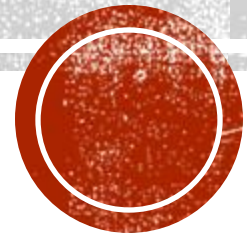


THE 2024 ENSHRINEMENT OF ABORTION IN THE FRENCH CONSTITUTION: A VOTE FOR HIS(HER/)STORY ?

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A HISTORIC CONSTITUTIONAL AMENDMENT

- New article 34 of the French Constitution: "**The law determines the conditions in which the freedom guaranteed to women to have recourse to abortion is exercised**".



EMPHATIC POLITICAL STATEMENTS

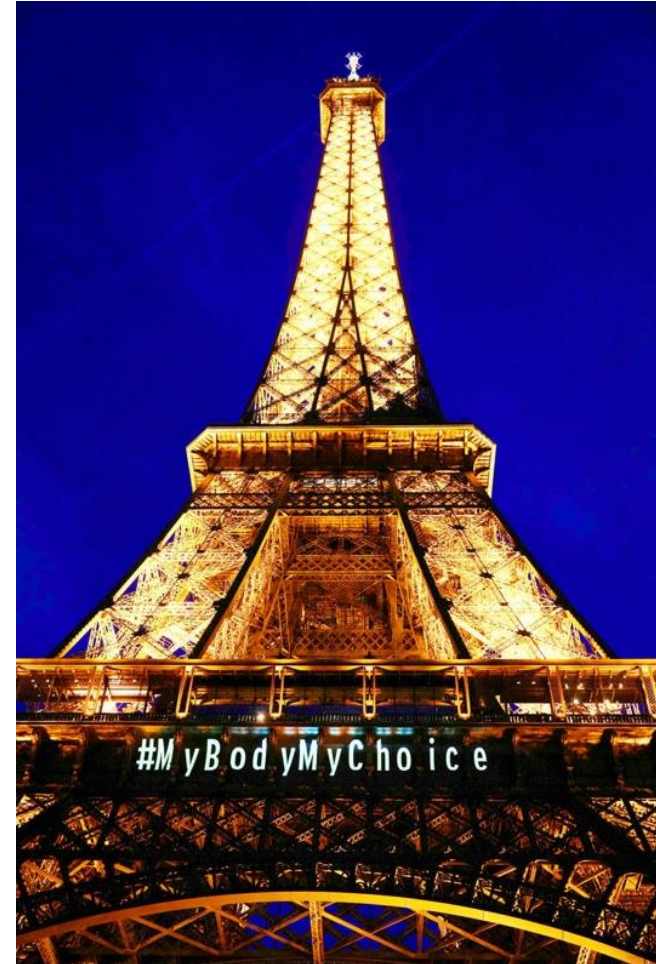


Emmanuel Macron 

Président de la République française.
6 mois

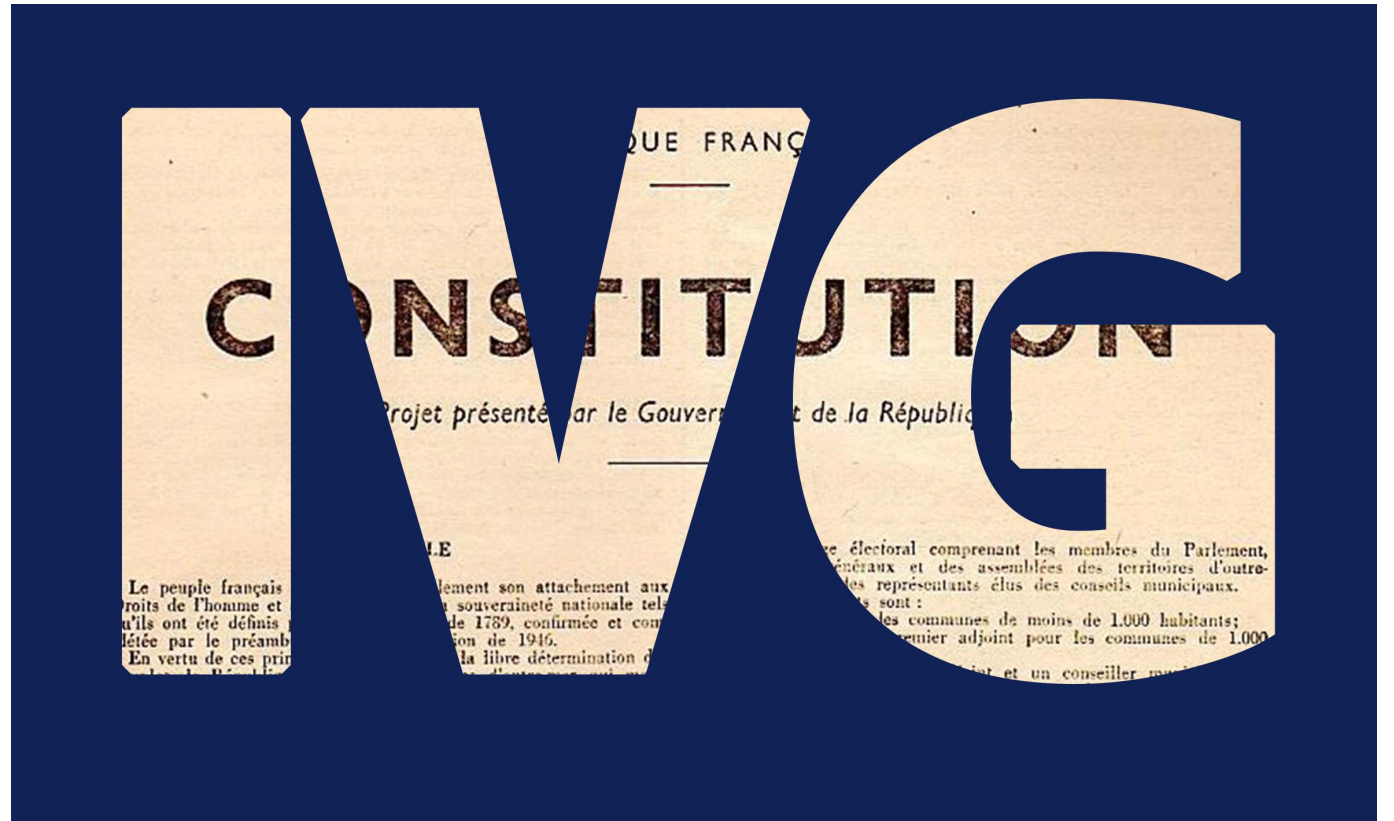
Fierté française, message universel.

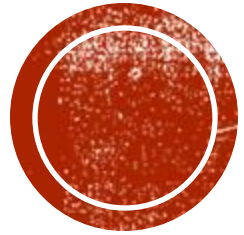
- French President Emmanuel Macron : "French pride, universal message."
- Prime Minister Gabriel Attal: "a fundamental step" that "will go down in history."
- President of the French National Assembly, Yael Braun Pivet : "France is at the forefront, it is in its place."



2 OBSERVATIONS:

- The political discourse has presented this revision as both historic and relatively consensual → including abortion in the constitution is a powerful symbol (I).
- However, this is not sufficient to overcome persistent issues (II).





1. A POWERFUL SYMBOL



A UNIVERSAL MESSAGE

- For the first time, abortion is explicitly enshrined in a constitution as a freedom for women



FOR FRENCH LAW: A STANDSTILL EFFECT

- Abortion had been legal for almost 50 years in France.
 - Veil Act (1975) made abortion legal for the first time
 - 1982 Act: coverage of abortion by the health insurance system
 - 1993 Act: penalization of the obstruction of abortion and decriminalisation of self-abortion
 - 2014 Act: removal of the notion of “distress” from the conditions for recourse to pregnancy termination.
 - 2016 Act: authorization for midwives to carry out medically induced abortions and abolition of the “seven-day reflection” period.
 - 2022: legal time limit for abortion extended to 14 weeks; Midwives can now perform abortions in health facilities, and it possible to perform medically induced abortions by teleconsultation.
- Yet French constitutional case law had not explicitly recognized the freedom to have an abortion



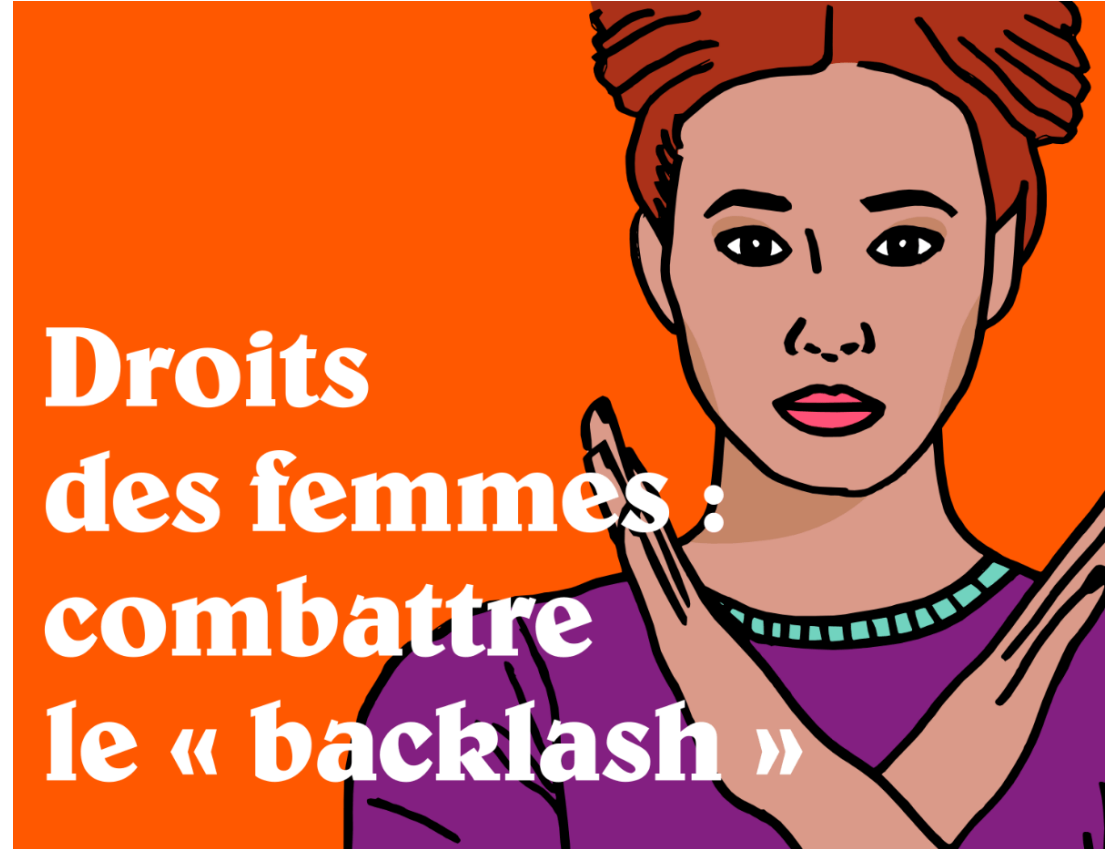
PREVIOUS FRENCH CONSTITUTIONAL CASE LAW

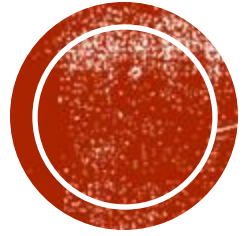


- 1975 (74-54 DC) decision: the Constitutional Council ruled that "the law on the voluntary termination of pregnancy *respects the freedom of persons* called upon to have recourse to or participate in a termination of pregnancy, whether in a situation of distress or for therapeutic reasons; consequently, it does not infringe the principle of freedom laid down in Article 2 of the Declaration of the Rights of Man and of the Citizen " → Abortion is not seen, in a positive sense, as a freedom that belongs to but, in a negative sense, as not infringing constitutional standards
- 2001 (2001-446 DC) decision: the Constitutional Council stated that the law allowing abortions up to 12 weeks of pregnancy did not violate the Constitution: "The law has not, in the current state of knowledge and techniques, upset the balance that respect for the Constitution requires between, on the one hand, *safeguarding the dignity of the human person against any form of degradation* and, on the other hand, the freedom of women " → conciliation between woman's freedom and respect for embryo's human dignity
- Huge deference to the Parliament's margin of appreciation → no guarantees in the event of a political change.



- The very purpose of the 2024 constitutionalisation is to prevent a backlash.
- The constitutionalisation of abortion does not change the existing law, but makes it harder to change the abortion rules in the future.





2. PERSISTENT CHALLENGES



A MINIMALIST WORDING

Initial proposal passed by the National Assembly: "*The law shall guarantee effective and equal access to the right to voluntary interruption of pregnancy*"

Rephrasing by the Senate (2^e parliamentary chamber) : "*The law determines the conditions under which a woman's freedom to terminate her pregnancy is exercised*".

- **Political debate** over the words chosen
 - *Right vs Freedom*
 - *Guarantee vs Determine*
 - Senator Philippe Bas (bill's rapporteur) : "the term "guarantee" is a constitutional wart"

- **Political compromise :**

According to the Conseil d'Etat ([opinion of 7 Dec. 2023](#)) : The wording "***the law determines the conditions in which the freedom guaranteed to a woman to have recourse to abortion is exercised***" makes it possible to "achieve the twofold objective sought by the Government, to ensure that the freedom to have recourse to a voluntary interruption of pregnancy is guaranteed by the Constitution and to affirm the competence of the legislature".



PERSISTANT DIFFICULTIES

- Access to abortion remains unequal in France, due to lack of doctors
 - Nearly 8% of abortion centres in France have closed in ten years
 - As more maternity units close, women are forced to travel further to have an abortion.
 - Few professionals perform abortions in town (only 2.9% of GPs and gynaecologists and 3.5% of midwives)
- Ethical Clause: According to the Public Health Code (Article L2212-8), a doctor or a midwife " is never obliged to carry out a voluntary interruption of pregnancy, but he must inform the person concerned without delay of his refusal and immediately inform her of the names of practitioners likely to carry out the procedure."



CONCLUSION

- Paradox:

The constitutionalisation of abortion changes everything, without changing anything !

