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Strasbourg, May 23th 2015

Object: Complaint concerning the systemic violation of the freedom of conscience of medical staff in Sweden.

Mr Special Rapporteur,

This is an individual complaint brought by the *European Centre for Law and Justice* concerning the violation of the freedom of conscience of medical practitioners in Sweden.

This is a systemic violation. The authors of the violation are the national authorities who refuse to put in place a legal framework allowing the exercise of conscientious objection, as well as the medical and health authorities who, except for rare cases, refuse local agreements which could reconcile the proper functioning of services with the respect for the right to conscientious objection.

Respectfully yours,

INDIVIDUAL COMPLAINT QUESTIONNAIRE

1. GENERAL INFORMATION

Does the incident involve an individual or a group?

A group of individuals

If it involves a religious or belief group please state the number of people involved and the denomination of the group:

Persons involved in women's health: doctors, in particular gynaecologists, obstetricians but also anaesthetists, midwives, nurses, student doctors, student midwives and student nurses...

Countries in which the incident took place:

Sweden

Nationality(s) of the victim (victims):

Swedish

- Does domestic law require (re-)registration of religious associations and if yes, what is the current status of the group in question?

Independent of religion

2. IDENTITY OF THE PERSONS CONCERNED

The victims cannot be notably identified because there are too many. They are represented notably by the Christian society of doctors and medical students KLM.

Gave their testimonies in this complaint:

- Christina L., midwife
- Ingrid CARLSSON, midwife
- Siv BERTILSSON, midwife
- Elin EIDERBRANT, midwife
- Annika LANDGREN, GP
- Marie WIGANDER, doctor
- Sofi BERGGREN, doctor

- Anna-Maria ANGERSTIG, paediatrician
- Andrea KISCHKEL, paediatrician

Denomination of his/her religion or belief:

Respect for the life of the unborn child, therefore conscientious objection to personally participate in abortions, especially late abortions.

Place of residence or origin:

Sweden

Age: adults

Sex: Females (majority) and males

Nationality(s):

Swedish

3. INFORMATION REGARDING THE ALLEGED VIOLATION

- Date and time (approximate, if exact date is not known):

Recurrent

- Place (location and country/countries):

Sweden

- Please provide a detailed description of the circumstances of the incident in which the alleged violation occurred respectively the nature of the governmental action:

In Sweden, abortion is free on demand for 18 weeks, according to the Abortion Act (1974:595). In the *travaux préparatoires*, freedom of conscience was presumed but no legal clause was introduced in the law. Practically, now there is no hospital that does allow conscientious objection for medical health care workers, who therefore are victims of discrimination.

The right to conscientious objection in International law

However, the right to conscientious objection in relation to abortion is largely recognised in European and international human rights law (see the attached document on conscientious objection). 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*” (ECHR, May 26th 2011, n° 27617/08, *R.R. v Poland*, §206; ECHR, October 30th 2012, n° 57375/08, *P. and S. v. Poland*, § 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*” (ECHR, October 30th 2012, n° 57375/08, § 107).

It is suitable to remind Sweden, as the European Court did in the case *Bayatyan v. Armenia* (July 7th 2011, n° 23459/03), that only the attitude aiming at reconciling the concurrent rights, rather than opposing them, is likely to “*ensure cohesive and stable pluralism and promote religious harmony and tolerance in society*” (§126).

The Parliamentary Assembly of the Council of Europe (PACE) has solemnly recalled in its 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*”.

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 “*9.10 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*”.

Similarly, in Resolution 2036 (2015) January 29th 2015 “*Tackling Intolerance and Discrimination in Europe with a Special Focus on Christians*”, the PACE called the States to “*6.2.2. 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*”.

Yet, on May 11th 2011, the Swedish Parliament organised a debate on Resolution 1763 (2010) of the Parliamentary Assembly of the Council of Europe on the Right to Conscientious Objection in Lawful Medical Care. The very possibility that health professionals can exercise a right to conscientious objection was questioned. 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 Resolution¹. The Parliament accepted the recommendation of the Commission of Foreign Affairs by 271 votes against 20. Sweden therefore officially took position against the freedom of conscience of medical practitioners and the Government instructed its delegation to try and change this Resolution.

¹ 2009/10:UU15 and 2011/12:KU14 http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/Fri--och-rattigheter_GZ01KU14/

The absence of freedom of conscience in Sweden

In Sweden, a doctor cannot refuse to perform an abortion even if the only reason is the sex of the baby. However, States have long been fighting against prenatal sex selection. In 1994, the Cairo Conference on population and development, paragraph 4.16 fixed as an objective the elimination of infanticide and prenatal sex selection, qualifying that it was “*harmful and unethical practices*”. More recently, Council of Europe Parliamentary Assembly Resolution 1829 (2011) condemned prenatal sex selection and asked States to “*prohibiting sex selection in the context of assisted reproduction technologies and legal abortion*”. Yet, Sweden continues to authorise prenatal sex selection. The problem of abortion because of the sex in Sweden is mentioned in the report of Ms Doris Stump², who emphasised the importance of Resolution 1829 of the Parliamentary Assembly of the Council of Europe on prenatal sex selection: “*the National Board of Health and Welfare was asked to give its opinion on a specific case and clarify whether medical staff are obliged to disclose the sex of the foetus even if there are no medical reasons, and to perform an abortion even when the sex of the foetus is the only basis for the request. The reply was affirmative*”³. The question was asked in response to the request of a woman, mother of two girls, to know the sex of her unborn child thanks to an amniocentesis. She already had two abortions because of the foetus’ sex. The hospital would not reveal the baby’s sex to avoid repeated abortions because of the sex, without any medical reason. The National Board of Health and Welfare said that the doctors could not refuse to tell sex or reject a request for an abortion up to 18 weeks even if the sex of the foetus was the only reason⁴.

Some medical personnel refuse to participate in abortions, especially late term abortions, because of the risk that the aborted child may be born alive. This is a complication that is not exceptional and is becoming more common when the pregnancy is more advanced. A study published in 2007⁵ found that about 1 out of 30 abortions after 16 weeks resulted in a born alive baby. At 23 weeks, the proportion was 9.7%, almost 1 in 10. According to some witnesses, the proportion is even much higher. **Swedish midwife Siv Bertilsson considers that a quarter of babies aborted after the 16th or 17th week live between 5 and 15 minutes.** To see these newborns struggling for breath and dying alone is inhumane for the child and traumatic for the midwife. Siv Bertilsson participated in abortions beyond 12 weeks at the beginning of her career. She has horrible flashbacks of those newborns dying in a bowl⁶. She was afterwards able to avoid participating in abortions but a reorganization of the department will soon force her to participate again, against her will. She therefore wonders whether to leave the profession she has been exercising for 36 years, or to submit to orders. In this context, she asked the National Board of Health and Welfare (*Socialstyrelsen*, government agency under the authority of the Minister of Health) for instructions on what to do with these babies, “*What should I do of the foetus if it is alive? I read in the law on the welfare of animals how to kill kittens, puppies and other small animals, and there are clear*

² Doc. 12715, report of the commission of the equality of chances for females and males in relation to Resolution 1829 (2011) of the Parliamentary Assembly of the Council of Europe on prenatal gender selection.

³ Explanatory memorandum by Ms Stump, rapporteur, Para. 112.

⁴ <http://www.thelocal.se/19392/20090512>

⁵ *British Journal of Obstetrics and Gynecology* <http://onlinelibrary.wiley.com/doi/10.1111/j.1471-0528.2007.01279.x/abstract>

⁶ <http://www.dagensmedicin.se/omvardnad/varfor-finns-inga-regler-for-hur-man-avlivar-foster-humant/>

rules on how to kill without causing distress or pain to the animal. Why are there no rules on how to humanely kill a human foetus? ⁷.”

Even after the legal limit of 18 weeks, and the limit of 21 weeks + 6 days set by the medical authorities, abortions are performed. Doctor Andrea Kischkel reports on an abortion, authorised by the *Socialstyrelsen*, ended at **22 weeks + 3 days** at the hospital of Gällivare. Informed shortly before, Dr Kischkel tried to have the mother transferred to the 3rd level Neonatal Intensive Care Unit of Umeå where neonatologists try to save premature born babies’ lives from gestational age 22 + 0 weeks. That was refused because it was an abortion. **A little girl was born alive on 1st March 2014 at 7:55 pm. The midwives were not allowed to contact the paediatrician on call.** Therefore, the child was given no medication, no pain relief although she had been pulled out by vacuum extraction. A midwife swept the baby into warm towels and waited until she had died, nearly half-an-hour later.

Not only is conscientious objection not provided for in Swedish law, it is even expressly rejected where abortion is concerned, even if the sex of the baby is the only reason. The Swedish Government and Parliament regularly reject proposals of a conscience clause for medical staff and students⁸. Sweden considers that people who have belief concerning the respect for life must choose an occupation without link to pregnancy. The former Minister for Social Affairs, Mr Göran Hägglund, said it publicly. Medical authorities agree. Heidi Stensmyren, president of *Sveriges Läkarförbund* (Swedish Medical Association) and Sineva Ribeiro, president of the *Vårdförbundet* (medical union, which claims 80% of the workforce) published an article⁹ with Christina Ljungros, president of the lobby RFSU (*Riksförbundet för sexuell upplysning*, Swedish Association for sex education, part of International Planned Parenthood IPPF), excluding conscientious objection. In this article, they claim that those who do not want to respect professional rules should choose another occupation; that foetuses are born alive does not change anything, since everyone knows what happens to the foetus in an abortion; it should only be easier to talk about it at work.

Physicians and midwives who respect the life of the unborn child have no support from professional authorities. They are excluded from these professions, put at a disadvantage in their careers, discriminated against. Students who share this belief are dissuaded from choosing these occupations. During their studies, they are even warned that they will not find a job if they object to taking part in abortions, as **Doctor Marie Wigander** reports. Many physicians renounced to choose the speciality they were interested in, gynaecology-obstetrics, because they knew they would not be able to exercise it in conformity with the requirements of their conscience or would not find a job if they did not perform abortions. **Paediatrician Anna-Maria Angerstig** and **Doctor Sofi Bergren** thus admit not even having considered specialising in obstetrics because they knew they would be forced to perform abortions. Students can even have their diploma denied for this reason. Some midwives and doctors have lost their jobs or been denied the job they applied for because of their belief¹⁰, even to the

⁷ <http://www.varldenidag.se/nyhet/2014/10/22/Vad-ska-jag-gora-med-fostret-nar-det-lever/>

⁸ <http://www.riksdagen.se/sv/Dokument-Lagar/Utskottens-dokument/Betankanden/201112Fri--och-rattigheter- GZ01KU14/>

⁹ <http://www.varldenidag.se/nyhet/2014/10/22/Livstecken-vid-sena-aborter-oproblematiskt-for-Vardforbundet/>

¹⁰ <http://morningstarnews.org/2014/03/woman-in-sweden-denied-work-as-midwife-for-refusing-to-perform-abortions/>

benefit of less skilled people. As media reported, midwife Ellinor Grimmark was fired then could not be hired because of her belief. Similarly, **Doctor Annika Landgren** was refused at least two jobs because she had told she would not perform abortions. That is the reason why she could not become a gynaecologist and therefore specialised in family medicine and opened her own medical centre, only possibility for her to exercise her profession. Medical research is tied to hospital so implies participation in abortion for gynaecologists. Doctors who respect the life of the children they will help bring into this world cannot work in hospitals, therefore are excluded from a researcher career. This is not only a heavy personal sacrifice but also a significant loss for the community.

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. **Sweden suffers from a shortage of midwives** but persists for ideological reasons rather than accepting skilled staff whose belief it disapproves of. The lack of recognition of the right to conscientious objection **not only deprives the medical staff of this right but also deprives some patients of doctors sharing their beliefs**. During the delicate time of pregnancy, a broad agreement with the doctor or midwife can be very important for women¹¹. For all, a respectful welcome, open to other solutions than abortion in case of problem, is essential. If doctors and midwives who respect life are systematically deterred from these professions, **women who want to keep their baby even if problems arise cannot find any who share or simply understand their position 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. Even for women who are not opposed to abortion as a matter of principle, it is important that doctors can exercise their profession honestly, in conformity with their conscience. What is at stake is the confidence of women in the medical staff.

Some people manage to find a way of exercising their profession, subject to some sacrifices on career or place. However, it is always a precarious balance, at the mercy of a change in circumstances or people. Thus, **midwife Christina L.** chose to work in a maternity hospital dealing only with normal childbirths, so as not to be obliged to participate in abortions. However, her hospital and another will probably merge in 2016. There will probably be rotation with the gynaecological department, where abortions are performed. In that case, she is ready to renounce her profession and become a nurse.

In some exceptional cases, an agreement – at least tacit – between the hospital managers and a doctor, midwife or nurse allows to avoid certain acts provided somebody able to do them is present. However, such agreements are rare and only experienced staff can obtain such concessions. For example, **midwife Ingrid Carlsson** had been working for 35 years when the procedure of medical abortion was introduced in Sweden. As she had decided not to administer these drugs, she was summoned to the hospital manager's office and told she was legally obliged to do it. The manager gave her three months to change her mind but finally never called her again. Thus, she went on working, with an implicit agreement.

People whose situation is not so well established cannot obtain this kind of friendly arrangement: people at the beginning of their career or having changed place recently, foreigners or simply those with less understanding managers. Moreover, these agreements are

¹¹ Survey January 2009 http://www.freedom2care.org/docLib/200905011_Pollingsummaryhandout.pdf

always flimsy. In January 2015, **midwife Elin Eiderbrant**, who had reached an agreement with her managers not to take part in abortions, was suspended for this reason. She was told to retrain as a nurse.

Conclusion

Swedish political and medical authorities consider that people who do not want to perform abortions should simply choose an occupation without link with pregnancy. However, the European Court of Human Rights judged that the faculty to change job does not suffice to guarantee freedom of conscience and religion: “*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*”¹². In Sweden, there is no balancing, although a sensitive ethical question concerning human life is at stake, definitely within the scope of the protection freedom of conscience and religion. Various positions and hierarchy of values may reasonably exist on these issues. Moreover, it is possible to organise so as to allow those who do not want to perform abortions to exercise their right to conscientious objection. Therefore, the ban on conscientious objection is manifestly not proportionate.

Which indications exist that the victim(s) has been targeted because of his/her religion or belief?

The concerned staff and students have recognized skills, especially proved by various modes of evaluation. However, their refusal to personally take part in abortions is considered a critical flaw in Sweden.

After a vote in Parliament, Sweden officially took stand against Council of Europe Parliamentary Assembly Resolution 1763 (2010) on the Right to Conscientious Objection in Lawful Medical Care.

The Health Minister and medical authorities have publicly declared that those who will not perform abortions must choose another job.

Medical staff and students who refuse to take part in abortions are systematically victims of discriminations.

Identification of the alleged perpetrator(s), name(s) if known and/or function, suspected motive:

It is a systemic violation. The authors are national authorities, who refuse to set a legal framework allowing for the exercise of the right to conscientious objection, national and local medical authorities who refuse, except in exceptional cases, individual agreements reconciling effective operation of health services and right to conscientious objection.

Are the perpetrator(s) known to the victim?

¹² *Eweida v. the United Kingdom*, 48420/10, 59842/10, 51671/10 et 36516/10), 15 January 2013, § 83

Are state agents or non-state-actors believed to be responsible for the alleged violation?

Yes.

If the perpetrators are believed to be State-agents, please specify (police, military, agents of security services, unit to which they belong, rank and functions, etc.), and indicate why they are believed to be responsible; be as precise as possible.

Government, Parliament and local authorities, especially hospital managers, are responsible for these systemic violations because they refuse to set a legal framework allowing for the exercise of the right to conscientious objection or to find concrete agreements permitting an acceptable functioning for all concerned people.

If identification as State agents is not possible, do you believe that Government authorities or persons linked to them, are responsible for the incident, why?

In addition to political authorities, medical authorities are also involved since they also reject the very idea of conscientious objection of medical staff.

If there are witnesses to the incident, indicate their names, age, relationship and contact address. If they wish to remain anonymous, indicate if they are relatives, by-passers, etc.; if there is evidence, please specify.

Witnesses:

Midwives: Christina L., Siv BERTILSSON, Elin EIDERBRANT, Ingrid CARLSSON

Doctors: Annika LANDGREN, Marie WIGANDER, Sofi BERGGREN, Anna-Maria ANGERSTIG, Andrea KISCHKEL

Public proofs:

The Minister of Health declared that people who will not perform abortions cannot become doctor or midwife.

After a parliamentary debate, Sweden officially took stand against Resolution 1763 (2010) of the Parliamentary Assembly of the Council of Europe on the Right to Conscientious Objection in Legal Medical Care

4. STEPS TAKEN BY THE VICTIM, HIS/HER FAMILY OR ANYONE ELSE ON HIS/HER BEHALF?

- Please indicate if complaints have been filed, when, by whom, and before which State authorities or competent bodies (i.e. police, prosecutor, court):

In March 2013, KLM (Association of Christian doctors and medical students in Sweden) FAFCE (Federation of Catholic Family Associations in Europe) and Pro Vita, an organization dedicated to the protection of human rights and human dignity in Scandinavia, submitted a

collective complaint against Sweden to the European Committee of Social Rights due to the absence of the right to conscientious objection.

According to the press, midwife Ellinor Grimmark brought an action in a Swedish court.

- Were any other steps taken?

None

- Steps taken by the authorities:

None.

- Indicate whether or not, to your knowledge, there have been investigations by the State authorities; if so, what kind of investigations? Please indicate progress and status of these investigations as well as which other measures have been taken?

State authorities have not done anything and are not to be expected to do anything since they are deeply opposed to the very existence of the right to conscientious objection regarding abortion.

Sweden denies the right of people not to be forced to act against their conscience in terms of respect for human life before birth.

- In case of complaints by the victim or its family, how have those authorities or other competent bodies dealt with them? What has been the outcome of those proceedings?

Proceedings mentioned are going on.

5. IDENTITY OF THE INSTITUTIONS SUBMITTING THIS FORM

European Centre for Law and Justice

- Contact number or address (please indicate country and area code):

4, Quai Koch
67000 Strasbourg
France

Fax: +33 3.88.24.94.47

Telephone: +33 3.88.24.94.40

Email: info@eclj.org

Status: individual, group, non-governmental organization, religious or belief group, inter-governmental agency, Government. Please specify:

Non-governmental organization

The European Centre for Law and Justice is an international, Non-Governmental Organization dedicated to the promotion and protection of human rights in Europe and worldwide. The ECLJ holds special Consultative Status before the United Nations/ECOSOC since 2007.

The ECLJ engages legal, legislative, and cultural issues by implementing an effective strategy of advocacy, education, and litigation. The ECLJ advocates in particular the protection of religious freedoms and the dignity of the person with the European Court of Human Rights and the other mechanisms afforded by the United Nations, the Council of Europe, the European Parliament, the Organization for Security and Cooperation in Europe (OSCE), and others.

The ECLJ bases its action on “the spiritual and moral values which are the common heritage of European peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy” (Preamble of the Statute of the Council of Europe).

Do you act with knowledge and on behalf of the victim(s)?

The ECLJ is acting with knowledge of the applicants before the European Committee of Social Rights. The 9 witnesses have agreed.

Please state whether you want your identity to be kept confidential:

Undesired.

Date you are submitting this form: May, 23th 2015



Grégor Puppink.