



HIGH LEVEL EUROPEAN SEMINAR

# PREVENTING ABORTION IN EUROPE

Legal framework and social policies

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## *Abortion and Conscientious Objection*

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**Historically, conscientious objection concerned only the military service, because it was the only case where a person could legally be required to kill another. However, in the past decades, laws have been voted that allow other exceptions to the prohibition of killing, therefore place some people, especially in the medical area, in a situation where they are required to end someone else's life. This is the case with abortion and euthanasia.**

Although the majority of the case-law and documents on conscientious objection concern the military service, objection is not limited to this area. It concerns **every** “*profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives*” (PACE Resolution 337 (1967)), especially “*within a context in which it may be necessary to deprive another human being of life*” (HRC *Kim v. Korea* § 7.3).

Normally, conscientious objection should have no reason to be claimed in the medical area: the aim of medicine is to cure, and no medical professional, in conscience, may refuse to cure. All medical professions aim at protecting life by promoting health.

However, **the scope of medical action has changed in the past decades. Various actions that are not therapeutic have been included in medical activities.** This began with contraception, developing with other non-therapeutic activities such as plastic surgery or sterilisation, eventually encompassing abortion and euthanasia.

**As the very nature of medicine was altered, the law provided conscience clauses to guarantee that medical staff would not be obliged to participate in those non-therapeutic activities.** Strictly speaking, these clauses are not conscientious objection, because there is no legal obligation to participate in such non-therapeutic activities. However, some recent developments suggest that situations leading to real medical conscientious objection are developing, as medical staff are increasingly required to participate in these non-therapeutic acts. **The problem does not lie in the conscience of the objector, but in the act demanded, which falls out of the scope of medicine and contradicts human life or dignity.** Conscientious objection is not based on a subjective opinion, which would be more or less arbitrary, but on the act at stake which objectively affects human life or dignity.

**Where human life, and possibly human nature, is at stake, it is certain that the right to conscientious objection applies.**

The right to refuse to undertake or to participate in a procedure is generally recognised but situations where people are required to act against their conscience are becoming more frequent.

## **I- GENERAL RECOGNITION OF THE RIGHT TO REFUSE TO UNDERTAKE OR PARTICIPATE IN A PROCEDURE**

The right to freedom of conscience of members of the medical professions, including their right to refuse to perform some activities or to participate in them is generally recognised, both at the international and national levels, and is settled in professional ethic rules.

### **Professional ethics**

Ethical rules of the medical profession insist on the duty of medical staff to **act in conscience**, and consequently their right not to be obliged to participate in an activity against their will. The general duty to act in conscience, for the benefit of patients is the basis of medical ethics, already reflected in the Hippocratic oath (V<sup>th</sup> century BC). Medical professionals must “*practise [their] profession with **conscience and dignity**” and “*maintain the utmost **respect for human life**”* and have the right “*both to undertake and to **object to undertake** medical procedures according to their personal conscience*”.*

The situation is similar for other medical professions, especially midwives and pharmacists. The fundamental principle guiding the conscience of members of all medical professions is respect for life.

### **International (especially European) level**

Since 1967, many resolutions of the Parliamentary Assembly of the Council of Europe have affirmed the right to conscientious objection, including in the medical area.

These resolutions manifest the **consensus on the state of the law and practice in Europe**, which comes very close to the definition of **customary international law, which is “evidence of a general practice accepted as law”**.

The **case-law of the ECHR** has also repeated that freedom of conscience in the workplace has to be respected, imposing on the State the obligation **to create a mechanism reconciling the concurring rights**.

Moreover, the Court has ruled that **the possibility to change job was not sufficient effectively to protect the right to freedom of conscience**.

### **National level**

This right is also recognised at the national level. In European countries where abortion (or euthanasia in some rare countries) have become legal, it is only under strict conditions. In any other cases, they remain criminal offences. As they are clearly exceptions to the prohibition of killing, the law clearly says that no one can be forced to participate in them.

**Freedom of conscience is guaranteed in all countries, including for medical staff in almost all.** Only five European States do not include freedom of conscience of medical practitioners: Bulgaria, the Czech Republic, and three northern countries (Iceland, Finland and Sweden).

All the other European States provide protection for the freedom of conscience of health professionals, either by law or in their constitution. In the written text you will find many examples and references of laws of various countries.

## **II- INCREASING OCCURRENCES OF OBLIGATIONS TO PERFORM ACTS CONTRARY TO CONSCIENCE**

**However, it may – and does – happen that some laws order health professionals to perform acts that are contrary to the aim of medicine.**

**Some people consider abortion as a right, not an exception to the right to life. This view is not founded in medical ethics, in international law or in most national laws.** Abortion and euthanasia are exceptions to the medical duty to protect life. No treaty admits abortion as a right; the 1994 **Cairo Conference** affirmed: *“In no case should abortion be promoted as a method of family planning”* and repeatedly called on States

to prevent abortion and help women avoid abortion. The **ECHR** has also repeated that **“Article 8 cannot be interpreted as conferring a right to abortion”**.<sup>1</sup>

Most national laws also expressly state that life must be respected; abortion and euthanasia where applicable are legal only under strict conditions, they are not “fundamental rights”.

However, there is a trend which claims that they are individual rights, and it influences the law and its interpretation in some countries.

## **Sweden**

**If abortion and euthanasia are considered rights and not exceptions, then it is not legitimate to refuse to perform them.** It is the case in **Sweden** regarding abortion. Doctors, midwives and other medical or auxiliary staff are obliged to perform abortion or participate in it. **Students** who refuse cannot get their diploma or have to choose another speciality. **Gynaecologists** who refuse to perform abortions cannot work in hospital and are barred from university research and teaching. **Physicians and midwives can lose their jobs or be denied employment** for refusing to participate in abortions. In some cases local arrangements are reached, but most of the time those who refuse suffer **severe discrimination and sanctions**. Recently, a midwife’s contract was not renewed, then she could not find any job because of her refusal to participate in abortions. She went to court, lost her case and had to pay huge damages. The only possibilities for her were to renounce her profession and become a nurse, or to go abroad, which she did. She is now a midwife in Norway.

## **Creeping discrimination**

**Unavowed constraint on medical staff and creeping discrimination are developing.** For example, in **France**, refusal to participate in abortion is theoretically protected, but public hospitals with gynaecology or surgery beds are obliged to perform abortions. Since doctors and midwives willing to perform abortions are scarce, all of them have to do it in turn and they can hardly exercise their right (though guaranteed by law) to refuse.

When abortion became legal, only the surgical method existed, so **pharmacists** were not expressly protected in France. Now that **chemical abortion** is frequent, they can have real conscience problems. Recently, a French pharmacist lost her job because she refused to sell morning-after pills (though she always asked a colleague, so the client got the product); she lost her case in the employment tribunal, and is now going to the court of appeal.

In the **UK**, **NHS job offers** specify that applicants should be *“prepared to carry out the full range of duties which they might be required to perform if appointed”*, implicitly

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<sup>1</sup> *A. B. C., v. Ireland*, 25579/05, GC 16 December 2010, § 214; *P. and S. v. Poland*, 57375/08, 30 October 2012, § 96.

including duties related to termination of pregnancy. Some **alleged cases of discrimination** were reported, like one in Scotland in 2000<sup>2</sup>.

**Until recently, this dangerous trend concern only abortion.** However, a recent case in **Belgium** suggests that the same could follow about **euthanasia**. A **nursing-home** refused to let a physician coming to euthanize a patient enter its premises. Finally, the patient went back to her home and was killed there. Her children are now suing the nursing-home for having refused the euthanasia to take place there, saying it increased the physical and moral suffering of their mother<sup>3</sup>.

## **Conclusion**

Termination of life is a fact: it is not a matter of religious belief, but of morals. Objectors may be of any religion or none at all.

The first documented case of conscientious objection in history concerns midwives, when Pharaoh ordered **Hebrew midwives** to kill male newborns, and they did not obey (Ex 1, 15-21). This happened in the **XIV<sup>th</sup> or XIII<sup>th</sup> century BC, before the birth of Moses, in other words before the 10 Commandments. It clearly shows that respect for life is part of the moral law printed in human conscience**, independently from religious beliefs.

Therefore, the right to conscientious objection does not stem from the freedom of religion and belief, but directly from freedom of conscience itself: from the human conscience' ability to adopt moral convictions on what to do, or not to do, on what is good and what is not good. It is a right not to be forced to take part, against your conscience, in the voluntary termination of a human life even if such termination is permitted by law.

Legalising abortion or euthanasia is one thing, obliging individuals to perform them against their will is another. Recognising the right not to be forced to participate in them does not affect the legality of abortion and euthanasia, or the possibility to have access to these procedures. Democratic States claiming to protect and promote human rights cannot refuse protection of one of the most fundamental human rights, freedom of conscience, to a category of population – namely the medical professions – because of their convictions, their moral judgment on what they should do, or not do.

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<sup>2</sup> BBC, 7 October 2000, "Abortion views cost job" <http://news.bbc.co.uk/2/hi/health/961169.stm>

<sup>3</sup> " Une maison de retraite a refusé l'accès à un médecin pratiquant l'euthanasie" La Libre, 2 January 2016 <http://www.lalibre.be/actu/belgique/une-maison-de-retraite-a-refuse-l-acces-a-un-medecin-pratiquant-l-euthanasie-5687780c3570b38a57ed03d9>