



Fundamental Freedoms - Freedom of Thought, Conscience, Religion or Belief
30 September 2015, Warsaw
The Right to Conscientious Objection in the Medical Field

The *European Centre for Law and Justice* (ECLJ) recalls that in 1975, Helsinki Final Act defined the right to conscientious objection as the right to act “*in accordance with the dictates of his own conscience*”. In 2010, the Council of Europe adopted a Resolution on the right to conscientious objection in lawful medical care¹, stating that “*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.*” It emphasized the need to affirm the right of conscientious objection and invited the member states “*to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services, and which guarantee the right to conscientious objection*”. In 2011, the Parliamentary Assembly of the OSCE adopted a Resolution recommending that “*in view of discrimination and intolerance against Christians, legislation in the participating States, including labor law, equality law, laws on freedom of expression and assembly, and laws related to religious communities and right of conscientious objection be assessed*”. A few years later, the same right was reaffirmed by the case-law of the ECHR² and other Resolutions³.

Nevertheless, cases reported⁴ show that doctors⁵, nurses⁶, midwives⁷, students for medical professions⁸, pharmacists⁹ and health institutions still cannot effectively exercise their right to conscientious objection. They are obliged to participate to acts contrary to their conscience or fired or severely sanctioned for acting according with their conscience. Thus, Christians find themselves excluded from those professions. Moreover, high public servant insult them

¹ Resolution 1763 of 7 October 2010 “The right to conscientious objection in lawful medical care”;

² *R.R. v Poland*, n° 27617/08, judgment of 26 May 2011, § 206: “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.” ; See also *P. and S. v. Poland*, n° 57375/08, judgment of 30 October 2012, § 106);

³ Resolution 1928 of 24 April 2013 “Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence”; Resolution 2036 of 29 January 2015 “Tackling intolerance and discrimination in Europe with a special focus on Christians”;

⁴ <http://www.intoleranceagainsthchristians.eu/advanced-search.html>;

⁵ E.g.: in Croatia, Poland, United Kingdom, Ireland, Norway, the Netherlands, Spain ;

⁶ E.g.: in United Kingdom;

⁷ E.g.: Sweden, United Kingdom;

⁸ E. g. : in Poland, United Kingdom ;

⁹ E.g.: in France, Czech Republic, Belgium, Austria, Germany, Poland, Spain, United Kingdom ;

(Christian midwife Ellinor Grimmark was compared to Jihadists by Swedish Ministry of Justice) and call for black-listing them (Spanish UNESCO Chair of Bioethics called for a national registry of doctors who will not perform abortions).

In these circumstances, the ECLJ recommends to Participating States: to assess freedom of conscience legislations to fully secure conscientious objection; to refrain from interferences and to modify legislation that discriminates or interferes with freedom of conscience and religion; to follow the OSCE Parliamentary Assembly Resolution of July 2011.

The ECLJ requests OSCE/ODIHR and to international Governmental Human Rights institutions: to implement its Parliamentary Assembly resolution of July 2011 and to recommend appropriate action to their member states or participating states.

Finally, the ECLJ recommends to employers to make possible the conscientious objection of medical staff.