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FREEDOM OF CONSCIENCE IN THE MEDICAL AREA

Dr Claire de La Hougue, Lawyer, fellow of the *European Centre for Law & Justice*.

Table of Contents

| | |
|---|----|
| INTRODUCTION: CONSCIENCE AND OBJECTION IN INTERNATIONAL LAW | 1 |
| <i>A- Freedom of Conscience, a Cornerstone of Human Rights</i> | 2 |
| <i>B- Conscientious Objection, a Constitutive Element of Freedom of Conscience</i> | 2 |
| I- CONSCIENTIOUS OBJECTION IN THE WORKPLACE, ESPECIALLY IN THE MEDICAL AREA | 5 |
| <i>A- The Right to Conscientious Objection in the Medical Area is not Contested</i> | 6 |
| <i>B- Reconciliation of Concurring Rights</i> | 7 |
| <i>C- Discrimination</i> | 8 |
| II- ABORTION AND FREEDOM OF CONSCIENCE IN ETHICAL PROFESSIONAL GUIDELINES | 10 |
| <i>A- Physicians</i> | 10 |
| <i>B- Midwives</i> | 12 |
| III- FREEDOM OF CONSCIENCE IN THE MEDICAL AREA, COMPARATIVE LAW..... | 13 |
| <i>A- General Duty of Conscience and Independence</i> | 13 |
| <i>B- Abortion and Euthanasia: Exception to the Prohibition of Killing</i> | 14 |
| <i>C- Opting Out Clauses</i> | 16 |
| <i>D- Conscientious Objection, Strictly Speaking</i> | 18 |

INTRODUCTION: CONSCIENCE AND OBJECTION IN INTERNATIONAL LAW

A- 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') and Article 9 of the European Convention on Human Rights ('the Convention'), directly and 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)

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)

B- Conscientious Objection, a Constitutive Element 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,¹ 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.

a) 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*

¹ "*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.

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 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 directly stems 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.”*

b)- 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) It must be noted that, for the ECHR, the objection itself is the belief that is protected by Article 9.

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 has 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.

Historically, conscientious objection concerned only 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 medical staff, in a situation where they are required to end someone else’s life. This is the case with abortion and euthanasia.

I- CONSCIENTIOUS OBJECTION IN THE WORKPLACE, ESPECIALLY IN THE MEDICAL AREA

Although the majority of 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* § 7.3).

Normally, conscientious objection should not apply in the medical area: the aim of medicine is to cure, and no one, in conscience, may refuse to cure. 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.

Since 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 real medical conscientious objection will develop in Europe. 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.

Where human life, and possibly human nature, is at stake, it is certain that conscientious objection can be claimed. There is not only a right but also a duty to object to an injunction to kill, at any stage of life. 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 recently 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 same applies to euthanasia, which ends a human life.

A- 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 fetus or embryo, for any reason*”.

This resolution is 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 2036 (2015) of 29 January 2015 entitled Tackling intolerance and discrimination in Europe with a special focus on Christians, 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, almost 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 PACE 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).

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.

B- Reconciliation of Concurring Rights

Moreover, the European Court of Human Rights 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. No 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*”².

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 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 States 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 may be the loss of the baby.

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 *Tysiac 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.

C- 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.

² *A. B. C., v. Ireland*, 25579/05, GC 16 December 2010, § 214; *P. and S. v. Poland*, 57375/08, 30 October 2012, § 96.

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 or euthanasia: while the latter does not mind doing 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 and abortion and euthanasia consist in ending a human life. Therefore, the situation of the objector is different and he must be treated differently, which can easily be done, by organising services accordingly.

Otherwise, the effect of the refusal to respect the freedom of conscience results in barring people who respect the life of unborn children 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 permits to eliminate all problems and meet the requirements of a democratic society: recognise the right of medical staff, and organise hospitals accordingly. This would answer the ECHR findings in *Bayatyan* and conform 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 recent PACE 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: *“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.

II- ABORTION AND FREEDOM OF CONSCIENCE IN ETHICAL PROFESSIONAL GUIDELINES

Members of the medical professions have a general duty to act in conscience, for the benefit of patients. This is the basis of medical ethics, already reflected in the Hippocratic oath (Vth century BC). This oath required doctors to heal patients according to their judgment, that is to say their conscience. It prohibited giving poison or abortive drugs. Though modern versions have usually erased the mention of abortion, they still oblige doctors to protect and promote health, follow their judgment or conscience and abstain from inflicting death deliberately.

A- Physicians

For example, the World Medical Association (WMA), which was created in 1947 to ensure the independence of physicians and to work for the highest possible standards of ethical

behaviour and care by physicians, states in the Declaration of Geneva³, its modernised version of the oath: *“I will practise my profession with conscience and dignity; the health of my patient will be my first consideration; (...) I will maintain the utmost respect for human life”*.

The WMA International Code of medical ethics⁴ adds: *“A physician shall always exercise his/her independent professional judgment and maintain the highest standards of professional conduct”* and *“always bear in mind the obligation to respect human life.”*

Even if the explicit prohibition of abortion has disappeared, all documents insist that physicians must always act according to their conscience and respect life. The WMA Medical Ethics Manual⁵ lists a number of controversial issues, the most crucial being abortion and euthanasia. Regarding the former, it states: *“Participation in abortion was forbidden in medical codes of ethics until recently but now is tolerated under certain conditions by the medical profession in many countries”* (p. 22). The manual acknowledges this diversity of opinion and belief and concludes: *“This is a matter of individual conviction and conscience that must be respected”* (p. 57). It is thus very clear that abortion is only tolerated and that no physician may be compelled to participate in abortion.

Regarding euthanasia, the manual notes: *“there is a significant difference of opinion among national medical associations. Some associations condemn it but others are neutral and at least one, the Royal Dutch Medical Association, accepts it under certain conditions”* (p. 23). The WMA concludes: *“Physicians are understandably reluctant to implement requests for euthanasia or assistance in suicide because these acts are illegal in most countries and are prohibited in most medical codes of ethics. This prohibition was part of the Hippocratic Oath and has been emphatically restated by the WMA in its 2005 Statement on Physician-Assisted Suicide and its 2005 Declaration on Euthanasia. The latter document states:*

“Euthanasia, that is the act of deliberately ending the life of a patient, even at the patient’s own request or at the request of close relatives, is unethical. This does not prevent the physician from respecting the desire of a patient to allow the natural process of death to follow its course in the terminal phase of sickness” (p. 59).

The WMA thus very strongly assert that there can be no obligation for physicians to participate in abortion or euthanasia.

Similarly, the International Federation of Gynaecologists and Obstetricians (FIGO) regularly recalls the right to conscientious objection of medical practitioners. The FIGO Committee for

³ Adopted by the 2nd General Assembly of the World Medical Association, Geneva, Switzerland, September 1948 and amended by the 22nd World Medical Assembly, Sydney, Australia, August 1968 and the 35th World Medical Assembly, Venice, Italy, October 1983 and the 46th WMA General Assembly, Stockholm, Sweden, September 1994 and editorially revised by the 170th WMA Council Session, Divonne-les-Bains, France, May 2005 and the 173rd WMA Council Session, Divonne-les-Bains, France, May 2006

⁴ Adopted by the 3rd General Assembly of the World Medical Association, London, England, October 1949 and amended by the 22nd World Medical Assembly, Sydney, Australia, August 1968 and the 35th World Medical Assembly, Venice, Italy, October 1983 and the 57th WMA General Assembly, Pilanesberg, South Africa, October 2006

⁵ <http://www.wma.net/en/30publications/30ethicsmanual/index.html>

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 conviction*" (p. 27). Many other FIGO resolutions and documents refer to conscientious objection. The only obligation of physicians is "*to disclose their objection*"⁶ and "*make every effort to achieve appropriate referral.*"⁷

The World Health Organisation also recognises that "*Individual health-care providers have a right to conscientious objection to providing abortion.*"⁸

B- Midwives

According to the International Confederation of Midwives (ICM) *International Code of Ethics for Midwives*,⁹ 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 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

⁶ Guidelines Regarding Informed Consent, in *id.* p. 15

⁷ Ethical Framework for Gynaecologic and Obstetric Care, in *id.* p. 13

⁸ *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

⁹ 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

education and preparation for parenthood and may extend to women's health, sexual or reproductive health and child care."¹⁰

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 Competencies¹¹ 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.

III- FREEDOM OF CONSCIENCE IN THE MEDICAL AREA, COMPARATIVE LAW

Freedom of conscience of medical staff is guaranteed in the vast majority of European countries. It seems that only five states do not recognise it: Bulgaria, the Czech Republic, and three northern countries (Iceland, Finland and Sweden). In Finland, the majority of cases are resolved by local agreements.

A- General Duty of Conscience and Independence

Physicians enjoy general autonomy in the exercise of their profession to allow them to exercise their judgment as required by their oath. Therefore, a physician is free of his medical decisions. French law specifies that a physician can freely order what medication he deems most suitable in the case¹² and can refuse to treat a patient for professional or personal

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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>

¹² "Dans les limites fixées par la loi et compte tenu des données acquises de la science, le médecin est libre de ses prescriptions qui seront celles qu'il estime les plus appropriées en la circonstance" Article R4127-8 code de la santé publique (CSP).

reasons¹³. A physician makes his decision according to what is good for his patient. For example, even if a patient insists on getting antibiotics, the physician can refuse if he thinks it is useless or harmful. He can also refuse to treat somebody, for example if he thinks he is not competent or for any other reason, except in emergency cases.

Pharmacists have a similar duty to exercise their profession with conscience, as mentioned in the various codes of ethics and in some professional oaths. For example, the French oath of Galien states: “*Je jure (...) d’exercer, dans l’intérêt de la santé publique, ma profession avec conscience*”. The first article of the French code of deontology of pharmacists asserts that they must preserve the liberty of their judgment and their independence¹⁴.

The fundamental principle guiding the conscience of members of all medical professions is respect for life. The French code of ethics of medical practitioners recalls that a physician must attend dying persons and cannot cause death deliberately¹⁵, while the code of ethics of midwives states that they must respect human life¹⁶ and adds that they must rescue new-born infants¹⁷.

Similarly the first article of the French code of deontology of pharmacists asserts that pharmacists respect life and the human person¹⁸.

Equivalent provisions regarding conscience and respect for life can be found in other codes of ethics, for example in articles 2 and 3 of the code of deontology of the Swiss Medical Association¹⁹.

B- Abortion and Euthanasia: Exception to the Prohibition of Killing

As already mentioned, abortion and euthanasia have long been (and still are in many countries) outside of medical action because they are not therapeutic acts. They directly contradict the oath of physicians not to inflict death.

In European countries where abortion has become legal, it is clearly an exception. The United Kingdom was the first to admit abortion, in 1967. It is only conditional: provided two medical

¹³ “Hors le cas d'urgence et celui où il manquerait à ses devoirs d'humanité, un médecin a le droit de refuser ses soins pour des raisons professionnelles ou personnelles » article R4127-47 CSP.

¹⁴ “Le pharmacien doit veiller à préserver la liberté de son jugement professionnel dans l'exercice de ses fonctions. Il ne peut aliéner son indépendance sous quelque forme que ce soit” Article R4235-3 CSP

¹⁵ “Le médecin doit accompagner le mourant jusqu'à ses derniers moments, assurer par des soins et mesures appropriés la qualité d'une vie qui prend fin, sauvegarder la dignité du malade et réconforter son entourage.

Il n'a pas le droit de provoquer délibérément la mort » (Article R4127-38 CSP).

¹⁶ “La sage-femme exerce sa mission dans le respect de la vie et de la personne humaine” (Article R4127-302 CSP)

¹⁷ “Une sage-femme qui se trouve en présence d'une femme ou d'un nouveau-né en danger immédiat ou qui est informée d'un tel danger doit lui porter assistance ou s'assurer que les soins nécessaires sont donnés” (Article R4127-315).

¹⁸ “Le pharmacien exerce sa mission dans le respect de la vie et de la personne humaine” Article R4235-2 CSP

¹⁹ http://www.fmh.ch/files/pdf16/Standesordnung_20150829_F.pdf

practitioners certify that a number of conditions are fulfilled, abortion is no longer an offence. In any other circumstances, it remains criminally punished²⁰.

Similarly, in France, where abortion became legal in 1975, the code of public health first recalls the principle of respect of human life from its beginning, then admits abortion as an exception only under the circumstances and conditions mentioned in the law²¹. The code of medical ethics insists on this exceptional character (Article R4127-18 CSP).

In the same way, the Belgian criminal code prohibits abortion, except under conditions restrictively listed²².

The situation is identical in the very rare countries where euthanasia or assisted suicide are admitted. Ending somebody's life is a crime, except under restrictive conditions.

Switzerland was the first to legalise assisted suicide, provided it is not for selfish reasons. However, euthanasia (called homicide at the victim's request) is always prohibited²³. In other words, the final lethal act must always be accomplished by the patient. The Federal Supreme Court, underlined the exceptional character of assisted suicide: "*assisted suicide cannot be considered as part of a doctor's activities, since it is self-evident that such an action goes against the aim of medicine.*"²⁴ Physicians must respect medical ethics formulated in the end-of-life care guidelines of the Swiss Academy of Medical Sciences.²⁵ These rules specify the conditions under which a patient may receive this prescription, relating especially to health, information of the patient and expression of his will.²⁶ A doctor who would not comply with this framework would be subject to civil, criminal and disciplinary sanctions. The Swiss National Advisory Commission on Biomedical Ethics insisted that assisted suicide was not part of medical activity.²⁷

²⁰ "Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith— (...)" 1967 Abortion Act, section 1

²¹ "Comme il est dit à l'article 16 du code civil ci-après reproduit :

"La loi assure la primauté de la personne, interdit toute atteinte à la dignité de celle-ci et garantit le respect de l'être humain dès le commencement de sa vie " (Article L2211-1 CSP).

"Il ne saurait être porté atteinte au principe mentionné à l'article L. 2211-1 qu'en cas de nécessité et selon les conditions définies par le présent titre" (Article L2211-2 CSP).

²² Art. 350. "Celui qui, par aliments, breuvages, médicaments ou par tout autre moyen aura fait avorter une femme qui y a consenti, sera condamné à un emprisonnement de trois mois à un an et à une amende de cent [euros] à cinq cents [euros].

Toutefois, il n'y aura pas d'infraction lorsque la femme enceinte, que son état place en situation de détresse, a demandé à un médecin d'interrompre sa grossesse et que cette interruption est pratiquée dans les conditions suivantes (...)

²³ Swiss penal code, Article 114, Article 115

²⁴ Judgment of 3 November, 2006, §6.3.4, in Haas §16

²⁵ "Problèmes de l'assistance médicale au suicide", stand by the Central Commission of Ethics (CCE) of the Swiss Academy of Medical Sciences, 20th of January 2012 <http://www.samw.ch/fr/Ethique/Fin-de-vie.html> (French only)

²⁶ <http://www.samw.ch/fr/Ethique/Directives/actualite.html>

²⁷ Swiss national advisory commission on biomedical ethics; Prise de position n° 9/2005 Avis unanime p. 72 http://www.nek-cne.ch/fileadmin/nek-cne-dateien/Themen/Stellungnahmen/fr/suizidbeihilfe_fr.pdf

In the Netherlands, assisted suicide and euthanasia are punished by article 293 and 294 of the penal code²⁸. However, the law of 10 April 2001 establishes the procedure to follow to transform the crimes of euthanasia and assisted suicide into medical treatments. In Belgium, the law of 28 May 2002, completed by the law of 10 November 2005, guarantees a physician will not be guilty of an offense if he respects strict conditions²⁹. In both countries, the patient must be conscious and endure unbearable suffering without prospect of improvement, the request must be written and repeated, and another physician must be consulted. Additional conditions were established for minor children, above 12 in the Netherlands, without age limit in Belgium since the law of 28 February 2014.

In Luxembourg, the law of 16 March 2009 on euthanasia and assisted suicide establishes the same conditions to decriminalise euthanasia and assisted suicide.

It is thus very clear that abortion and euthanasia are exceptions to the general prohibition of killing, and that they can only be performed under strict conditions. As they are not normal part of medical activity, the laws that authorised them specified that no physician or other medical staff could be obliged to participate in them.

C- Opting Out Clauses

Section 4 of the British 1967 Abortion Act is dedicated to conscientious objection:

Conscientious objection to participation in treatment.

(1) Subject to subsection (2) of this section, no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection:

Provided that in any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.

(2) Nothing in subsection (1) of this section shall affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.

(3) In any proceedings before a court in Scotland, a statement on oath by any person to the effect that he has a conscientious objection to participating in any treatment authorised by this Act shall be sufficient evidence for the purpose of discharging the burden of proof imposed upon him by subsection (1) of this section.

²⁸ Patients Rights Council, "Background about Euthanasia in the Netherlands"

<http://www.patientsrightscouncil.org/site/holland-background/> and "Holland's Euthanasia Law"
<http://www.patientsrightscouncil.org/site/hollands-euthanasia-law/>

²⁹ "Le médecin qui pratique une euthanasie ne commet pas d'infraction s'il s'est assuré que : le patient est majeur ou mineur émancipé, capable et conscient au moment de sa demande; la demande est formulée de manière volontaire, réfléchie et répétée, et qu'elle ne résulte pas d'une pression extérieure; le patient se trouve dans une situation médicale sans issue et fait état d'une souffrance physique ou psychique constante et insupportable qui ne peut être apaisée et qui résulte d'une affection accidentelle ou pathologique grave et incurable; et qu'il respecte les conditions et procédures prescrites par la présente loi » (Law of 28 May 2002, completed by Law of 10 November 2005, Art. 3, § 1).

In France, the law on abortion provides that no physician or midwife, nurse or other medical auxiliary can be obliged to perform an abortion or participate in it³⁰. This applies to termination of pregnancy for a medical reason as well (Art. L.2213-2 CSP). This absence of obligation to participate in abortion is repeated in the codes of ethics of physicians³¹ and midwives³².

Similarly, Article 350-6 of the Belgian criminal code³³ and Article 13 of the Luxembourg law of 17 December 2014 on voluntary termination of pregnancy³⁴ state that no medical staff or auxiliary can be obliged to participate in an abortion.

When abortion became legal, only the surgical method existed, so pharmacists were not always included in the protection. Now that chemical abortion is frequent (around one half of all abortions, varying according to the country), they can have real conscience problems. As they must exercise their profession with conscience and respect life, protection from participation in an abortion should extend to them. In Belgium, the code of ethics rules that they do not have to sell abortive products³⁵. In France however, they do not enjoy such protection, as they are not considered a medical profession nor an auxiliary, but a *sui generis* category not protected by the conscience clause. Recently, a young pharmacist lost her job because she refused to sell abortive products, although she always called a colleague so the client was served. She lost in the employment tribunal and her case is now pending in the court of appeal.

The vast majority of European States provide protection of freedom of conscience of health professionals, either by law or in their constitution, like Portugal where Article 41 guarantees the right to be a conscientious objector (without mentioning in what area). Laws that protect medical staff against compulsory participation in abortion usually require them to inform the patient timely, and sometimes organise referral to a volunteer colleague. In some countries, like Norway, referral is compulsory.

³⁰ *“Un médecin ou une sage-femme n'est jamais tenu de pratiquer une interruption volontaire de grossesse mais il doit informer, sans délai, l'intéressée de son refus et lui communiquer immédiatement le nom de praticiens ou de sages-femmes susceptibles de réaliser cette intervention selon les modalités prévues à l'article L. 2212-2.*

Aucune sage-femme, aucun infirmier ou infirmière, aucun auxiliaire médical, quel qu'il soit, n'est tenu de concourir à une interruption de grossesse” (Article L2212-8 CSP).

³¹ *“Un médecin ne peut pratiquer une interruption volontaire de grossesse que dans les cas et les conditions prévus par la loi ; il est toujours libre de s'y refuser et doit en informer l'intéressée dans les conditions et délais prévus par la loi » (Article R4127-18 CSP).*

³² *“Conformément aux dispositions des [articles L. 2212-8 et L. 2213-2](#), aucune sage-femme n'est tenue de concourir à une interruption volontaire de grossesse” (Article R4127-324CSP).*

³³ *“Aucun médecin, aucun infirmier ou infirmière, aucun auxiliaire médical n'est tenu de concourir à une interruption de grossesse” Article 350-6 penal code.*

³⁴ *“Aucun médecin ne sera tenu de pratiquer une interruption volontaire de grossesse.*

De même aucun professionnel de santé ne sera tenu de concourir à une telle intervention » (Luxembourg law of 17 December 2014 on voluntary termination of pregnancy, Article 13)

³⁵ *« Sans préjudice aux droits du patient, à la continuité des soins et à l'exécution de la prescription, le pharmacien a le droit de refuser la délivrance en raison de ses objections de conscience. Dans ce cas, il doit renvoyer le patient auprès d'une pharmacie où le produit en question peut bien être délivré. Si ce n'est pas le cas, le pharmacien doit exécuter la prescription. Durant le service de garde, la clause de conscience doit toujours s'effacer devant le droit du patient à la continuité des soins » Code de déontologie pharmaceutique, article 32.*

In Switzerland, Article 15 of the Constitution protects freedom of conscience and religion in general, and cantonal law goes into details. For example, the law of Geneva guarantees that nobody in the health profession can be obliged to give treatment contrary to their ethical or religious beliefs³⁶. This protects all professionals of health, including pharmacists, against participating in abortion or euthanasia.

The Belgian law of 28 May 2002 on euthanasia guarantees that nobody can be obliged to participate in euthanasia³⁷. This protection is not limited to health professionals. Express protection of pharmacists was not added because it was already included in this general provision. A physician who refuses to perform euthanasia must inform the patient and give the medical record to the physician chosen by the patient. He has no obligation to refer the patient, but only hand over the record.

The same rule is found in the Luxembourg law of 16 March 2009, with an addition: the physician has 24 hours to inform the patient of his refusal, and give his reasons³⁸.

When, recognising that abortion or euthanasia are contrary to the mission of the health professions or that some other acts are not normally part of medical activity, the law provides protection of conscience, refusal to participate in these acts is not conscientious objection strictly speaking, but use of an option afforded by law.

D- Conscientious Objection, Strictly Speaking

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, but it influences the law and its interpretation in some countries.

³⁶ Geneva law on health, Article 82 (RSGE K 1 03 ; LS):

« 1 Le professionnel de la santé ne peut être tenu de fournir, directement ou indirectement, des soins incompatibles avec ses convictions éthiques ou religieuses.

2 L'objecteur doit dans tous les cas donner au patient les informations nécessaires afin que ce dernier puisse obtenir, par d'autres professionnels de la santé, les soins qu'il n'est pas disposé à lui fournir.

3 En cas de danger grave et imminent pour la santé du patient, le professionnel de la santé doit prendre toutes les mesures nécessaires pour écarter le danger, même si elles sont contraires à ses convictions éthiques ou religieuses ».

³⁷ « Aucun médecin n'est tenu de pratiquer une euthanasie. Aucune autre personne n'est tenue de participer à une euthanasie. Si le médecin consulté refuse de pratiquer une euthanasie, il est tenu d'en informer en temps utile le patient ou la personne de confiance éventuelle, en précisant les raisons. Dans le cas où son refus est justifié par une raison médicale, celle-ci est consignée dans le dossier médical du patient.

Le médecin qui refuse de donner suite à une requête d'euthanasie est tenu, à la demande du patient ou de la personne de confiance, de communiquer le dossier médical du patient au médecin désigné par ce dernier ou par la personne de confiance » (Art. 14 Law of 14 May 2002).

³⁸ « Aucun médecin n'est tenu de pratiquer une euthanasie ou une assistance au suicide.

Aucune autre personne ne peut être tenue de participer à une euthanasie ou une assistance au suicide.

Si le médecin consulté refuse de pratiquer une euthanasie ou une assistance au suicide, il est tenu d'en informer le patient et/ou la personne de confiance, s'il en existe une, dans les 24 heures en précisant les raisons de son refus.

Le médecin qui refuse de donner suite à une demande d'euthanasie ou d'assistance au suicide est tenu, à la demande du patient ou de la personne de confiance, de communiquer le dossier médical du patient au médecin désigné par ce dernier ou par la personne de confiance » (Art. 15, Law of 16 March 2009).

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 abortion. 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 abortion. She went to court and lost her case. 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. In spite of the shortage of midwives, Sweden refuses to respect and accommodate freedom of conscience. When the Parliamentary Assembly of the Council of Europe adopted Resolution 1763(2010) on the right to conscientious objection in lawful medical care, Sweden officially took a stand against it.

In the five countries which do not respect freedom of conscience of health professionals, few cases go to court or are reported abroad. In some cases, local agreements allow the objector not to participate. Most of the time, either they resign themselves to act against their will and conscience, or they choose another profession.

Officially, only Sweden, Finland (where there is a debate on this issue³⁹), Iceland, the Czech Republic and Bulgaria do not guarantee freedom of conscience of medical staff. However, a worrying trend can be noted in other countries. 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. 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 including duties related to termination of pregnancy. Some alleged cases of discrimination were reported, like one in Scotland in 2000⁴⁰. Even if abortion cannot be considered a matter of medical emergency (the only possible urgency regards the legal time limit) and has no therapeutic effect, doctors are often required to perform it when adequate services for termination of pregnancy "*would not otherwise be available*", which is a manifest violation of professional deontology and freedom of conscience.

Until recently, this dangerous trend concerned only abortion. However, a recent case in Belgium suggests that the same could follow about euthanasia. A nursing-home in Diest 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

³⁹ Helsinki Times, 28 August 2014, "Citizens' initiative calls for right to conscientious objection in health care" <http://www.helsinkitimes.fi/finland/finland-news/domestic/11797-citizens-initiative-calls-for-right-to-conscientious-objection-in-health-care.html>

⁴⁰ BBC, 7 October 2000, "Abortion views cost job" <http://news.bbc.co.uk/2/hi/health/961169.stm>

refused the euthanasia to take place there, saying it increased the physical and moral suffering of their mother⁴¹.

The issue of assisted suicide in hospital was also discussed in Switzerland, in particular in the University Hospitals of Geneva⁴². No consensus could be reached so the decision was taken on a majority vote: assisted suicide can take place in hospital under strict conditions, only for patients who cannot be sent back home, and provided no hospital staff participates. This reflexion shows the exceptional character of assisted suicide and the fact that it is not part of a doctor's mission. It is therefore very worrying to see it treated trivially or as an individual right.

Conclusion

Termination of life is a fact: it is not a matter of religious belief. 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 XIVth or XIIIth 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 freedom of religion, but directly from freedom of conscience itself: from the ability of human conscience to adopt moral convictions on what to do, or not to do, on what is good or 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.

⁴¹ “UNE MAISON DE RETRAITE A REFUSE L'ACCES A UN MEDECIN PRATIQUANT L'EUTHANASIE” LA LIBRE, 2 JANUARY 2016 [HTTP://WWW.LALIBRE.BE/ACTU/BELGIQUE/UNE-MAISON-DE-RETRAITE-A-REFUSE-L-ACCES-A-UN-MEDEGIN-PRATIQUANT-L-EUTHANASIE-5687780c3570b38a57ed03d9](http://www.lalibre.be/actu/belgique/une-maison-de-retraite-a-refuse-l-acces-a-un-medecin-pratiquant-l-euthanasie-5687780c3570b38a57ed03d9)

⁴² Hôpitaux universitaires de Genève, Conseil d'éthique Clinique, “Autorisation / interdiction de l'assistance au suicide au sein des HUG” <http://www.hug-ge.ch/sites/interhug/files/documents/soigner/ethique/assistanceausuicideaux.pdf>