42245

IPPF EUROPE

Regional Information Bulletin

Vol 5 No 1 January 1976

Council of Europe Resolution on Family Planning

In this issue

– **the full text of the recent Council of Europe resolution on *Legislation Affecting Fertility in Family Planning***

– **the recently published IUSSP/Vienna Centre study of legislation affecting fertility in Europe, *Law and Fertility in Europe* is reviewed**

– **the main features of the recent Italian *Family Law Reform Act* are presented**

– **report on a subregional sex education working group**

– **notice is given of the latest Regional publication, *Abortion Counselling: A European View***

The Committee of Ministers of the Council of Europe established in 1972 a committee of Demographic Experts to consider demographic situations and trends in the member states of the Council of Europe with a view to informing the authorities and the public at large of their economic, social, ecological and cultural implications, and to prepare reports and practical recommendations to governments on demographic questions of particular European interest.

At its first meeting, in September 1973, the Committee of Demographic Experts established three working parties—on the ageing of the population, on migration, and on fertility. The working party on fertility has met three times, and, among other activities, has studied legislation directly or indirectly affecting fertility in Europe.

A draft resolution on legislation affecting fertility and family planning prepared by the working party was adopted by the Committee of Demographic Experts at its 3rd meeting in June 1975, and by the Committee of Ministers of the Council of Europe on 14 November 1975 at the 250th meetings of the Ministers' Deputies.

Under rule 10 of the Rules of Procedure for meetings of Ministers' Deputies, when it was adopted:

- the representative of Belgium reserved his Government's right not to comply with the text of paragraph D of this resolution
- the representative of the Federal Republic of Germany reserved his Government's right not to comply with the text of paragraph D of this resolution
- the representative of Ireland, who had abstained when the vote was taken, reserved his Government's right not to comply with the text of the resolution as a whole.

Apart from these reservations, the adoption of the text implies that the member countries of the Council of Europe (Austria, Belgium, Cyprus, Denmark, France, Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Sweden, Switzerland, Turkey and the United Kingdom) accepted the proposals contained in the resolution and intend to put them into effect in due course.

IPPF Europe was represented by an observer at meetings of the working party on fertility and of the Committee of Demographic Experts. The text of the resolution adopted on 14 November 1975 is as follows:

The Committee of Ministers

i. Having regard to Recommendation No 2 of the 2nd European Population Conference on certain social and economic aspects of fertility trends in Europe and to the studies carried out and conclusions put forward by its Committee of Demographic Experts;

ii. Noting that Resolution 2436 (XXIII) of the General Assembly of the United Nations refers to "the right of parents to decide freely and responsibly on the number and spacing of their children";

iii. Noting that the World Population Plan of Action adopted by the World Population Conference held in Bucharest in August 1974 affirms that all couples and individuals have the right to decide freely and responsibly the number and spacing of their children;

iv. Noting further that in the programme of concerted international action for advancement of women (1970), the General Assembly of the United Nations declared one of the minimum targets of the second United Nations Development Decade to be the making available to all persons who so desire of the necessary information and advice to enable them to exercise that right;

v. Noting the differences in legislation pertaining to contraception, abortion and economic and social aid to families in member states, and noting also the marked differences between the *de jure* and *de facto* situations which frequently exist in this field;

vi. Noting that these differences may lead to social injustice;

vii. Noting that the recent decline in fertility in nearly all developed countries has occurred despite these differences in legislation and in its application;

viii. Conscious that legislation affecting family planning and aid to families should be seen primarily as a means of allowing people to exercise their discretion;

Recommends member governments:

I.i. when formulating policies relating to population to have full regard to the rights and needs of families;

I.ii. to enable all persons who so desire to have the information and means to decide freely and responsibly on the number and spacing of their children;

II. In order to realize these objectives, to take the following legislative and administrative measures;

A. Family planning services

To make family planning information,

advice and means available to all sections of the population as an integral part of health and social services, by means of:
i. increasing the range and efficiency of family planning services, and ensuring that they are well distributed geographically so as to be within easy reach of the whole population; in this context, special attention needs to be paid to rural areas and the socially disadvantaged areas of large cities;
ii. supporting, where appropriate, the work of non-governmental family planning organizations; this should not be seen as a substitute for action by governments, but should play a clearly defined role in the overall national family planning structure, such organizations being encouraged to continue their work in association with the public health service;
iii. creating, where necessary, a national authority or system of co-ordination for action concerning family planning;
iv. taking all necessary steps to publicise family planning services, with the aim of ensuring that all sections of the population are fully informed of the facilities to which they are entitled;
v. authorizing the supervised advertisement of contraceptives and their distribution after officially approved technical and clinical testing;
vi. ensuring that family planning consultation and the provision of all contraceptives requiring medical supervision are organized in such a way that all income groups may have equal access to them;
vii. encouraging the medical profession to play a part in family planning programmes as an important contribution to good standards of family and community health.

B. Education in family planning
To ensure that all people, especially young people, whether married or single, are informed about the problems and objectives of family planning and about the relative advantages and disadvantages of the various methods available, and in particular by:
i. ensuring that those who are responsible for school curricula, at appropriate levels, are aware of the importance of education in family planning;
ii. making it possible for all couples, and especially those intending marriage, to be able to take advice and instruction on family planning, and encouraging them to do so;
iii. ensuring that those who are responsible for the curricula of medical schools are aware of the importance of including training in the role of doctors in the family planning services;
iv. training social workers, youth workers and paramedical personnel to provide adequate guidance on family planning.

C. Sterilization
1. To ensure that persons who desire sterilization are made fully aware that in the present state of knowledge the operation is generally irreversible;
2. To make sterilization by surgical procedure available as a medical service.

D. Abortion
1. To reduce the need to resort to abortion, in particular by implementing the measures recommended in the other sections of this resolution;
2. To ensure that all legal abortions are carried out under the best possible medical conditions;
3. To ensure that abortion, in those cases where it is permitted by law, is available as a medical service to all women regardless of their social or economic position;
4. To take all necessary steps to eliminate the practice of illegal abortion with its attendant dangers.

E. Economic and social assistance to families
1. To reconsider current systems and levels of family allowances, as well as their periodical revision, and to assess how far the present structure of priorities in social provision—including the relationship between direct and indirect benefits, eg tax relief—is appropriate to present social and family needs;
2. To pay special attention to the specific needs of certain families which are statistically in a minority (single-parent families, families with several children, etc);
3. In framing government housing policy, to take account of the real needs of families, having regard to their varying size and structure;
4. To review the position of working people with direct family responsibilities, in particular with regard to maximum possible flexibility of working hours, including opportunities for part-time work, and by extending the provision of crèches, nursery schools and similar services.

III. To report every four years to the Secretary General of the Council of Europe on the action they have taken on this resolution.

The group of European demographers who form the Committee of Demographic Experts have recognized the fall in birth rates in Europe, and the fact that fertility levels, starting at very different points in the various countries of Europe, have converged and are converging towards a uniform standard and a decline in fertility affecting all age groups, social classes, etc.
Nevertheless, the Committee has expressed the opinion that liberal legislation and provision of planned parenthood services should be accepted as an essential human right and as an integral part of social services. At the same time the demographers have stated that it is difficult to isolate the legislative factor among the many variables which determine demographic trends.

The demographers have drawn attention to the need for the study of demographic factors to be set in a wider framework of socio-economic factors influencing nuptiality and childbearing, and of individual motivation and behaviour. This broader understanding they consider to be important not only to demographers but also to policy makers, in order to give a sound basis for formulating present and future policy, and understanding the wider implications of population trends.

Law and Fertility in Europe

The publication of these two volumes* completes a joint project of the International Union for the Scientific Study of Population (IUSSP), and of the Vienna Centre for the Co-ordination of Research and Documentation in the Social Sciences (Vienna Centre). The programme began in late 1971 with plans for an overall review of laws and statutory regulations directly or indirectly affecting fertility in all European countries. The result is a symposium of Reports describing the nature and extent of such legal provision in each of 21 countries, with some discussion indicating how far social and welfare laws might affect fertility trends. Each Report outlines the laws relating to marriage and divorce, family planning including abortion and sterilization, social welfare benefits particularly favouring children, housing provision, and finally the legal situations affecting womens rights at work and in society generally. The emphasis of the Reports is on the current formal situation and on recent changes; there is no attempt to present a research centred analysis of the relationships between law and fertility behaviour. The project throughout was envisaged as a primary collation of data to clear the ground around the problem of the nature of these relationships.

The Reports are arranged on an approximately standardized model of sections dealing with particular topics, so that there is a convenient degree of comparison between the Reports country by country. There is variation in emphasis and certain topics are treated at greater length in some Reports than in others. Four preliminary chapters offer general discussions of Marriage and the Family, Contraception and Abortion, Social Welfare Provision, and Womens Rights, each in a European perspective.

Certain general propositions emerge from a reading of these volumes. They include recognition of the important differences in social norms and administrative systems which separate Southern, Eastern and North Western Europe in a generally significant way, and which derive from quite important differences in social and political history. Another distinct group of questions is associated with the strength of pressures to change the law in particular countries and the forms of resistance to such changes, and also the relationships between social norms and the legal definitions of the limits of permitted behaviour. The pressures for change are effectively all towards greater liberalism in the law, and there are interesting accounts of such pressures in one or two countries. The Report on Eire discusses the significance of the McGee case for the extension of permitted family planning services in the Republic in the light of the confused political situation following the judgment of the High Court. The Italian Report comments on the interest being shown in the "legalization" of abortion, and there is a section which outlines the facts on clandestine abortion and tempts the reader to refer immediately to the analogous sections in other Reports, eg those on the Socialist Republics of Eastern Europe and that on the United Kingdom. The question of actual population policies affecting changes in the law appears in the account of restriction of certain family planning services in Romania and in Hungary. The Report on France records the dramatic history of the battle to establish legal abortion. Other matters of interest include the contribution of immigrant populations to fertility rates in France, West Germany and in Switzerland.

All of this material is useful (although some of it falls rapidly out of date) and some is of great interest. A final series of questions have to do with what possibilities emerge for further study and research. The long sequence of publications from Professor Luke Lee's "Law and Population" team in Tufts University have led the way to increasing activity in this field, and it is probably time to ask what follows after general description and collation. In each national society the central problem of interest is that of the character of the *motivation* towards particular family size aspirations on the part of married couples. The European context is one in which conventional family planning services and social welfare benefits focused on the family are taken for granted in most countries; what is looked for are explanations of why a family does or does not go on to a third child, or why the decision is taken not to begin a family at all. Does the family really assess the cost/benefits of educational services, family benefits, housing provision etc. when arriving at such decisions. So far there is no evidence that "luck" or "chance" has ceased to operate at the margins in determining family size for many couples, but the trend is surely towards more or less rational decisions based on confident family planning in some not too distant future. The whole area of family support in the widest sense is decided basically by statute in European countries; so far the prime purpose of such laws have been either a social policy of reducing the pains and burdens of poverty, or a general theory of equalization of economic and social circumstances (and opportunities) as far as is feasible in law. Such decisions, however, if they mean anything at all, have some repercussions in terms of preferred family size.

The European scene is rich in historically derived variety of social and political systems. The Reports convey an unmistakable sense of growing similarity of institutions and recent social laws, a "convergence" which may result from the necessary arrangements of an urban industrial culture, but may also derive from increased secularity and individualism which is likely to be further reinforced by the extension of

**Law and Fertility in Europe:* M Kirk, M Livi-Bacci and E Szabady. Ordina Editions, Liège 1975.

the small family norm. An interesting factor is the pressure to maintain high fertility in Eastern Europe, perhaps to support labour intensive economies, and perhaps also to produce Marxist evidence for the refutation of Malthus and his later apologists. The ancient institution of marriage as the basis of family building continues within increasingly common newer assumptions about the role of the State in assisting the family, and also such other new norms as the equality of the sexes and the rights of individuals to terminate a pregnancy (or a marriage).

A symposium of a score of authors calls for an editorial choice between more rigorous standardization of chapters, and a greater degree of personal emphasis on relevant material in the context of a particular country. The middle course obvious in this book means a certain degree of unevenness as between particular Reports. There is also the general problem of deciding whether discussion should be broadly developmental and concerned with changes in time, or structural and focused sharply on one moment in time as a means of analysis and comparison. Allowing for the inevitable risks of failing to please purists in either camp the compromise here is reasonable. Altogether this has been a brave and successful attempt to bring useful information together in a meaningful way. It ought to prove a springboard for more specific studies in depth, and it is to be hoped that the IUSSP and the Vienna Centre are now considering their next steps in this direction. Meanwhile changes continue in national laws and someone should be monitoring these changes and noting their social and demographic implications. What are to be the national responses if there is augmenting concern about the prospect of some years of falling fertility in Europe?

Maurice Kirk
Leeds University

Family Law Reform in Italy

After a long and passionate debate in the Italian Parliament, the *Family Law Reform Act* (Law No 151 of 19 May 1975) came into force on 21 September 1975. Although subject to certain technical criticism, the *Act* marks a new departure from the previous Italian law on the subject, and must be considered a significant attempt to bring the law into line with social and economic realities in the areas which it touches.

Background

The previous Italian law on the subject was contained in the Civil Code of 1942, of which the part devoted to family law was enacted in 1939. The main features of the Code reflected the previous Italian Civil Code, dating back to 1865. Thus the law in force until September 1975 was quite out of tune with the widespread social changes which had taken place since the 1930s.

Moves to amend the law were initiated long before the 1975 *Act.* The Constitution of 1947 laid down rules on the family which were not completely in accordance with the spirit of the Civil Code. For example, the fundamental principle of the equality of husband and wife, as declared in Article 29 of the Constitution certainly conflicted with a number of Civil Code regulations. However, since the relevant article established legal guarantees of family unity, it was possible in practice to nullify almost any effect of the article in interpreting the former law.

Apart from any direct effect of constitutional regulations on the former legislation, their principles gave rise over the years to several laws designed to reform specific aspects of the system embodied in the Civil Code. In this sense, the new *Act* completes a long process, whose origins lie in the Constitutional Charter. The following Acts may be recalled: the 1955 Act, concerning the abolition of any indication of names of father and mother in any official document, such indication having been previously mandatory, resulting in significant discrimination between legitimate and so-called "natural" children; the 1967 Act, on so-called "special" adoption, which brought the adopted child into the family as a whole, and altered the legal relationships between the child and the adoptive parent(s); the well-known 1967 Divorce Act, which finally permitted divorce after a century of debate; and lastly the 1975 Act which lowered the age of majority from 21 to 18 years.

The main points covered by the 1975 *Act* concern marriage and the separation of spouses, their personal and property relations, filiation and parental authority. It is obviously impossible to review here all aspects of this far reaching reform, the following outline will therefore be confined to the main points.

Apart from certain new rules concerning nullity of marriage the main feature of the new rules on marriage is the basic principle of the equality of husband and wife. The new rules repeal the old hierarchical family, in which the husband was the head of the family and the holder of so-called "marital authority". This pattern was explicit in previous rules: Article 143 of the 1942 Civil Code stated: "the husband is the head of the family. The wife follows his civil status, takes his surname and is obliged to accompany him wherever he chooses to establish his residence". None of these rules survives. The new Article 143 expressly states that husband and wife have the same rights and duties, in particular the mutual obligation of fidelity, moral and material support, co-operation in the interest of the family and cohabitation. Both husband and wife have the duty to contribute, each in proportion to his means and to his capacity, professionally or at home, to the needs of the family. A consequence of the basic principle is embodied in another rule, which clearly establishes that the wife "adds" the surname of the husband to her own and keeps it unless she remarries.

As far as citizenship is concerned, the old rule that the wife loses her citizenship by marrying a foreigner is now replaced by the new principle that

the wife retains Italian citizenship unless she expressly desires otherwise, even if she acquires new citizenship upon marriage or if the husband changes his nationality. (The old rule had been declared unconstitutional by the Constitutional Court a few months before the new law came in force.)

The wife is no longer obliged to live where the husband thinks fit. The basic principle is that both spouses must agree on the general course of family life, including where to live permanently. However, when no agreement can be reached, either spouse is entitled to seek the intervention of the court, which should try to achieve an agreement after hearing both spouses and the children, if over 16 years. If this proves impossible, the judge can, at the request of both spouses, issue an order for arrangements which he thinks are in the interest of the family. Obviously, the judge's power to intervene in family life can give rise to serious problems and abuses, and should be used with great care and discretion. The rules on this subject were extensively debated during the preparation of the new law. The resulting compromise will have to be evaluated in the light of future judicial experience.

Thorough changes have also come about in the field of property. Contrary to the previous "separation" system, whereby each spouse retained ownership of his own goods and acquisitions, unless otherwise expressly agreed, the legal system now prescribes the community of property, unless otherwise agreed by public deed. However, the community covers only acquisitions by the spouses after the marriage; goods acquired before marriage remain separately owned.

The separation of spouses was already the subject of several rules in the Civil Code of 1942. However, a fundamental change is provided by the new rules. Under the old system, it was a basic principle that, apart from "consensual" separation (where both husband and wife had to agree on terms and conditions of the separation), separation was only permitted where either or both were at fault for specific reasons laid down in the law (eg adultery, wilful desertion, or grave injuries). This principle is now reversed: separation is permitted whenever cohabitation of the spouses is impossible on merely objective grounds, or is gravely prejudicial to the interests of the children, irrespective of any "fault" of either spouse.

One of the landmarks of the *Act* is the revised treatment of children. The abolition in law of the hierarchical and authoritarian structure of the family significantly affect the position not only of the spouses, but also of the children. The basic rule here is that both husband and wife have the duty to maintain and educate the children (as already stated in the old text of the Code), taking into account—and this is an important addition—their capacity, natural tendencies and aspirations. It is clear from these rules that the new law confers much importance on the interests of the children and on respect for their personality: the child is less an object, more an active subject in the life of the family.

Another consequence of the increased consideration given to the interests of the child is the relevance of the differences between legitimate and illegitimate children, and the legal status of the latter. The basic difference between the two categories has not been nullified by the *Act* nor could it be, as it is a consequence of the fact that marriage is, even under the new rules, the basis of the family, and the source of presumption of conception occurring during the present marriage. Even from this point-of-view, however, the 1975 *Act* has tried to take into account the interests of the children. In fact, it provides that the effects of a valid marriage remain valid in the case of children born or conceived in a marriage subsequently declared void, even if this marriage was contracted in bad faith, unless the nullity is due to bigamy or incest. This rule clearly aims at avoiding any discrimination between children as a consequence of the behaviour of their parents—the leitmotiv of the reform in this particular field.

As far as legitimate children are concerned, the main changes apply to the basic presumption of conception during marriage, which is now no longer valid after 300 days from the separation of the spouses and the treatment of action to disown. The latter can be now initiated not only by the husband, as previously, but also by the wife and/or the child. The law has abandoned the idea that the interest of the child is to retain the status of legitimacy, this being no longer always true, in view of social attitudes and of the improved position given to children born outside marriage. The law also provides for wider grounds for action to disown, and specifically considers blood tests as part of appropriate evidence.

The most significant changes, from the standpoint of the protection of children's interests, can be seen in the *Act* as it regulates the treatment of natural children. Natural children can always be acknowledged by their parents, even if married at the time of conception, and before the marriage is dissolved or annulled. This means in practice that adulterine children can be acknowledged beyond the strict limits traced by the old law. Moreover, judicial declaration of paternity and maternity is always possible. The above-mentioned rules also apply to all children born before the new *Act* came into force, and acknowledgements made under the old law, invalid by virtue of its provisions, may no longer be declared null and void after the new rules came into force. These basic rules reduce to a small minority those children who cannot be acknowledged (mainly incestuous children) and afford remarkable improvement in the treatment of natural children.

Full equality between natural and legitimate children is guaranteed by the law, which expressly states that acknowledgement gives the parent the same duties and rights as towards legitimate children. A number of specific provisions of the *Act* aim at ensuring practical equality of treatment by modifying or repealing several rules which previously differentiated between natural and legitimate children in

matters of maintenance or inheritance.

Further changes concern the treatment of judicial declaration of paternity and maternity, which is now subject to no statute of limitation as far as the child is concerned, and for which proof may be given by any means. In accordance with the general principles of the *Act*, authority has been conferred on both parents, whereas the former law conferred it on the father alone. In case of disagreement between the parents, the law now provides that, if the questions involved are of special importance, each parent can bring the question before the judge, who is entitled to confer the power to decide the issue to whichever parent he deems better qualified to take care of the child's interests.

In conclusion, however, it should be noted that we are dealing with problems which cannot be satisfactorily solved by merely enacting a new law, progressive and in accordance with modern principles though it may be. It is too early to judge whether the practical application of the new rules will satisfy the intentions of their enactment. It is to be hoped, in any event, that the courts will be prepared to apply the new *Act*, by taking into account the current social situation which it reflects, and not merely by trying to insert it into the old structure of the Civil Code. If they interpret the law according to traditional principles, the spirit of the reform will be largely nullified. Satisfactory application of the *Act* also implies a series of changes deeply affecting the organization of society itself, which cannot be expected to occur merely as a consequence of the law: for instance, the full realization of equality between husband and wife obviously implies changes in social structures and services (eg school, public transport, medical care), without which many obstacles will remain. But the law is only a beginning—let us hope that future developments will be in line with the spirit of the reform.

Bianca Maria Cozzi
Milan

Sex Education Working Group

The last in a series of three sub-regional working groups* on sex education was held in Luxembourg, 13–15 October 1975, with Kina Fayot (Regional Vice President) as Convenor. The German-speaking group, consisting of people nominated by member associations in Austria, Federal Republic of Germany, German Democratic Republic, Luxembourg, Poland and Yugoslavia, concentrated on preschool and primary education. Reports were presented on the development of sex education and its actual practice in the different countries. As in other European countries (see *Survey on the Status of Sex Education in European member countries*) the immediate problem is teacher training, which is generally considered to be inadequate. Considerable emphasis was placed on the importance of co-operation between the school(teacher) and parents, and it was thought that family advice centres might have a valuable role in sex education. It was agreed, too, that the training of preschool/kindergarten teachers might significantly improve the quality of preschool sex education.

*See *RIB* Vol 4 No 2 April 1975 for reports on the previous meetings.

Abortion Counselling Report

The report of the Regional Working Group on *Abortion Counselling: A European View*, held in December 1974, is published this month and is available (in English only) from the Regional Office, 64 Sloane Street, London SW1X 9SJ – price £1.00 plus postage.

Copies of the reports of the 1973 Working Group meeting on *Induced Abortion and Family Health: A European View* are still available from the Regional Office, price £1.50 plus postage.

ISSN–0306–9303

International Planned Parenthood Federation
Europe Region
64 Sloane Street
London SW1X 9SJ

Printed in England by Stephen Austin/Hertford