abortion.

Some of these professional groups even made another juridical interpretation of the Spanish Law, based on the Technical Resolution 461 of the WHO which defines:

Abortion as the interruption of pregnancy before the viability of the foetus.

Given the fact that in natural conditions foetal viability is accepted between 24 to 26 weeks and taking into consideration that the margin in determining the gestational age by ultrasound is  $\pm 2$  weeks, it was considered, that when a pregnancy passed the limit of 26 weeks, it could be interpreted that it was no longer an abortion, since it went beyond what is established by law.

Taking into consideration this legal concept, when a foetal abnormality incompatible with extra uterine life is diagnosed, and considering that maternal risk increases during delivery as gestational age increases, termination of pregnancy can be considered an adequate option.

This same concept can be extended whereby the physical, psychological or a dignified life of the foetus is concerned. In the cases mentioned above, some specialized clinics prefer to make their own evaluation of the foetus before interrupting the gestation.

This interpretation has been generalized between the groups of Accredited professionals who perform abortion above 12 weeks. Actually more and more professionals perform abortion up to 26 weeks in normal foetuses if there is a Psychiatric report which considers that the mother's psychological health is at risk.

Until now nobody has found a judicial reason to make demands against such a practice, not even the antiabortion organisations.

Modern technology allows foetal welfare and viability to be studied prior birth, with a very small margin of error, determining if the foetal health in the extra uterine period will be adequate in terms of quality and dignity.

In all cases the authorization of the mother is of vital importance in order to perform the abortion. Previously she is being informed about the surgical technique which will be used, the possible complications.

Special attention is taken regarding the credibility of the Medical Report emitted by the 2 specialists regarding the viability of the foetus, when the gestational age is above 26 weeks.

The Spanish laws are not restrictive towards women regarding their legal situation when requesting an abortion as long as she is in Spanish territory.

These special legal circumstances, together with the experience and prestige of the Spanish clinics highly specialized in interruption of pregnancy even at a late stage, has made it possible that actually the Private clinics are the ones who practice the majority of the abortions in Spain, as recognized by the Spanish Ministry of Health.

Only some Public Hospitals accept to perform abortion until 22 weeks in cases whereby the foetal health and viability is compromised. In cases of rape, abortion is done up to 12 weeks. Exceptionally it is performed due to mothers' health with a normal foetus and basically none for psychological reasons.

Also Spain absorbs a lot of cases from neighbouring countries such as France, Italy and Portugal, countries with more restrictive laws once the gestational age is above 12 weeks.

As you can observe, according to the statistics of the Spanish Ministry Of Health between 1997 and 2004 the percentage of provoked abortions below 12 weeks has been stable, with a slight decrease regarding those below 8 weeks, whilst there is a significant increase in cases above 12 weeks.

**Tabla 1**

**Total percentage of abortions performed nationally according to the type of Health Center**

Fuente: Ministerio de Salud y Consumo

Year	Public centers			Private centers		
	Total (%)	Hospital (%)	Non hospital (%)	Total (%)	Hospital (%)	Private clinics (%)
2004	3,57	3,56	0,00	96,44	9,72	86,73
2003	2,86	2,41	0,44	97,15	10,13	87,02
2002	2,47	2,09	0,38	97,53	8,87	88,66
2001	2,43	2,16	0,28	97,57	8,85	88,72
2000	2,37	2,11	0,26	97,63	8,34	89,29
1999	2,53	2,24	0,29	97,46	7,78	89,68
1998	2,64	2,33	0,31	97,37	7,65	89,72
1997	2,68	2,39	0,29	97,32	8,58	88,74
1996	2,77	2,47	0,30	97,24	7,98	89,26
1995	2,67	2,39	0,28	97,33	7,13	90,20

**Tabla 2**

**Total percentage of abortions performed nationally in Spain according to gestational age.**

Fuente: Ministerio de Salud y Consumo

Year	≤ 8 weeks (%)	9-12 weeks (%)	13-16 weeks (%)	17-20 weeks (%)	21 + weeks (%)	unknown Wks (%)
2004	61,43	26,50	6,33	3,69	2,02	0,03
2003	63,52	25,36	5,57	3,62	1,92	0,01
2002	62,69	26,54	5,36	3,53	1,85	0,03
2001	64,29	25,05	5,25	3,68	1,67	0,07
2000	65,03	25,68	4,47	3,30	1,45	0,06
1999	64,66	25,83	4,51	3,28	1,41	0,31
1998	64,80	26,63	4,04	2,88	1,35	0,30
1997	64,91	26,85	3,86	2,92	1,24	0,20
1996	64,98	26,60	4,24	2,75	1,12	0,31
1995	66,40	26,10	3,85	2,38	0,77	0,49

**Tabla 3**

**Total percentage of abortions performed nationally in Spain according to the cause.**

Fuente: Ministerio de Salud y Consumo

Year	Maternal Health	Foetal Risk	Rape	Various motives	Unknown
2004	96,70	3,06	0,02	0,22	0,00
2003	96,89	2,83	0,02	0,26	0,00
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