



14 September 2015

AMICUS CURIAE BRIEF¹

to

Jönköpings Tingsrätt (District Court of Jönköping),

in the case of

Ellinor Grimmark ./ Region Jönköpings län (Regionen)

Case nr T 1781-14

FREEDOM OF CONSCIENCE, A CORNERSTONE OF HUMAN RIGHTS

Freedom of conscience is at the very core of human rights. It is protected in all human rights instruments, especially in Article 18 of the International Covenant on Civil and Political Rights ('the Covenant', ratified by Sweden in 1971) and Article 9 of the European Convention on Human Rights ('the Convention'), directly and/or through the prohibition of discrimination.

Its importance is underlined by the fact that, according to Article 4 of the Covenant, **no derogation can be made to this right** even "*in time of public emergency which threatens the life of the nation*". According to Article 9-2 of the European Convention (and Article 18-3 of the Covenant), limits can be brought only to the *manifestation* of religion or belief, under strict conditions, never on the substance of the right. The Strasbourg Court regularly asserts that, "*As enshrined in Article 9, freedom of thought, conscience and religion is one of the **foundations of a "democratic society"** within the meaning of the Convention*" and insists that "*it is also a precious asset for atheists, agnostics, sceptics and the unconcerned.*" (*Kokkinakis v. Greece*, 14307/88, 25/05/1993 § 31)

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² "*The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him*"; on the duty to

Freedom of conscience has an internal dimension, the freedom to adhere or not to adhere to a belief, and an external dimension, the freedom to act “*in accordance with the dictates of his own conscience*” (Helsinki Final Act, Principle VII). This implies not only freedom *not to be prevented* from acting according to one’s conscience (*i.e.* from manifesting one’s belief) but also the right *not to be compelled* to act against one’s conscience, as the Human Rights Committee recognised: “*while the right to manifest one’s religion or belief does not as such imply the right to refuse all obligations imposed by law, it provides certain protection, consistent with article 18, paragraph 3, against being forced to act against genuinely-held religious belief.*” (Yoon and Choi v. Republic of Korea, 3rd November 2006, § 8.3)

CONSCIENTIOUS OBJECTION, A NECESSARY COROLLARY OF FREEDOM OF CONSCIENCE

As human beings are endowed with conscience and able to make a moral judgement, conscientious objection is both a duty, enshrined in Principle IV of the Nuremberg Principles,² and a right. This is why it was already mentioned in the Convention and the Covenant.

The development of international human rights law has led to recognise **objection as an integral part of freedom of conscience.**

The UN mechanism

In General Comment 22 (1993) on Article 18, the Human Rights Committee (HRC) stated that “*The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief.*”

This led the Committee to find violations of Article 18 of the Covenant in countries that do not recognise conscientious objection: conscientious objection is an essential part of freedom of religion or belief. In the case *Jeong et al v. Republic of Korea* (communications 1642-1741/2007, 24 March 2011, § 7.3) the Human Rights Committee recognised that conscientious objection is not a mere manifestation of belief, but a constituent element of freedom of conscience: “*The Committee recalls its General Comment No 22 where it has considered that the fundamental character of the freedoms enshrined in article 18, paragraph 1 is reflected in the fact that this provision cannot be derogated from, even in*

² “*The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him*”; on the duty to object, see also ECHR, *Polednova v. the Czech Republic*, 2615/10, June 21st 2011 and *K.-H. W. v Germany*, 37201/97, GC March 22nd 2001.

time of public emergency, as stated in article 4, paragraph 2 of the Covenant. Although the Covenant does not explicitly refer to a right of conscientious objection, **the Committee believes that such a right derives from article 18, inasmuch as the obligation to be involved in the use of lethal force may seriously conflict with the freedom of conscience. The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion.**" The same paragraph is found in all subsequent cases on conscientious objection.

Freedom of conscience is not protected if people are obliged to act against the dictates of their conscience. For the Committee, it is clear that the right of objectors to refuse military service stems directly from the right to freedom of conscience (1st sentence of Art. 18-1) therefore is not subject to limitations under Art. 18-3. In the case of *Atasoy and Sarkut v. Turkey*, the Committee repeated **"that the right to conscientious objection to military service is inherent to the right to freedom of thought, conscience and religion."** (1853-1854/2008, 29 March 2012 § 10.4)

In the case of *Kim v. Republic of Korea* (1786/2008, 25 October 2012, § 7.3 7.4), the Human Rights Committee was even more precise: **"The Committee further notes that freedom of thought, conscience and religion embraces the right not to declare, as well as the right to declare, one's conscientiously held beliefs. Compulsory military service without possibility of alternative civilian service implies that a person may be put in a position in which he or she is deprived of the right to choose whether or not to declare his or her conscientiously held beliefs by being under a legal obligation, either to break the law or to act against those beliefs within a context in which it may be necessary to deprive another human being of life.**"

The Council of Europe instruments

The European Court of Human Rights (ECHR) also **"considers that opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9."** (GC, 7 July 2011, *Bayatyan v. Armenia*, 23459/03, § 110)

The Court concluded Armenia had violated Article 9, especially because the majority should not always impose their view in a democratic society: **"The Court further reiterates that pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position**

(see Leyla Şahin, cited above, § 108). Thus, respect on the part of the State towards the beliefs of a minority religious group like the applicant's by **providing them with the opportunity to serve society as dictated by their conscience** might, far from creating unjust inequalities or discrimination as claimed by the Government, rather ensure cohesive and stable pluralism and promote religious harmony and tolerance in society." (Bayatyan, § 126)

Through this judgment, the Court rallied to the position of the Parliamentary Assembly of the Council of Europe (PACE), which had advocated conscientious objections for decades, since 1967. The Court expressly relied on the various PACE resolutions and recommendations (§ 51-53), beginning with Resolution 337 (1967):

*"1. Persons liable to conscription for military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service **shall enjoy a personal right to be released from the obligation to perform such service.***

2. This right shall be regarded as deriving logically from the fundamental rights of the individual in democratic Rule of Law States which are guaranteed in Article 9 of the European Convention on Human Rights."

The Court further mentioned Recommendation 478 (1967), Recommendation 816 (1977) and Recommendation 1518 (2001) – which states that **the right to conscientious objection is a "fundamental aspect of the right to freedom of thought, conscience and religion"** enshrined in the Convention – and Recommendation 1742 (2006) concerning the human rights of members of the armed forces.

These PACE resolutions and recommendations manifest the **consensus in Europe on conscientious objection**, confirmed by Recommendations R(87)8 and CM/Rec(2010)4 of the Committee of Ministers, also mentioned in the *Bayatyan* judgment.

CONSCIENTIOUS OBJECTION IN THE WORKPLACE, ESPECIALLY IN THE MEDICAL AREA

Although the majority of the case-law and documents on conscientious objection regards military service, objection is not limited to this area. It concerns **every "profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives"** (APCE Resolution 337 (1967)), especially **"within a context in which it may be necessary to deprive another human being of life"** (HRC *Kim v. Korea*). Therefore, it is certain that it applies to medical acts where human life is at stake, such as abortion and euthanasia. Human life is a continuum from the moment of fertilisation, as recalled by the Court of Justice of the European Union in the case of *Oliver Brüstle v Greenpeace e.V* (C-34/10, 18 October 2011, § 35).

The European Court of Human Right has also just confirmed that “*human embryos cannot be reduced to ‘possessions’*” (*Parrillo c. Italy*, 46470/11, GC 27 August 2015, § 215). Since Roman law, only two categories exist, therefore it can safely be deduced that, if embryos do not belong to the category of things, they necessarily belong to that of persons. The Court had already stated that “*it may be regarded as common ground between States that the embryo/foetus belongs to the human race. **The potentiality of that being and its capacity to become a person ... require protection in the name of human dignity***” (*Vo v. France*, 53924/00, GC 8 July 2004, § 84). It cannot be contested that abortion consists in ending a human life, therefore refusal to perform abortion is a case of conscientious objection as protected by international and European law.

The right to conscientious objection in the medical area is not contested

The most recent general human rights instrument, the Charter of Fundamental Rights of the European Union, expressly recognises the right to conscientious objection, without limiting it to military service (Article 10.2).

In two cases against Poland, the European Court of Human Rights, considering that conscientious objection and the access to legal abortion respectively fall under Articles 9 and 8 of the Convention and are in conflict, judged that “*states are obliged to organise the health services system in such a way as to **ensure that an effective exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation***” (*R.R. v Poland*, 27617/08, May 26th 2011, §206; *P. and S. v. Poland*, 57375/08, October 30th 2012, § 106). **The Court refused to make one right prevail over the other and imposed the responsibility to create a mechanism reconciling the concurrent rights on the State.** The Court insisted on this point, noting that the Polish law “*has acknowledged the need to ensure that doctors are not obliged to carry out services to which they object, and put in place a mechanism by which such a refusal can be expressed. **This mechanism also includes elements allowing the right to conscientious objection to be reconciled with the patient’s interests***” (*P. and S. v. Poland*, § 107).

The Parliamentary Assembly of the Council of Europe (PACE) has solemnly recalled in **Resolution 1763 (2010): “no person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human foetus or embryo, for any reason”.**

This importance and authority of this resolution is revealed in particular by the energy of Sweden to fight it. On May 11th 2011, the Swedish Parliament organised a debate on Resolution 1763 (2010). The Commission of Foreign Affairs, at the origin of the debate, recommended that the Parliament incite the Government to criticise the content of the

Resolution 1763 and to try and obtain a change in the nature of this Resolution³. The Parliament accepted the recommendation of the Commission of Foreign Affairs by 271 votes against 20. Therefore Sweden, alone among the 47 member States, officially took position against the freedom of conscience of medical practitioners and the Government instructed its delegation to try and change this Resolution. If Resolution 1763 had been but an empty shell, Sweden would not have bothered trying to change it. The fact that it fiercely opposed the resolution shows that it recognises its authority as a soft law document reflecting 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*” according to article 38 of the statute of the International Court of Justice).

The importance of conscientious objection in the medical area was recalled in Resolution 1928 (2013) of April 24th 2013 Safeguarding Human Rights In Relation To Religion And Belief, And Protecting Religious Communities From Violence, the PACE called Member States to “***ensure the right to well-defined conscientious objection in relation to morally sensitive matters, such as military service or other services related to health care and education, in line also with various recommendations already adopted by the Assembly, provided that the rights of others to be free from discrimination are respected and that the access to lawful services is guaranteed***”.

Various resolutions have also insisted on the right to freedom of conscience, which includes objection, in the workplace. Thus, in Resolution 1846 (2011), the PACE called on States to “***uphold freedom of conscience in the workplace while ensuring that access to services provided by law is maintained and the right of others to be free from discrimination is protected***”.

These resolutions and recommendations are soft law instruments: though not legally binding, they reflect the consensus existing in Europe. Actually, all European countries except Sweden seem to recognise conscientious objection in the medical area, at least to some extent. The Strasbourg Court regularly relies on APCE resolutions and recommendations when deciding a case, as can be seen again in the most recent case of *Parrillo v. Italy* where it quoted two Recommendations of the Parliamentary Assembly regarding the protection of embryos, namely Rec 1046 (1986) and Rec 1100 (1989).

In the case of *International Planned Parenthood Federation – European Network (IPPF EN) v. Italy* (87/2012, 10 September 2013), the European Social Rights Committee never contested the right of conscientious objection of medical staff but simply repeated that the State was responsible for the organisation of hospitals so as to provide access to legal services: “*adequate measures must be taken to ensure the availability of non-objecting medical practitioners and other health personnel when and where they are required to provide abortion services*” (§ 163).

³ 2009/10:UU15 and 2011/12:KU14 http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Fri--och-rattigheter_GZ01KU14/

In the case of *Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden*, (99/2013, 17 March 2015), the right to conscientious objection was not contested either: the Committee merely said it was not covered by Article 11 of the Social Charter on the right to health, which does not affect its protection under the right to freedom of conscience.

Reconciliation of 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**: *“Given the importance in a democratic society of freedom of religion, the Court considers that, where an individual complains of a restriction on freedom of religion in the workplace, rather than holding that the possibility of changing job would negate any interference with the right, the better approach would be to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate.”* (*Eweida and others v. the United Kingdom*, 48420/10, 15 January 2013, § 83). A very serious reason, such as a grave breach of the rights of others, must exist to justify depriving somebody of their job.

However, the balancing required by the ECHR is not applicable where a right protected by the Convention conflicts with rights not so protected: *“It is a different matter where restrictions are imposed on a right or freedom guaranteed by the Convention in order to protect ‘rights and freedoms’ not, as such, enunciated therein. In such a case only indisputable imperatives can justify interference with enjoyment of a Convention right”* (ECHR *Chassagnou and others v. France*, 25088/94, 2833/95, and 2844/95, GC 29 April 1999, § 113). Now, while freedom of conscience is one of the most fundamental human rights, abortion cannot be claimed as a human right at the international or European levels. Not treaty admits abortion as a right; the 1994 Cairo Conference on Population and Development not only affirmed: *“In no case should abortion be promoted as a method of family planning”* (§ 8.25) but also repeatedly called on States to prevent abortion (e.g. §§ 7.6 and 8.25) and help women avoid abortion (§ 7.24).

The ECHR has also repeated that “Article 8 cannot be interpreted as conferring a right to abortion”⁴.

Even the European Social Rights Committee, in the aforementioned case of *IPPF EN v. Italy*, accepted to examine the issue of access to abortion services with regard to the right to health only because *“national legislation has classified (abortion services) as a form of medical treatment that relates to the protection of health and individual well-being, and which therefore can be considered to come within the scope of Article 11 of the*

⁴ *A. B. C., v. Ireland*, 25579/05, GC 16 December 2010, § 214; *P. and S. v. Poland*, 57375/08, 30 October 2012, § 96.

Charter" (§ 161), not because the Social Charter encompasses an alleged right to abortion.

It is thus quite clear that an alleged right to abortion, with no existence in international law, cannot prevail over one of the most fundamental human rights, namely freedom of conscience. Neither can Sweden hide behind the margin of appreciation: **this margin does not concern the existence of the right to conscientious objection, but at most its conditions of implementation, provided they do not impair the substance of the right.**

The balance can hardly be done with the right to health either, as abortion has no therapeutic effect. Pregnancy is not a disease, which would be cured by abortion. Only in the very rare cases where pregnancy directly threatens the life of the mother is this balance relevant, but then there is no right to objection: all possible measures to save the woman's life must be taken, even if the consequence is the termination of pregnancy.

The Court has accepted that abortion may fall within the scope of the right to private life, in which case concurring rights must be reconciled, keeping in mind the outstanding position of freedom of conscience and religion in a democratic society. In the case of *Tysiak v. Poland* case (5410/03, 20 March 2007), the European Court clearly refused to limit the right to conscientious objection, when the applicant (as well as a third party) complained that "*a gynaecologist could refuse to perform an abortion on grounds of conscience*", and further complained that "*a patient could not bring a doctor to justice for refusing to perform an abortion*" (§ 100). **The Court clearly refused to undermine, at any moment in its decision, the freedom of conscience of medical practitioners.** It is the State's responsibility to organise hospitals so as to permit the exercise of concurring rights.

Discrimination

The protection of freedom of conscience can also be ensured through the prohibition of discrimination, banned both by EU law and Council of Europe standards. If exercising one's right to freedom of conscience causes severe adverse consequences, the freedom is not effectively protected. Losing one's job and being obliged to change occupation is a very grave adverse consequence, with severe effects on private life. It can only be justified by very compelling reasons.

European Union's Council Directive 2000/78/EC of 27 November 2000 Establishing A General Framework For Equal Treatment In Employment And Occupation prohibits direct and indirect discrimination, based upon, inter alia, religion or belief. It applies to:

*a) conditions for **access to employment**, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;*

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and working conditions, including dismissals and pay;

Article 14 of the European Convention on Human Rights prohibits discrimination based on religion or belief in the exercise of the rights guaranteed in the Convention. The Court has always recognised that people in a different situation must be treated differently, otherwise they would be victims of discrimination: ***“the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”*** (*Thlimmenos v. Greece*, 34369/97, GC 6 April 2000, § 44)

An objector and a non-objector are in radically different situations with regard to abortion: while the latter can do it, the former cannot because it would contradict the dictates of his conscience, his strongest and most intimate convictions based possibly on faith but mainly on rational thinking and scientific evidence that life is a continuum from fertilisation to death. Therefore, the situation of the objector is different and he must be treated differently, which can easily be done, especially in Sweden where objectors are rare.

Otherwise, the effect of the refusal to respect the freedom of conscience results in barring people who fully respect life from professions linked with pregnancy, which is both paradoxical and discriminatory. People with all the scientific skills and human qualities for these professions are deterred from them by the systematic discrimination they undergo. In the end, the patients, especially pregnant women, suffer the consequences of this obstinacy. Moreover, the lack of recognition of the right to conscientious objection not only **worsens the shortage of midwives and deprives the medical staff of their right but also deprives some patients of midwives and doctors sharing their beliefs and the risk for these women to be pressured into abortion becomes very high.** Therefore, claiming that the right to conscientious objection would jeopardise access to health services is false. On the contrary, it would guarantee a diversified access, corresponding to the diversity of patients.

A very simple solution would eliminate all problems and meet the requirements of a democratic society: recognise the right of medical staff, and organise hospitals accordingly. This would be particularly easy in Sweden, where abortion is accepted by the majority of medical staff, and would be in accordance with the ECHR findings in *Bayatyan* and with the consensus reflected in various PACE resolutions, such as Resolution 1846 (2011) Combating All Forms Of Discrimination Based On Religion 25 November 2011 ***“when enacting legislation and implementing appropriate policies, strive to accommodate the needs of different religions and beliefs in a pluralist society, provided that any such measures do not infringe the rights of others;”***

Similarly, a very recent APCE resolution insists on the necessity to accommodate beliefs to ensure effective freedom of conscience, which is a foundation of a democratic and pluralist society and is necessary for peace and harmony in a pluralist society. Resolution 2036 (2015) Tackling Intolerance And Discrimination In Europe With A Special Focus On Christians underlines that acts of hostility against Christians are often overlooked by the national authorities and that *“Expression of faith is sometimes unduly limited by national legislation and policies which do not allow the accommodation of religious beliefs and practices”*. This resolution insists that ***“The reasonable accommodation of religious beliefs and practices constitutes a pragmatic means of ensuring the effective and full enjoyment of freedom of religion. When it is applied in a spirit of tolerance, this concept allows all religious groups to live in harmony in the respect and acceptance of their diversity.”*** Intolerance against objectors – who often are Christians, even if the objection is based on conscience, not necessarily religion – is a manifestation of this hostility, overlooked by some States but matter of concern for the European institutions.

Once again, *“The role of the authorities in a situation of conflict between or within religious groups is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.”* (ECHR, *Holy Synod of the Bulgarian Orthodox Church*, 412/03 35677/04, 22 January 2009 § 120)

Organising health services so as to accommodate the needs of conscientious objectors would remedy the present violation of freedom of conscience and eliminate discrimination based on religion or belief.

ABORTION AND FREEDOM OF CONSCIENCE IN ETHICAL PROFESSIONAL GUIDELINES

According to the International Confederation of Midwives (ICM) *International Code of Ethics for Midwives*,⁵ the aim of the profession is to *“improve the standard of care provided to women, babies and families”*. Abortion is not mentioned and it is obvious that young women who want to become midwives long to help women bring babies into the world, not to abort them.

The Scope of Practice in the Definition of the Profession reads as follows:

“The midwife is recognised as a responsible and accountable professional who works in partnership with women to give the necessary support, care and advice during pregnancy, labour and the postpartum period, to conduct births on the midwife’s own responsibility and to provide care for the newborn and the infant. This care includes preventative measures, the promotion of normal birth, the detection of complications in mother and

⁵ Adopted at Glasgow International Council meeting, 2008, Reviewed and adopted at Prague Council meeting, 2014

http://internationalmidwives.org/assets/uploads/documents/CoreDocuments/CD2008_001%20V2014%20ENG%20International%20Code%20of%20Ethics%20for%20Midwives.pdf

child, the accessing of medical care or other appropriate assistance and the carrying out of emergency measures.

The midwife has an important task in health counselling and education, not only for the woman, but also within the family and the community. This work should involve antenatal education and preparation for parenthood and may extend to women's health, sexual or reproductive health and child care.”⁶

This profession resolutely aims at promoting life. Abortion is not mentioned. Even if “sexual or reproductive health care” was considered a euphemism for abortion, the text only says that education and counselling *may extend* to this area, not that midwife should perform abortions or participate in them.

Abortion has very little place in the various documents of the ICM. For example, the text on the Essential Competencies⁷ of midwives does not mention it in the Key Midwifery Concepts nor in the Scope of Midwifery Practice. Abortion is only mentioned at the very end of the document as a subsidiary topic under the item Facilitation of Abortion-Related Care, which clearly does not mean that a midwife is obliged to perform abortion herself.

Abortion is definitely not a constituent part of the work of midwives.

Section III of the *International Code of Ethics for Midwives* specifies:

c. Midwives may decide not to participate in activities for which they hold deep moral opposition; however, the emphasis on individual conscience should not deprive women of essential health services

d. Midwives with conscientious objection to a given service request will refer the woman to another provider where such a service can be provided.

Similarly, the International Federation of Gynaecologists and Obstetricians (FIGO) regularly recalls the right to conscientious objection of medical practitioners. The FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health has gathered a number of fundamental texts in a document entitled *Ethical Issues in Obstetrics and Gynaecology*, October 2012, with one concerning “Ethical Guidelines on Conscientious Objection” (p. 25-27). This document asserts that “Practitioners have the rights both to undertake and to **object to undertake** medical procedures according to their personal conscience” (p. 26) and repeats: “**Practitioners have a right to respect for their conscientious convictions in respect both of undertaking and not undertaking the delivery of lawful procedures, and not to suffer discrimination on the basis of their**

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<http://www.internationalmidwives.org/assets/uploads/documents/Definition%20of%20the%20Midwife%20-%202011.pdf>

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<http://internationalmidwives.org/assets/uploads/documents/CoreDocuments/ICM%20Essential%20Competencies%20for%20Basic%20Midwifery%20Practice%202010,%20revised%202013.pdf>

conviction” (p. 27). Many other FIGO resolutions and documents refer to conscientious objection. The only obligation of physicians is “*to disclose their objection*”⁸ and “*make every effort to achieve appropriate referral.*”⁹

The World Health Organisation also recognises that “*Individual health-care providers have a right to conscientious objection to providing abortion.*”¹⁰

Conclusion

Sweden is quite isolated in its refusal of conscientious objection for medical staff, as all other European countries recognise it in some way or other. In the absence of a specific law about freedom of conscience, including conscientious objection, the existing provisions on discrimination are manifestly not sufficient since they fail to protect an essential right of a category, the medical professions, and submit them to discrimination based on their deeply held convictions. The ban on conscientious objection is clearly out of proportion with the alleged risk for society, and in breach of Sweden’s international commitments.

Termination of life is a fact. Therefore, the right to conscientious objection is not part of a more general right to have “an opinion” or a religious belief; it is a right not to take part in the voluntary termination of a human life when such termination is permitted by law, whether you have a religious belief or not. Thus, the purpose of the “conscience clause” is less to permit anyone to object than to make sure that no one is forced to participate against their will.

⁸ Guidelines Regarding Informed Consent, in *id.* p. 15

⁹ Ethical Framework for Gynaecologic and Obstetric Care, in *id.* p. 13

¹⁰ *Safe Abortion: technical and policy guidance for health systems*, 2012, p. 69
http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf?ua=1