



Statement by Amnesty International and Human Rights Watch: comprehensive approach to regulating conscientious objection in the health care field needed

Conscientious objection in the context of health care provision

International standards recognize the importance of conscientious objection to the exercise of an individual's fundamental right to freedom of thought, conscience, and religion.¹ However, international law also recognizes that the exercise of this right may be subject to necessary and proportionate restrictions enshrined in law in order to protect the rights of others, including others' rights to life, health, physical integrity and access to health care without discrimination. Ultimately a medical professional's conscientious objection cannot be allowed to deny anyone effective access to needed care, including abortions. This issue has been the subject of recommendations made by international and regional human rights bodies and mechanisms such as the UN Committee on Economic, Social and Cultural Rights (CESCR), the UN Committee on the Elimination of Discrimination against Women (CEDAW), the UN Special Rapporteur on the right to the highest attainable standard of health, and the Council of Europe Commissioner for Human Rights.²

The need to proportionately regulate the right to conscientious objection in a manner that is consistent with the respect of the rights of others has been highlighted by the European Court of Human Rights and United Nations human rights bodies. The European Court of Human Rights has upheld limitations on conscientious objection. In one case brought by pharmacists objecting to the

¹ The right to freedom of conscience is recognized in multiple international treaties. See e.g. Article 18 of the International Covenant on Civil and Political Rights (ICCPR), and Article 5 (d)(vii) (recognizing the right of non-discrimination in the enjoyment of the right to freedom of conscience) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).. The right of conscientious objection as a derivative of the right to freedom of conscience has been recognized by the Human Rights Committee, most often in reference to military service. UN Human Rights Committee, General Comment 22, Article 18: The Right to Freedom of Thought, Conscience and Religion, A/48/40 vol. I (1993) 208, paras. 11.

² See UN Committee on the Elimination of Discrimination against Women, General Recommendation 24, Women and Health (Twentieth session, 1999), para. 11; UN Committee on the Elimination of Discrimination against Women, Concluding Observations on Croatia, UN Doc. A/53/38 (1998), paras. 109, 117; Italy, UN Doc. A/52/38 Rev.1, Part II (1997), paras. 353, 360; South Africa, UN Doc. A/53/38/Rev.1 (1998), para. 113. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover – Mission to Poland, 20 May 2010, UN Doc. A/HRC/14/20/Add.3, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/134/03/PDF/G1013403.pdf?OpenElement>; and Memorandum to the Polish Government, Assessment of the progress made in implementing the 2002 recommendations of the Council of Europe Commissioner for Human Rights, paragraphs 92 to 98 and Recommendation 15, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1155005&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.

sale of contraceptives: the Court underlined that "as long as the sale of contraceptives is legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants cannot give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products, since they can manifest those beliefs in many ways outside the professional sphere."³

At the most basic level, failure to appropriately regulate the exercise of conscientious objection can function as a barrier to an individual's access to needed health care services. The CESCR which monitors the implementation of the International Covenant on Economic, Social and Cultural Rights (ratified by all Council of Europe member states except Andorra) has noted that the realization of women's right to health "requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health."⁴ In 1999, the CEDAW, which monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (ratified by all Council of Europe member states) expressed a similar sentiment by affirming states' obligation to respect access for all women to reproductive health services and to "refrain from obstructing action taken by women in pursuit of their health goals."⁵

The CEDAW has stated that an adequate regulatory framework on conscientious objection should have a referral system to prevent gender-discriminatory outcomes. In its General Recommendation 24 on Women and Health, the Committee stated: "It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers."⁶

A human rights based approach to conscientious objection in the health care field

Without transparent and participation-driven accountability systems in place, it is difficult or impossible to establish the extent to which healthcare professionals exercise their right to conscientious objection and whether the health system is equipped to ensure that the exercise of conscientious objection by individuals or institutions does not bar individual service users' access to information, diagnosis and health care.⁷

The UN Special Rapporteur on the right to the highest attainable standard of health recently highlighted the need for both clarity in definition and the legal obligations entailed in invoking

³ Pichon and Sajous v. France, App. No. 49853/99, Decision of 02 October 2001, ECHR 2001-X, available at www.echr.coe.int, p. 4.

⁴ United Nations Committee on Economic, Social and Cultural Rights, General Comment General Comment 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2000/4, paragraph 21, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/439/34/PDF/G0043934.pdf?OpenElement>.

⁵ United Nations Committee on the Elimination of Discrimination against Women, Recommendation No. 24; 20th session, 1999 (article 12: women and health), paragraph 14, available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>.

⁶ United Nations Committee on the Elimination of Discrimination against Women, Recommendation No. 24; 20th session, 1999 (article 12: women and health), paragraph 11, available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>.

⁷ The UN CESCR has emphasized transparency and accountability, noting that that it is "important to undertake preventive, promotive and remedial action to shield women from the impact of [...] norms that deny them their full reproductive rights." The Committee highlighted the importance of effective judicial or other appropriate remedies for violations of the right to health. (United Nations Committee on Economic, Social and Cultural Rights, General Comment General Comment 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2000/4, paragraphs 21 and 59, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G00/439/34/PDF/G0043934.pdf?OpenElement>).

conscientious objection (transparency) and redress (accountability) for conscientious objection. He noted that when within a legal framework the concept of conscientious objection is open to different interpretations, "legal uncertainty may limit or prevent access to redress" for individuals affected by government failure to meet its obligation to provide medical care.⁸ In the context of inadequate documentation of when conscientious objection is invoked, and an absence of records of health providers who would perform abortions he noted that "[w]ithout regularly updated information, women's access to legal health services is seriously compromised."⁹

Similarly the UN Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights (ratified by all Council of Europe member states) has also expressed "deep concern about ...the lack of information on the use of the conscientious objection clause by medical practitioners who refuse to carry out legal abortions."¹⁰ And in 2007, the CEDAW called specifically for research on the scope, causes and consequences of illegal abortion to include research on how access to legal abortions was limited "by the use of the conscientious objection clause".¹¹

In conclusion a human rights based approach to regulating conscientious objection must include:

- Regulations defining conscientious objection, the entitlements and duties of healthcare providers wishing to exercise their individual right to conscientious objection and patients' right to information, diagnostic care and decision-making on the full range of lawful medical treatments;
- Implementation and enforcement procedures in the form of oversight and monitoring mechanisms which allow patients to make complaints and access remedies.

The PACE Resolution and Recommendation on "*Women's access to lawful medical care: the problem of unregulated use of conscientious objection*", as currently drafted, includes recommendations to this effect and would make an important contribution to filling an existing gap.

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⁸ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover – Mission to Poland, 20 May 2010, UN Doc. A/HRC/14/20/Add.3, paragraph 3, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/134/03/PDF/G1013403.pdf?OpenElement>. The restrictive laws on abortion in Poland have led to it coming under particular scrutiny from human rights bodies in assessing whether women's rights are being met.

⁹ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover – Mission to Poland, 20 May 2010, UN Doc. A/HRC/14/20/Add.3, para. 52, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/134/03/PDF/G1013403.pdf?OpenElement>.

¹⁰ UN Human Rights Committee, Concluding Observations on Poland, UN Doc. CCPR/C/SR.2251, para 8.

¹¹ UN Committee on the Elimination of Discrimination against Women, Concluding Comments on Poland, UN Doc. CEDAW/C/POL/CO/6, para 25.

