Written Question to the Committee of Ministers of the Council of Europe
on
Structural violations of the right to conscientious objection in the field of health in Spain

In Spain, health professionals suffer structural and systemic violations of their rights. They are prevented from exercising their freedom of conscience through the following practices (all of which are detailed below with personal examples)[1]:

- Submission of a fundamental right to administrative authorization: In order to exercise their fundamental right, a conscientious objector must request an authorization from the administration in advance and in writing.
- Creation of a registry of conscientious objectors: The above requests are registered in a registry that ranks medical professionals according to their conscience.
- Systematic discrimination against the conscientious objectors: The presence in the registry has negative consequences for a medical professional. Their career advancement is dependent upon the number of abortions performed or prescribed through the "Accreditation Program of Professional Skills." In Andalusia, recruitment in the health care system is subject to the condition of not being an objector.
- No recognition of the right to conscientious objection of institutions that according to their ethos refuse to practice abortions, such as catholic hospitals.

Within this structure, there are also other violations, such as:

- Administrative refusal to register an objector in the registry;
- Deprivation of the right to object for the staff responsible for pre-natal diagnosis, nursing and other administrative personnel;
- In order to prevent conscientious objections, the type of operation or information about a negative opinion from the ethical clinical committee is not communicated to the medical professionals, especially to the anesthesiologists and clinical nurses.

In Spain, the law 2/2010 on "Sexual and reproductive health and abortion"[2] has caused an alarming increase in serious abuses of the right to "effectively exercise the freedom of conscience for health professionals in their professional environment."[3] The right to conscientious objection is grounded on the principle that no one shall be coerced to suppress human life. Any attack on human life, when permitted by law, can only be performed voluntarily. This right has been affirmed, among others, by the ECHR (see below) and by the Resolution 1763/2010 of this Assembly "On the Right to conscientious objection in the field of health" according to which:

> *"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."*

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[1] A monographic report on the violations of the right of conscientious objection of public health professionals in Spain was published in 2011 by the National Association for the Defense of the Right of Conscientious Objection (ANDOC), in collaboration with the *European Centre for Law And Justice* (ECLJ).

The report is published http://www.eclj.org/pdf/Memo_CouncilofEurope_20110615.pdf

[2] Law 2/2010 of March 3rd (BOE No. 55 of March 4th).

[3] R.R. v. Poland (application no. 27617/04) on May 26th, 2011: "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." (§206)

Against this recognized fundamental right:

1. Under Spanish law, the exercise of the right to conscientious objection is governed by a strict administrative procedure. This violates the principle that every fundamental right must be exercised freely. The registration procedure, formally presented as merely declarative, is in fact a preexisting authorization procedure. Indeed, experience has shown that the Administration actually reserves the right to refuse the registration of the conscientious objector due to the timing issues, lack of direct involvement in an abortion process, or the limited size of the registry (numerus closus), etc.[4]

That is what happened, among many other documented cases, to Mrs**. Silvia Montoro Goethe**, family doctor; **Mrs. Ana Maldonado Checo**, nurse; or **Mr. Ramon Paez Ruiz de Angulo**, who -having communicated their conscientious objections (Documents appendix to the Report, No.5)- received a written statement in which the Medical Director of the Northern Healthcare Area of Malaga informed them "that such request lacks practical validity" because in their case (See, appendix to the Report, No. 6) "the law does not imply the possibility of exercising the right to conscientious objection." The same thing happened to **Ms. Alicia Pineda Miramón**, nurse, employed by a health center in Cuenca, and to **José Fernando Pérez Santos**, administrative assistant, who received a statements from the administration stating that "the petition is rejected" and "the request for the registration in the register of conscientious objectors is rejected" (See, appendix to the Report, No.7).

These administrative denials often exclude mandatory references about potential appeals, such as the time and jurisdiction where the appeals must be submitted.[5] With striking frequency and remarkable negligence, the denials are predated making a potential appeal procedurally impossible.

2. The requirement of the Administration to register an objector constitutes a means of pressure on medical staff. If the doctor, or other health-care professional, has not sought and achieved a registration of his objection, he is legally obligated to prescribe, carry on or participate in an abortion, even against his freedom of conscience.

3. The rules of the Accreditation Program of Professional Skills evaluate primary care physicians by the number of abortion referrals they have produced.[6] Absence of abortion referrals places a negative rating on health-care professionals that causes difficulty in promotion, and in turn, an economic detriment up to 500 €/month. As a result, the assessment of professional skills is linked to ideological reasons, unrelated to the criteria of merit and ability. In the Spanish health system, practically all health professionals are employed in the private sector, based on permanent or temporary contracts. Therefore, conflicts of conscientious objection have a direct impact on the employment situation, especially for the physicians and medical residents who are hired temporarily.

4. In some regions, there are even more violations. For example, in Andalusia, unofficial instructions are sent to the health professionals informing them of the unavoidable obligation to submit to the so-called woman's "right" to abortion. Professionals suffer from systematic pressure on this issue. In Andalusia, the selection of health personnel to the Andalusian Health Service (SAS) is done through an interview process during which the medical professional has to prove that he doesn't object. The

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[4] Conscientious objection has traditionally been common among the medical professionals in Spain.

[5] Law 30/92 on the Legal Regime of Public Administrations and Common Administrative Procedure, Articles 53 to 59.

[6] The Accreditation Program of Professional Skills (can be found online: http://www.juntadeandalucia.es/agenciadecalidadsanitaria/system/galleries/download/acsa/Programas_Acreditacion/Profesionales/Manual_de_competencias_medico_familia_atencion_primaria_ME_1_1_02.pdf) is developed by guides of good practice that are used for professional accreditation and, if need be, establishing criteria for promotion. On pages 49 and 96 of these documents, the "good practice" is defined as it is applicable to family doctor in case of abortion.

health-care personnel already working for the SAS is evaluated on criteria, inter alia on abortion, that favor those who do participate in abortion process and do not object.

5. The violations of medical practitioners' rights sorted by their functions are principally:

Family practitioners: Family practitioners are often the first to consult with a woman seeking an abortion, and yet they are not authorized to exercise their right to conscientiously object. They must refer the woman to an abortion specialist, and they are required to sign a certificate of visitation, which is needed by the woman to abort her baby.

Nurses and midwives: While on duty, they are forced to take part into abortions. They must give morning after pills on prescription from doctors.

Staff or Social workers: When referrals are given to concerned hospitals, these employees are obliged to fill out documents recording their full names. Only their names, and not the referring doctor's, appear on these documents.

Anesthesiologists and assisting staff in the operating room who take part in uterine curettage: Anesthesiologists are called to the operating room to sedate women undergoing uterine curettage. If the anesthesiologist asks information to know whether the curettage is meant to treat a miscarriage or induce an abortion, they receive a confusing explanation or none at all.

Obligation to participate in eugenic abortions: Despite the fact that the 1997 Convention of Oviedo[7] prohibits pre-natal diagnosis for eugenic purposes and that the Convention of United Nations on the Rights of Persons with Disabilities[8] grants equality of the rights of the disabled persons, the staff in charge of a pre-natal diagnosis cannot object to the procedure. Other staff members are not informed if the pre-natal diagnosis has a eugenic purpose aiming to avoid the birth of a disabled child. If the abortion is performed on the grounds of a fetal anomaly,[9] they are often not informed of the negative opinion of the committee of ethics.

6. The inaction of public authorities has translated into a "lawless" situation. This abortion law has created a non-ethical bureaucratic chain that operates the process of objections. Professionals are involved in this process without being able to exercise their freedom of conscience. The directives that are applied are usually not public or statutory.

Hidden rules, disguised by operational procedures, make it impossible for the medical professional to refuse to perform an abortion or advise against one for both scientific and deontological reasons.

When a medical professional believes an abortion is not scientifically advisable, these rules make it difficult to refuse signing referrals for abortions that will be performed in specialized medical centers.

Doctors cannot refuse to participate in a prenatal diagnosis that leads to a eugenic abortion.[10]

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[7] Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine Oviedo, 4.IV.1997 Article 12: "Tests which are predictive of genetic diseases or which serve either to identify the subject as a carrier of a gene responsible for a disease or to detect a genetic predisposition or susceptibility to a disease may be performed only for health purposes or for scientific research linked to health purposes, and subject to appropriate genetic counseling."

[8] Convention on the Rights of Persons with Disabilities Article 10: "States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others."

[9] Article 15(c) of Law 2/2010

[10] A. Fortuny "Propuesta de Screening combinado de cromosomopatías en el primer trimestre de la gestación para todo el territorio nacional" in Recomendaciones para la organización de un Servicio de Obstetricia y Ginecología. Documento SEGO 2005, p. 21: The screening of all pregnancies should identify women who have an increased risk of a pregnancy anomaly. A prenatal diagnosis allows fetal treatment and selective termination of pregnancy when medical science cannot offer more adequate solutions. In Spain, women must have access to a prenatal screening system that allows them to determine whether they are at a high risk for chromosome abnormalities and, as a result, are candidates for further invasive diagnostic tests. It is the duty of healthcare authorities, the Central Government and the Autonomic Communities' to guarantee access to these services in all of the country.

Hidden rules of this nature, foreign to the rule of law, make medical objectors defenseless. Among informal instructions provided in Andalusia are the following examples: "*The referral document, like any other, can be completed by the physician* (...) *or other professional (midwife, nurse or social worker)*" without consideration to the fact that it is a prescription and brings possible implications for the mental and physical health of the woman and the fetus. Furthermore, "*until the 14th week* [of pregnancy] (...) *it must be ensured that the woman leaves the center with* [a] *referral*"[11] and that the health professionals who object may not give information, or treat the woman before or after she has had the abortion.[12]

On a regular basis, health professionals' conscientious objections are refused. According to the Administration, the law regarding abortion and abortion referrals (as well as the treatment the women receive before and after the abortion), does not state the possibility to exercise the right of conscientious objection.

Some reference standards on conscientious objection:

The Spanish Constitutional Court stated on April 11, 1985: "Nevertheless, it is pertinent to mention, in terms of the right to conscientious objection that such a right exists and may be exercised, irrespective of whether or not such a regulation has been issued. Conscientious objection is part of the content of the fundamental right to ideological and religious freedom acknowledged in art. 16.1 of the Constitution […] is directly applicable".

In Spain, there was no standard regulation of general procedures for conscientious objections. Recognizing the absence of legal standards, corresponding political and public authorities began regulating objections by means of ad hoc instructions.

In the *European Convention on Human Rights*, Article 9 protects "freedom of thought, conscience, and religion," and Article 14 corresponds to "prohibition of discrimination." Both articles provide a broad protection for the freedom of conscience of medial suppliers who do not want to take part in the interruption of a human life.

The *European Charter of Fundamental Rights* establishes in Article 10 § 2: "The right to conscientious objection is recognised, in accordance with the national laws governing."

The *European Union's Council Directive 2000/78/EC* of 27 November 2000 establishing a general framework for equal treatment in employment and occupation also provides protection to the freedom of conscience of medical practitioners. The Directive prohibits direct and indirect discrimination, based upon, *inter alia*, religion or belief. These provisions are likely applicable to a refusal to permit a medical professional to exercise his or her right of conscience. (§11-12, Articles 1-2).

The right to freedom of conscience is protected by Article 18 of *International Covenant on Civil and Political Rights.*

The European Court of Human Rights stated in the case *R.R. v. Poland* (no. 27617/04) on May 26, 2011 that the States must ensure the "*effective exercise of the freedom of conscience of health professionals in the professional context*" when they organize their healthcare services and access to abortion.

E. Bermejo, L. Cuevas, J. Mendioroz, M.L. Martínez Frías "Vigilancia epidemiológica de anomalías congénitas en Espana en los ûtimos 23 anos (periodo 1980-2002)", in Boletin del ECEMC: Revista de Dismorfologia y Epidemiologia. Serie V. n. 2, 2003, p. 60, pub. En http://bvs.isciii.es/mono/pdf/CIAC_02.pdf : It is a proven fact that there are a decreasing number of babies who are born with birth defects in Spain. This was already commented on in the previous reports [Rodriguez-Pinilla and co. 2002] and in principle, this could be considered as a positive fact. It is necessary to elaborate on the reasons for the decrease of birth defects in order to determine its impact. The decrease in the number of babies born with anomalies can mainly be attributed to the impact of abortions where fetal abnormalities are detected. In essence, the disease was not avoided because the embryo already developed. With improvements made within the prenatal diagnosis field, it becomes easier to detect fetal anomalies earlier without invasive techniques. As a result, the numbers of abortions are increasing, not only in our country, but also in the rest of the developed world [ICBDMS, 2002; EUROCAT, 2002]. Thus, the first prevention measures, which impede the disease, are not exercised.

[11] Documento del Servicio Andaluz de Salud, Dirección General de Asistencia Sanitaria: Instrucciones a los Centros sanitarios ante la demanda de interrupción voluntaria del embarazo (IVE), p. 19.

[12] Id. p.20.

In numerous decisions since the 1989 ruling of the European Commission of Human Rights in *Rommelfanger v. Germany*[13], the Court has asserted the right of the institutions the ethos of which is based on religion or belief, such as catholic hospitals, to exercise their right of conscientious objection on the institutional level.

In its *Recommendation no.1518 (2001)*, the PACE posits that "the right of conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights."[14]

Finally, the International Federation of Gynecology and Obstetrics (FIGO) provides that "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 convictions."[15]

Question:

How does the Committee of Ministers plan to act in order to ensure, in Spain, respect for doctors, healthcare and administrative personnel, as well as hospitals and institutions' right to conscientious objection in compliance with PACE Resolution 1763/2010 and other European and international rules which guarantee this right?

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[13] European Commission of Human Rights, September 6th 1989, *Rommelfanger v. Germany* (application no. 12242/89)

[14] Recommandation on the Exercise of the right of conscientious objection to military service in Council of Europe member states: "The right of conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights"

[15] See Federación Internacional de Ginecología y Obstetricia. Recomendaciones sobre cuestiones éticas en obstetricia y ginecología por el comité del FIGO para el estudio de aspectos éticos en la reproducción humana (Oct. 2009).