



**United Nations - Human Rights Council
Session 31, Geneva**

**The right to conscientious objection of medical practitioners
Side event, 8th March 2016**

INTRODUCTORY REMARKS

Dr Gregor Puppinck, Director General of the *European Centre for Law & Justice*.

I'm very pleased to welcome you to this side event on the "*The right to conscientious objection of medical practitioners*", in the name of the *European Centre for Law & Justice*. We are very honoured of the participation of Professor Heiner Bielefeldt, the current UN Special Rapporteur on freedom of religion *or* belief, and I thank you.

At the origine of this conference is a discussion we had, dear Professor Bielefeldt, on conscientious objection and more precisely, on the difference between "*freedom of conscience*" as distinct from "*freedom of religion*". We agreed that the very specificity of "*freedom of conscience*" is under explored and of a primary importance.

The issue of "*conscientious objection*" is directly connected to the one of "*freedom of conscience*", distinct from religion: you do not need to hold a religious belief to object in conscience to a specific practice.

Can a medical doctor, a midwife, a nurse or a pharmacist be coerced to take part in an abortion, euthanasia or an assisted suicide?

Can they be sanctioned for their refusal to take part in those practices?

Can they be dismissed by their employer or denied access to the profession if they refuse to take part in a process aimed at ending a human life?

Can a hospital, founded and run by a religious community, be coerced to practice abortion, euthanasia or an assisted suicide?

The answer is clearly "no": they cannot be coerced nor sanctioned.

There is quite a unanimous consensus in both national and international laws recognising and asserting the fundamental right to object practicing in a process aimed at voluntary ending a human life. This right is inherent to the one of freedom of conscience.

However, some people, and States, refuse recognizing this conscientious right, affirming in substance that if abortion or euthanasia is “legal”, no one shall be entitled to object: the personal conscience shall not prevail over the legality: therefore, both medical practitioners and institutions shall accept to accomplish any practices once they are legal. According to this vision, the ultimate criterion of justice is NOT the conscience but the law voted by the majority.

And here lies the difficulty: is it the *law* or the *conscience* that is a better indicator of justice? Normally, the law pursues justice and enlightens the consciences of the individuals, so that both the individual’s conscience and the law are ordained to justice: they may not contradict, but work together, so that the individuals conscientiously accept to implement the law for their individual and common good.

The problem arises when individuals have the clear and serious conviction that an act prescribed by a legitimate authority is not good nor just, but evil and unjust: evil and unjust at such a degree of gravity that they can not take any part in this act without losing their self esteem, their dignity.

This problem is serious because it questions the very justice and goodness of the order, and ultimately of the law. A fair democracy should respect such questionings.

The right to conscientious objection has long been claimed by individuals and groups opposed to taking part in military activities that may lead to the voluntary killing of other human beings. This right is now well recognised and established both in International law and in the legislation of most democracies.

More recently, along with the depenalization in some countries of the practices of abortion, assisted suicide and euthanasia, medical practitioners and institutions have also asked for, and most of the time been granted to right not to take part in those practices.

Beyond the matters of war, abortion and euthanasia, the claim for a right to conscientious objection is increasing along with the depenalization or the legalisation of practices that have long been illegal and considered as immoral. We find here the matters of prostitution, drugs, but also homosexual relationships and civil unions, or artificial procreation for single persons, and so on.

When we ask if an *individual can refuse to take part in such practices*, we should also reverse the question and ask if the society *can coerce an individual to take part* in such practices.

To answer this question, we have to understand the fact that the so-called “liberal societies” functions with a “double level of morality”. The “social level” is said to be tolerant whereas the “individual level” can maintain moral judgments.

Liberal societies want both to be tolerant and to respect individual freedom and autonomy. Those societies are legalising those contentious practices in a spirit of tolerance: the society shall not make a judgment on personal behaviours: it is up to the individuals to decide if they want to undergo abortion or euthanasia. Within such liberal society, most individuals will not oppose the legalisation of those practices, considering that they have no legitimacy to limit someone else’s freedom. Therefore, they will accept or tolerate abortion or euthanasia. And this is one of the main arguments of the debate on the legalisation of those practices: “*Why should you prevent someone else from ending his life or her pregnancy? Who are you to judge*

and to deny someone else freedom? You shall be tolerant because it does not change anything to your life and it does not force you to do the same.” Most of the time, it is true, it does not change directly your individual life, but the fact is that, sometimes, it does change something to your life: when you are the one compelled to accomplish the contentious practice. If you are the doctor, the nurse or the director of the hospital, it does change something in your life. It also change something in your life, if the school of your children starts teaching them that those practices are good.

The same doctor, nurse or director may not contest the legalisation of abortion or euthanasia, because they want to be tolerant, but they may at the same time personally and absolutely refuse to take any part in those practices. So, they expect that society will also be tolerant towards them, as they are asked to be towards those who wanted the legalisation.

It would be unjust to, on the one hand, obtain the legalisation of contentious practices in the name of tolerance and, on the other hand, to be intolerant once the practice is legalised towards those who, at the personal level, reject it.

If a society wants to be just and tolerant, it has to accept that individuals make conscientious judgments on their personal behaviour; and it is for the society not only to refrain from *coercing* and from *sanctioning* those who refuse to take part in a process aimed at ending a human life, but also to protect them against discriminations.

Too many medical practitioners are unjustly discriminated against in their studies or career because they want to remain faithful to the original Hippocratic oath.

However, the matter of conscientious objection is often presented as complex.

It is complex if you look to the matter from the subjective viewpoint of the individual's conscience: why the respect for conscience requires that the convictions of an individual may prevail, in some circumstances, over the legal order? There are answers to this question, they go deep in morals and philosophy.

But if you look to the matter from the objective viewpoint of the practice at stake, then it becomes clear: Voluntary ending the life of a human being is evil, even if society sometimes finds justified to tolerate it; therefor, no one shall be coerced to do it, nor sanctioned and discriminated against for refusing to terminate the life of another human being.

In order to deepen the understanding of conscientious objection, to clarify and exemplify this matter, I'm very pleased, after those introductory remarks, to give the floor to three distinguished panellists.

First Professor Heiner Bielefeldt, the UN Special Rapporteur on freedom of religion or belief, a proéminent expert in Human rights. Professor Bielefeldt is a philosopher, Professor of Human Rights at the University of Erlangen-Nürnberg, Professor Bielefeldt proposed to go deep in the presentation of the roots of freedom of conscience and conscientious objection. We thank you very much for your participation.

I'm very pleased to give the floor to the second panellist, Dr Claire de La Hougue, a French lawyer, senior fellow at the ECLJ, with a PHD from Paris-Nanterre University on freedom of

religion in Europe. As a lawyer, you are working on cases of conscientious objectors at the national, European and international level.

Dr Claire de La Hougue will present the status of the right to conscientious objection in positive law and professional deontology.

I'm very pleased to give the floor to the third panellist: Professor Jean-Pierre Schoupe, a Professor in the Faculty of Canon Law of the Pontifical University of the Holy Cross (Rome) where you teach a course on the "Relationship between Church and the Political Community". You have a Ph. D. in Canon Law and another Ph. D. in Law from the University of Paris 2 with a dissertation on "the institutional aspect of freedom of religion in the case law of the ECHR".

Professor Jean-Pierre Schoupe will discuss the case of the institutional right to "conscientious objection"; can a religious institution refuse to practice abortion or euthanasia?

We will then have a short time for questions.

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