



Nyköpings tingsrätt  
Box 333, 611 27 Nyköping  
Sweden

10 January 2016

**In the matter of:  
Case of Linda Steen (T 2153-15) vs. Landstinget i Jönköpings Län**

**Introduction**

1. ADF International (“ADF”) is a global alliance-building legal organization, with more than 3000 allied lawyers around the world, which advocates for religious freedom, life, and marriage and family before national and international institutions. ADF has been involved in more than 50 cases before the European Court of Human Rights (“ECtHR”), and has argued cases before the Inter-American Court of Human Rights, the United States Supreme Court and a number of United Nations bodies. As well as having ECOSOC consultative status with the United Nations, ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform. ADF is a leader in the area of litigation surrounding rights of conscience.
2. ADF submits this brief on behalf of midwife Linda Steen. Her case is representative of an emerging human rights problem in Sweden regarding failure to recognize the right of conscientious objection. This problem is further highlighted in the case of Ellinor Grimmark, which has attracted international media attention.<sup>1</sup>
3. This brief outlines the protection found in international law for rights of conscience. It demonstrates the trend resulting in recognition of a right for medical practitioners to refuse participation in abortion. Particular regard will be had to the jurisprudence of the ECtHR as well as other international hard and soft law documents. Turning to the

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<sup>1</sup> See for example, L. Vuoto, “This midwife can’t get a job in Sweden – and it’s a serious problem” *CNA* (4 January 2016); J. Rudolffson, “Ask a Swedish pro-life midwife about her country’s reputation for tolerance” *National Review* (18 May 2015).



national level, it will be demonstrated that Sweden is the only country in the EU which does not have either a general conscience provision or specific laws protecting medical staff.

### **Protection of rights of conscience in international law**

4. Protection for rights of conscience is explicitly recognised and secured in international law, and is among the commitments Sweden has accepted through the treaty and convention ratification process in a number of documents. In each case, Sweden has consented to be bound by these commitments. Sweden stands alone in failing to abide by its international commitments.<sup>2</sup>

### *Jurisprudence of the European Court of Human Rights*

5. The Grand Chamber of the ECHR has unambiguously affirmed rights of conscience for sincerely held religious and moral beliefs as falling within the ambit of Article 9 of the European Convention of Human Rights (“the Convention”). Article 9 states:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

6. In the landmark case of *Bayatyan v. Armenia*<sup>3</sup>, the Grand Chamber for the first time expressly upheld the right to conscientious objection in the context of compulsory military service. The Grand Chamber held 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.<sup>4</sup>

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<sup>2</sup> See Annex 1, below.

<sup>3</sup> *Bayatan v. Armenia* [GC], no. 23459/03, 27 October 2009.

<sup>4</sup> *Ibid.*, at § 110.



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7. While in this instance the Court held that the guaranteed right of conscience could be expressed through exemption from military service, the judgment by no means limited the expression of conscientious objection to military service. The following reasoning of the Grand Chamber, while lengthy, clearly indicates that the right to conscientiously object equally applies in other contexts, including being required to take part in an abortion procedure:

124. The Court cannot overlook the fact that, in the present case, the applicant, as a member of Jehovah's Witnesses, sought to be exempted from military service not for reasons of personal benefit or convenience but on the ground of his genuinely held religious convictions. (...) Thus, the system existing at the material time imposed on citizens an obligation which had potentially serious implications for conscientious objectors while failing to allow any conscience-based exceptions and penalising those who, like the applicant, refused to perform military service. In the Court's opinion, such a system failed to strike a fair balance between the interests of society as a whole and those of the applicant. It therefore considers that the imposition of a penalty on the applicant, in circumstances where no allowances were made for the exigencies of his conscience and beliefs, could not be considered a measure necessary in a democratic society. Still less can it be seen as necessary taking into account that there existed viable and effective alternatives capable of accommodating the competing interests, as demonstrated by the experience of the overwhelming majority of the European states....

126. 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 (...) 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.<sup>5</sup>

8. The language used by the Court obliging States to uphold and maintain a healthy "democratic society", has a broader context than military service. The Court has clearly delineated a wider principle regarding the importance of States accommodating citizens' deeply held religious convictions and refraining from imposing penalties on them where there are viable alternatives available.

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<sup>5</sup> *Ibid.*, at §§ 124 - 126.



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9. *Bayatyan* is of critical value and importance in the recognition of the right to conscientiously object because it explicitly overruled previous decisions of the Court, and of the European Commission (“the Commission”). In the case of *X v. Austria*,<sup>6</sup> the Commission had stated that, in interpreting Article 9 of the Convention, it had also consider the terms of Article 4 § 3 (b), which provide that forced or compulsory labour should not include “any service of a military character or, in cases of conscientious objectors, in countries where they are recognised, service exacted instead of compulsory military service”. The Commission made an significant textual argument that, by including the words “in countries where they are recognised” in Article 4 § 3 (b), a choice was left to the High Contracting Parties whether or not to recognise conscientious objectors in the military arena and, if they were so recognised, to provide some substitute service.
  
10. Notwithstanding the textual basis of Article 4 § 3 (b), the Court in *Bayatyan* came to the conclusion, as cited above, that not providing for conscientious objection in the military field “imposed on citizens an obligation which had serious implications for conscientious objectors while failing to allow any conscience-based exceptions and penalising those who, like to applicant, refused to perform military service,”<sup>7</sup> and in so doing, the Armenian authorities failed to strike a fair balance between the interests of society and the interests of the applicant. The Court also noted the developments in international law on the right to conscientious objection at length.<sup>8</sup>
  
11. It should follow *a fortiori* that in the context of medical staff and the performance of abortions, without a clear textual reference to the contrary, a failure of a State actor to recognise conscientious objection runs contrary to the obligation to strike a fair balance between the interests of the society and those of the medical staff given their objection is grounded upon the same respect for the dignity of all human life. This is made even more compelling given a reasonable accommodation is readily available both in the case of military service and in the context of abortion. Various schemes of accommodation are

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<sup>6</sup> Commission decision of 2 April 1973, no. 5591/72.

<sup>7</sup> *Bayatyan* at § 124.

<sup>8</sup> *Ibid.*, at §§50 – 70.



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displayed by the majority of European States. It is simply unarguable to suggest that safeguarding rights of conscience for medical staff is not possible because to so do would leave patients unable access abortion.

12. Following the decision of the Grand Chamber in *Bayatyan*, the same reasoning was then applied in the similar case of *Bukharatyan v. Armenia*,<sup>9</sup> again in the context of compulsory military service - cementing the right of conscientious objection under Convention law and leaving no doubt about this jurisprudential line.
13. The ECtHR has developed upon the principles espoused in both *Bayatyan* and *Bukharatyan* in a number of decisions, recently upholding the right to act according to one's deeply held convictions in a number of settings using the concept of reasonable accommodation to guarantee protection of rights enshrined under Article 9 of the Convention. An example of this is the case of *Vartic v. Romania (No. 2)*<sup>10</sup>, where the Court found a violation of a Moldovan prisoner's rights under Article 9 for refusing to serve him a vegetarian diet in accordance with his convictions.
14. *Jakóbski v. Poland*,<sup>11</sup> which was a decision pre-dating the *Bayatyan* decision, concerned a Buddhist detained in a Polish prison, serving an eight year prison sentence for rape. The applicant had requested that the prison authorities serve him meat-free meals in order to comply with his Mahayana Buddhism convictions, but he was only provided with pork-free meals. The Court held that "the authorities failed to strike a fair balance between the interests of the prison authorities and those of the applicant, namely the right to manifest his religion through observance of the rules of the Buddhist religion."<sup>12</sup> It therefore concluded that there had been a violation of Article 9 of the Convention.
15. Furthermore, in the case of *Eweida and Others v. the United Kingdom*<sup>13</sup>, the Court held that there was no requirement for an applicant to establish "that he or she acted in

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<sup>9</sup> *Bukharatyan v. Armenia*, no. 37819/03, 10 January 2012.

<sup>10</sup> *Vartic v. Romania (No. 2)*, no. 14150/08, 17 December 2013.

<sup>11</sup> ECHR, *Jakóbski v. Poland*, no. 18429/06, 7 December 2010.

<sup>12</sup> *Ibid.*, § 54.

<sup>13</sup> *Eweida and Others v. the United Kingdom*, nos. 48420/10, 59842/10, 51671/10, 36516/10, 15 January 2013.



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fulfillment of a duty mandated by the religion in question” in order for the right to freedom of religion to have been interfered with.<sup>14</sup> The United Kingdom courts had found, on the basis of previous decisions of the Court, that a religious manifestation had to be a requirement of a religion to be protected, but significantly the Court overruled this reasoning.<sup>15</sup> Further, the *Eweida* Court overruled decades of pre-existing Commission case law which had indicated that the ability to resign from a job led to a conclusion that there was no interference with Article 9. The Court reasoned that:

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.<sup>16</sup>

16. Turning specifically to rights of conscience for medical professionals, the Court has not yet been called upon to rule specifically upon this but clearly anticipates their existence. In *R.R. v. Poland*,<sup>17</sup> the Court reasoned that where abortion is legalized, it must be available under the following terms:

States are obliged to organize 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...<sup>18</sup>

17. The recognition that health professions can and do exercise “freedom of conscience in the professional context” is qualified only by the access argument in this insightful paragraph which takes for granted a system securing the “effective exercise of the freedom of conscience of health professionals.” That argument is clearly moot in a jurisdiction like Sweden which is not only experiencing a shortage of qualified midwives, but in which rates of conscientious objection would be very low. Moreover, given the shortage of qualified professionals in this field, by excluding otherwise competent midwives, it is the State which is jeopardizing the proper provision of healthcare services other than abortion.

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<sup>14</sup> *Ibid.*, § 82.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, § 83.

<sup>17</sup> *RR v. Poland*, no. 27617/04, ECHR 2011.

<sup>18</sup> *Ibid.*, § 83. Emphasis added.

*Relationship between rights of conscience and the prohibition against discrimination*

18. Article 14 of the Convention provides as follows:

“The enjoyment of the rights and freedoms set forth in this European Convention on Human Rights shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

19. The Jurisprudence of the Court has considered that the freedom from discrimination encompassed by Article 14 is a freedom not to be discriminated against in the enjoyment of the rights guaranteed under the Convention. The Court has found Article 14 to be violated when States treat differently persons in analogous situations without providing an objective and reasonable justification.

20. In *Thlimmenos v. Greece*,<sup>19</sup> the Court held that a difference of treatment is discriminatory for the purposes of Article 14 if it “has no objective and reasonable justification”, that is if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realised”:

The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification (see the *Inze* judgment cited above, p. 18, § 41). However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. 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.<sup>20</sup>

21. This issue arose in *Thlimmenos* in connection with a refusal by the Greek authorities to allow the applicant to gain qualification as an accountant on the ground of his having a former conviction for having refused to wear military uniform during a national mobilisation in 1983 because of his religious convictions. What was at issue was not the distinction made by domestic law between convicted persons and others for access to a profession but the lack of distinction between convicted persons whatever their offences,

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<sup>19</sup> *Thlimmenos v. Greece* [GC], no. 34369/97, ECHR 2000-IV.

<sup>20</sup> *Ibid.*, § 44.



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and the fact that no account was taken of the applicant's offence being of a special nature because of its moral motivation. The Court therefore considered that Article 14 had been violated in conjunction with Article 9.

22. In this regard the Court reaffirmed the complimentary aspect of an Article 14 discrimination claim. *Marckx v. Belgium*<sup>21</sup> is authority for the proposition that Article 14 discrimination claims do not have a separate existence from the Convention rights. Equally, the absence of 'discrimination' in the facts of a given case does not act to prevent the Court from making a finding that another substantive right has been violated.

23. The *Marckx* case involved the failure of the Belgian authorities to allow an unmarried mother to register herself as the mother of her child in the normal manner. The Plenary Court held:

The Court's case-law shows that, although Article 14 has no independent existence, it may play an important autonomous role by complementing the other normative provisions of the Convention and the Protocols: Article 14 safeguards individuals, placed in similar situations, from any discrimination in the enjoyment of the rights and freedoms set forth in those other provisions. A measure which, although in itself in conformity with the requirements of the Article of the Convention or the Protocols enshrining a given right or freedom, is of a discriminatory nature incompatible with Article 14 therefore violates those two Articles taken in conjunction.<sup>22</sup>

24. Similarly in *Abdulaziz and others v. United Kingdom*<sup>23</sup> the Court found that although the application of Article 14 does not necessarily presuppose a breach of the substantive provisions of the Convention and its Protocols – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the rights and freedoms.

25. In *Thlimmenos v. Greece*, cited above, the applicant complained that no distinction was made by the national authorities as between persons grounding their exemption from military service in an exercise of their freedom of religion, conscience and belief, or

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<sup>21</sup> *Marckx v. Belgium*, no. 6833/74, 13 June 1979.

<sup>22</sup> *Ibid.*, § 32.

<sup>23</sup> *Abdulaziz, Cabales and Balkandali v. The United Kingdom*, 28 May 1985, Series A no. 94.





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other persons convicted when subsequently being disbarred from seeking to apply for a professional role. The Court noted that the applicant's own conviction resulted from the very exercise of his Article 9 freedoms. The Court gave weight to the fact that no account was taken of the applicant's offence being of a special nature because of the religious motivation. The Court stated;

Seen in this perspective, the Court accepts that the "set of facts" complained of by the applicant – his being treated as a person convicted of a serious crime for the purposes of an appointment to a chartered accountant's post despite the fact that the offence for which he had been convicted was prompted by his religious beliefs – "falls within the ambit of a Convention provision", namely Article 9.<sup>24</sup>

26. It is worthy of particular comment here that the Greek authorities were found to have breached Article 14 and discriminated against the applicant as a result of the failure to allow him to pursue his chosen profession due to the prior exercise of his religious and conscience rights under Article 9 of the Convention.

27. In conclusion, the foregoing cases establish clearly that the concept of discrimination in relation to Convention rights arises as a *complementary* aspect of a claim alleging a breach of a substantive right. The absence of 'discrimination' in the factual background of a given matter does not preclude a finding of a violation of a Convention right. Moreover, a finding that a Convention right has been violated does not, *ipso facto*, give rise to a claim of discrimination under Article 14.

### *Margin of Appreciation*

28. It should be noted that the ECtHR does afford a degree of deference to member states through the doctrine of the margin of appreciation. This is aimed at ensuring the subsidiarity of the Convention machinery given that "national authorities are in principle better placed than an international court to evaluate local needs and conditions."<sup>25</sup> This sensitivity to the history, culture and law of member states is a source of the legitimacy

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<sup>24</sup> *Supra* n 19 at § 42.

<sup>25</sup> Explanatory Report on 'Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms, art.1. Available at: [http://www.echr.coe.int/Documents/Protocol\\_15\\_explanatory\\_report\\_ENG.pdf](http://www.echr.coe.int/Documents/Protocol_15_explanatory_report_ENG.pdf)



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of the Court's judgments given that the Convention is "built on diverse economic, cultural, and legal traditions..."<sup>26</sup>

29. The doctrine has recently been formally recognised, and is soon to be entrenched into the preamble of the Convention by Protocol 15 when it comes into force.<sup>27</sup> It is a powerful method of ensuring a balance of uniformity in the protection of Convention rights whilst also supporting the diversity of social realities in different member states.
30. In cases which raise complex scientific, legal, moral and social issues, particularly in the absence of a social consensus among the member states, the Court affords greater discretion to member states, yielding a wider margin of appreciation.<sup>28</sup> This is an indispensable manifestation of the exercise of the Court's supervisory, rather than appellate, function.
31. However, the presence of an emerging or established consensus throughout the member states must be a clear indication of the fundamental nature of the right in question, and therefore leads the Court to adopt a more exacting standard of scrutiny of impugned measures or practices.
32. For example, in *Evans v. UK*<sup>29</sup> the Court recalled the fact that "there is no clear common ground amongst the member states" on questions relating to IVF and went on to say that "the Court considers that the margin of appreciation to be afforded to the respondent State must be a wide one."<sup>30</sup>
33. Given the clear consensus that exists amongst European states in protecting the conscience of their healthcare practitioners demonstrating the fundamental nature of the

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<sup>26</sup> Bakircioglu, O , 'The Application of the Margin of Appreciation Doctrine in Freedom of Expression and Public Morality Cases', *German Law Journal*, vol. 8, 2007, p.717.

<sup>27</sup> Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms, art.1. Available at: [http://www.echr.coe.int/Documents/Protocol\\_15\\_ENG.pdf](http://www.echr.coe.int/Documents/Protocol_15_ENG.pdf)

<sup>28</sup> *X, Y, and Z v. UK*, Application no. 21830/93, 22 April 1997, see §§ 44, 52.

<sup>29</sup> *Evans v. UK*, no. 6339/05, 7 March 2006.

<sup>30</sup> *Ibid.*, § 81.



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right,<sup>31</sup> it is inevitable that alleged violations in this subject area will attract heightened scrutiny from the ECtHR. It is also therefore highly unlikely that matters concerning conscientious objection for healthcare professionals would be considered to fall within the ambit of Sweden's margin of appreciation.

*Wider international recognition of the right of conscientious objection*

*a) The Court of Justice of the European Union*

34. The ECtHR is not isolated in recognizing the importance of conscientious objection and development of the law in this area. In recent cases before the Court of Justice of the European Union ("CJEU"), *Federal Republic of Germany v. Y*<sup>32</sup> and *Federal Republic of Germany v Z*<sup>33</sup>, the Advocate General gave his opinion on the correct understanding of Article 9 of the Convention. The Advocate General stated that if the so-called "core area" of religious belief comprised only of "private conscience", it would render any protections for "the external manifestation of that freedom" effectively "meaningless".<sup>34</sup> In its final ruling the CJEU held that the right to act upon sincerely held religious or moral beliefs must include public manifestations of those beliefs.

35. An understanding of Article 9 void of a right to act on one's deeply held convictions becomes the far more limited freedom of "worship,"<sup>35</sup> which protects only private manifestations of faith.<sup>36</sup> In this context, belief-motivated action would only be allowed so long as it does not touch any other boundaries of civil society. This is not what the Convention envisioned, nor what it protects. Indeed, Article 9 § 1 explicitly lists a

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<sup>31</sup> See Paragraph 52 below.

<sup>32</sup> Case C-71/11.

<sup>33</sup> Case C-99/11.

<sup>34</sup> Advocate General opinion at § 46.

<sup>35</sup> The Court of Appeal decision in *Ladele v. London Borough of Islington* [2009] EWCA Civ 1357 illustrates this narrowing of freedom of religion to freedom of worship. Lord Neuberger held at § 51: "...the effect on Ms Ladele of implementing the policy [performing same sex civil partnerships] did not impinge on her religious beliefs: she remained free to hold those beliefs, and free to worship as she wished."

<sup>36</sup> For example, when the Charity Tribunal found against the last remaining Catholic adoption agency in England, it stated that "religious conviction in the sphere of personal belief is protected in both domestic and European equality law, so that acts of devotion, worship, and prayer (including ceremonies) are exempt from equality obligations" but held that there is an "essential distinction" between private acts of worship and the provision of a public service. *Catholic Care v. The Charity Commission for England and Wales*, CA/2010/0007, 26 April 2011 § 60.



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number of forms which manifestation of one's religion or belief may take: not only worship but teaching, practice and observance as well.<sup>37</sup>

b) *The Parliamentary Assembly of the Council of Europe*

36. With regard to the issue of rights of medical professionals and abortion in particular, the Parliamentary Assembly of the Council of Europe ("PACE"), of which Sweden is a member, could not be more clear than as set out in the provisions of Resolution 1763 (2010) entitled "The right to conscientious objection in lawful medical care":

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.

The Parliamentary Assembly emphasises the need to affirm the right of conscientious objection together with the responsibility of the state to ensure that patients are able to access lawful medical care in a timely manner. The Assembly is concerned that the unregulated use of conscientious objection may disproportionately affect women, notably those with low incomes or living in rural areas.

In the vast majority of Council of Europe member states, the practice of conscientious objection is adequately regulated. There is a comprehensive and clear legal and policy framework governing the practice of conscientious objection by health-care providers ensuring that the interests and rights of individuals seeking legal medical services are respected, protected and fulfilled.

In view of member states' obligation to ensure access to lawful medical care and to protect the right to health, as well as the obligation to ensure respect for the right of freedom of thought, conscience and religion of health-care providers, the Assembly invites Council of Europe member states to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services, and which:

- 4.1. guarantee the right to conscientious objection in relation to participation in the medical procedure in question;
  - 4.2. ensure that patients are informed of any conscientious objection in a timely manner and referred to another health-care provider;
- ensure that patients receive appropriate treatment, in particular in cases of emergency.<sup>38</sup>

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<sup>37</sup> See *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 60, ECHR 2000-XI and *Metropolitan Church of Bessarabia and others v. Moldova*, no. 45701/99, §114, ECHR 2001-XII.

<sup>38</sup> PACE Resolution 1763 (2010).



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37. If one completes an investigation of the voting list, there is to be found deputies voting in favour of the Resolution from Malta, Spain, Romania, the Netherlands, Italy, France, Hungary, Germany, Slovak Republic, Moldova, Austria, Luxembourg, Poland, Albania, Georgia, Latvia, Ireland, Switzerland, Lichtenstein, Ukraine, Sweden, Norway, Bulgaria, Lithuania and Portugal, comprising a total of 25 countries.
38. Not only did the Resolution pass by a majority of votes, but it was also passed by a majority of countries. It is clear the vote enjoyed a robust debate including 89 amendments and that the final text was voted for by a numerical majority of those present *including* a Swedish representative.
39. Furthermore, PACE Resolution 2036 (2015) entitled “Tackling intolerance and discrimination in Europe with a special focus on Christians” provides that member States should “promote reasonable accommodation within the principle of indirect discrimination *so as 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 provided.”<sup>39</sup>
40. The position of PACE is supported by that of the Council of Europe’s Council of Ministers, comprising the foreign ministers of the 47 member states, which also affirms rights of conscience.<sup>40</sup>

c) *The United Nations Human Rights Committee*

41. The International Covenant on Civil and Political Rights (“ICCPR”), which Sweden ratified in 1971, provides that:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in

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<sup>39</sup> PACE Resolution 2036 (2015), § 6. Emphasis added.

<sup>40</sup> See Recommendation R(87)8 and Recommendation CM/Rec(2010)4.



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public or private, to manifest his religion or belief in worship, observance,  
practice and teaching. ...<sup>41</sup>

42. The United Nations Human Rights Committee, the body that monitors implementation of the ICCPR, initially took the view that the ICCPR did not provide for the right to conscientious objection.<sup>42</sup> However more recently, much like the ECtHR, it has recognised the importance of rights of conscience as an important component of freedom of thought, conscience and religion. The Committee noted in General Comment 22 that while "...the [ICCPR] does not explicitly refer to a right to conscientious objection, ... the Committee believes that such a right can be derived from article 18..."<sup>43</sup>

43. Further to General Comment 22, the Committee has found violations of Article 18 in cases concerning compulsory military service. Firstly it found that in *Frédéric Foin v France* the applicant "was discriminated against on the basis of his conviction of conscience."<sup>44</sup> In 2006, the Committee found violations of Article 18 in two cases against South Korea, stating:

[W]hile 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... [R]espect on the part of the State for conscientious beliefs and manifestations thereof is itself an important factor in ensuring cohesive and stable pluralism in society...<sup>45</sup>

44. The Committee has gone even further in recognizing that conscientious objection is *inherent* in freedom of thought, conscience and religion:

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 exception from compulsory military service if this cannot be reconciled with that

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<sup>41</sup> Article 18.

<sup>42</sup> See *L.T.K. v. Finland*, Communication no. 185/1984, UN doc. CCPR/C/25/D/185/1984, 9 July 1985.

<sup>43</sup> General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18), 30 July 1993, § 11.

<sup>44</sup> Communication No. 666/1995, 9 November 1999, at § 10.3.

<sup>45</sup> *Yoon v Republic of Korea* and *Choi v Republic of Korea*, communication nos. 1321/2004 and 1322/2004, UN Doc. CCPR/C/88/D/1321-1322/2004, January 23, 2007, §§ 8.3 - 8.4.



individual's religion or belief.<sup>46</sup>

45. Mr. Hipólito Solari-Yrigoyen suggested that the issue of the conscientious objection to military service should be examined under article 18.1, *forum internum*, and not 18.3, as mere manifestation and reasoned:

[E]ven if it were wrongly supposed that the present Communication does not concern recognition of the objector's right, but merely its public manifestation, the statement that public manifestations may be subject only 'to such limitations as are prescribed by law' in no way implies that the existence of the right itself is a matter for the discretion of state parties.<sup>47</sup>

d) *The European Union*

46. The European Parliament had determined that the right to conscientious objection was inherent in the concept of freedom of thought, conscience and religion, as recognised in Article 9 of the Convention, and called upon the member States of the European Union to incorporate the right to conscientious objection as a fundamental right in their legal systems.<sup>48</sup>

47. The Charter of Fundamental Rights of the European Union entered into force with the Lisbon Treaty in December 2009. It contains explicit protection for conscientious objection in Article 10(2) which provides that: "the right to conscientious objection is recognized, in accordance with the national laws governing the exercise of this right." Whilst this provision is aimed at the area in which conscience protections were first codified, military service, the principal is not so limited and the emphasis of the provision is on the place of national laws to regulate the framework which *a priori* assumes the existence of conscience protections.

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<sup>46</sup> *Min-Kyu Jeong et al v Republic of Korea*, communication nos. 1642-1741/2007, UN Doc. CCPR/C/101/D/1642-1741/2007, 27 April 2011, para 7.3; *Atasoy v Turkey*, communication nos. 1853/2008 and 1854/2008, UN Doc. CCPR/C/104/D/1853-1854/2008, 19 June 2012, para 10.4.

<sup>47</sup> See n 38, Dissenting Opinion of Mr Hipólito Solari-Yrigoyen, paras 8.2 and 8.3.

<sup>48</sup> For example, see: Resolution of the European Parliament of 7 February 1983 on Conscientious Objection, Doc.1-546/82; Resolution of the European Parliament on Conscientious Objection and Alternative Civilian Service, 13 October 1989, Doc. A3-15/89; Resolution of the European Parliament on Conscientious Objection in the Member States of the Community, 18 January 1994, Doc. O.J. (C 44) 103.



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48. The European Court of Human Right in *Bayatyan* specifically noted that, in the context of compulsory military service, the majority of European States had found “viable and effective alternatives” to accommodate conscientious objectors. A comparative survey of the laws regarding rights of conscience in member States of the European Union clearly highlight the notable vacuum present in Swedish law in this area.
49. Among Member States of the European Union, every State has explicit Constitutional or statutory protections for rights of conscience. Most countries provide *specific* protections for medical staff in connection with performing abortions. Even those Member States without explicit textual reference to abortion nonetheless broadly define the enumerated right of conscience within their domestic law. A detailed analysis of rights of conscience in the European Union follow which not only illustrates the practicability of legislating for conscientious objection but demonstrates the undeniable shift that has taken place in favour of conscience protections which the ECtHR would take into account in assessing any complaint grounded on this basis.

### **Statistical Summary on laws protecting conscience across EU member states**

50. With the exception of Sweden, *every EU member state* has either a general law protecting freedom of conscience, or a specific law protecting medical practitioners’ rights of conscience. The majority of States have both a general provision and a specific law.
51. Number of EU member states with *general clause(s) guaranteeing freedom of conscience*: **22** out of 28 (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain).
52. Number of EU member states *with specific laws protecting medical practitioners’ rights of conscience*: **21** out of 28 (Austria, Belgium, Croatia, Cyprus, Denmark, France,





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Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Malta<sup>49</sup>, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, United Kingdom).

### **The interests at stake in this case**

53. As demonstrated in Annex 1, below, while there is a strong European consensus on the protection of individual rights of conscience in Europe, the authorities in this case have incorrectly relied upon, explicitly or implicitly, a fabricated “right” to abortion. No such right to abortion exists in international law. The ECtHR has explicitly stated that the Convention does not contain a right to abortion.<sup>50</sup> The Court further recognizes that with the advancement of science and various forms of research involving the embryo, greater protections are now afforded to the pre-born child in international law.<sup>51</sup>

54. Nor is the issue of abortion a competence of the European Union. For example, in 2006, the European Council stated that: “The European Union treaties have not bestowed on the Community or the Union the competence whereby the Union could regulate on abortions.”<sup>52</sup> Further, the European Council has stated that the term “reproductive health” does not include any reference to a right to abortion and the Council does “not accept that abortion should form part of policies on reproductive and birth control education.”<sup>53</sup>

55. Finally not a single binding international human rights document describes abortion as a right. Both the 1994 International Conference on Population and Development in Cairo and the Fourth World Conference on Women that took place in Beijing in 1995 held that

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<sup>49</sup> Malta is included in this list as abortion is generally unavailable there, removing the need for a specific provision to protect the conscience of healthcare workers – none of whom are required to participate.

<sup>50</sup> *A, B and C v. Ireland* [GC], no. 25579/05, 16 December 2010.

<sup>51</sup> *Vo v. France*, no. 53924/00, § 84, 8 July 2004.

<sup>52</sup> Paula Lehtomäki, President-in-Office of the Council, 13 December 2006, Reply to an Oral Question (H-0983/06) by Bastiaan Belder, MEP. Emphasis added. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20061213&secondRef=ITEM-021&language=EN#3-429>

<sup>53</sup> Answering questions from MEPs Bernd Posselt (H-0729/03) and Dana Scallon (H-0794/03), 4 December 2003. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20031216&secondRef=ITEM-005&language=EN#2-178>



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governments have an obligation to eliminate and reduce abortions and to help woman avoid repeat abortions.<sup>54</sup> The outcome documents also hold that abortion should never be promoted as a method of family planning.<sup>55</sup> If abortion was indeed a “right”, clearly international law would not be describing it as something governments need to reduce or eliminate.

## Conclusion

56. In summary, on the one hand this case considers the question of access to abortion, which is not an international right, is outside the competence of the European Union and the accessibility of which is not practically at stake in this case. On the other is the interests of a small number of medical practitioners, bound by a moral code which says they cannot take life, supported by all other European countries and by international law. The impact of this policy is seen in the personal cost for the medical practitioners who are forced out of a profession they love. It is also felt in the healthcare system, and the patients it seeks to treat, which struggles to fill positions and is left unrepresentative of population it serves.

57. The European Court of Human Rights has held that guaranteeing freedom of thought, conscience and religion is at least part of the duty of State neutrality.<sup>56</sup> Where necessity and proportionality are lacking, a State must accommodate religious and moral beliefs no matter how irksome it finds them. This notion stems from the reluctance of European civilization – born of decency, forbearance, and tolerance – to compel our fellow citizens to humiliate themselves by betraying their own consciences.

Respectfully,

R Clarke.

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<sup>54</sup> ICPD Programme of Action at § 8.25.

<sup>55</sup> ICPD Programme of Action at § 7.24.

<sup>56</sup> See n 30, above.



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## Annex 1: National laws in EU Member States on freedom of conscience and conscientious objection

Member State		Relevant Law	Provision	Details
Austria	General	Austrian Constitution	Art 14	‘Everyone is guaranteed complete freedom of conscience and creed. The enjoyment of civil and political rights is independent of religious belief. Nevertheless duties incumbent on nationals may not be prejudiced by religious beliefs. No one can be forced to observe a ritual act or to participate in an ecclesiastical ceremony in so far as he is not subordinate to another who is by law invested with such authority.’
	Specific	Austrian Criminal Code	Art 9a(3)	‘Every male Austrian is liable for military service. Conscientious objectors who refuse the fulfillment of compulsory military service and are exonerated therefrom must perform an alternative service. The details are settled by law.’
			Art 97(2)	‘No physician is required to perform an abortion or to participate in it, unless an abortion without delay is necessary to save the pregnant woman from an imminent, not otherwise preventable death. This is also true for those working in the nursing profession, in medical-technical services, and for people employed in auxiliary medical services.’
			Art 96(3)	‘No one shall be in any way whatever disadvantaged due for refusing to participate in or to perform a non-criminal abortion.’
			Reproductive Medicine Act 1992 (Fortpflanzungsmedizingesetz, BGB1. No. 275/1992) s 6(1)	S 6(1)
		S 6(2)	‘No person shall be in any way whatever disadvantaged as a result of refusing to perform or participate in medically assisted reproduction in accordance with this Act.’	
Belgium	General	Belgian Constitution	Art 19	‘Freedom of worship, its public practice and freedom to demonstrate one’s opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished.’
	Specific	The Belgian Act on Euthanasia 2002	Ch VI, s 14	‘The request and advance directive referred to in Sections 3 and 4 of this Act are not compulsory in nature. No physician may be compelled to perform euthanasia. No other person may be compelled to assist in performing euthanasia. Should the physician consulted refuse to perform



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Member State		Relevant Law	Provision	Details
				euthanasia, then he/she must inform the patient and the persons taken in confidence, if any, of this fact in a timely manner, and explain his/her reasons for such refusal. If the refusal is based on medical reasons, then these reasons are noted in the patient's medical record.'
		Belgian Penal Code	Art 348, al 2, 6 <sup>o</sup>	'Neither a physician, nor a nurse, nor a medical assistant is obliged to cooperate with the termination of a pregnancy. The physician is obliged to inform a patient interested in abortion, during the first visit, of his refusal.'
Bulgaria	General	Bulgarian Constitution (adopted 12 July 1991)	Art 38(1)	'Freedom of conscience, thought, and choice of religion or religious or atheistic beliefs are inviolable. The state shall assist the keeping up of tolerance and respect among believers of different faiths as well as between believers and nonbelievers.'
			Art 38(2)	'Freedom of conscience and religion may not be detrimental to national security, public order, public health and morality, or the rights and freedoms of other citizens.'
			Art 59(2)	'Religious or other beliefs are not grounds for refusing to fulfill the obligations imposed by the Constitution and laws.'
Croatia	General	Constitution of the Republic of Croatia (consolidated and confirmed 6 July 2010)	Art 17	'Even in cases of clear and present danger to the existence of the state, no restrictions may be imposed upon the provisions of this Constitution stipulating the right to life, prohibition of torture, cruel or unusual treatment or punishment, and concerning the legal definitions of criminal offences and punishment, and the freedom of thought, conscience and religion.'
			Art 40	'Freedom of conscience and religion and the freedom to demonstrate religious or other convictions shall be guaranteed.'
	Specific		Art 48	'Conscientious objection shall be allowed to all of those who, based on religious or moral conviction, are not willing to perform military duties in the armed forces. Such persons are obliged to perform other duties as specified by law.'
			Law on Nursing (Zakon o sestrinstvu, pročišćenitekstzakona NN 121/03, 117/08, 57/11), Art 3	Art 3
		Law on Medical Practice (Zakon o liječništvu, pročišćenitekstzakona, NN 121/03, 117/08)	Art 20	'Because of their ethical, religious or moral beliefs or beliefs, doctors have the right to assert a conscientious objection and refuse to conduct diagnosis, treatment



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Member State		Relevant Law	Provision	Details
				and rehabilitation of the patient, if doing so does not conflict with the rules of the profession, and if it does not cause permanent damage to the health of or threaten the life of a patient. Doctors must promptly inform patients about their objections and refer them to another physician of the same profession. In the case of doctors employed in a medical institution, a company, or other legal entity that performs health services, or who work with another doctor in a private practice, they must notify their supervisor or employer of their objection.'
Cyprus	General	Constitution of the Republic of Cyprus	Art 18(1)	'Every person has the right to freedom of thought, conscience and religion.'
			Art 18(6)	'Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person.'
	Specific	Doctors (Council, Discipline and Pension Fund) Law of 1967 & 1970	Art 8	'...a doctor may refuse medical treatment to a patient except in cases of emergency or humanitarian duty; this general provision may be relied upon, in principle, where the motivations for refusing to provide a medical treatment are religious or ideological.'
Czech Republic	General	Charter of Fundamental Rights and Freedoms (incorporated as part of the Constitution of the Czech Republic under Art 112(1) of the Constitution, both adopted 16 December 1992)	Art 15(1)	'The freedom of thought, conscience, and religious conviction is guaranteed. Everyone has the right to change her religion or faith or to have no religious conviction.'
	Specific		Art 15(3)	'No one may be compelled to perform military service if such is contrary to his conscience or religious conviction. Detailed provisions shall be laid down in a law.'
Denmark	Specific	Consolidated Act on Induced Abortion (LovbekendtgÅrelse, 2006-10-16 nr. 541)	Section 10(2)	'...doctors, nurses, midwives and social and health assistants, or students in these professions, for whom it is contrary to their ethics or religious beliefs to perform or assist in induced abortion, can apply for and be granted exemption.'
Estonia	General	Constitution of the Republic of Estonia	Section 40	'Everyone is entitled to freedom of conscience, freedom of religion and freedom of thought.'
Finland	General	Finnish Constitution 1999	Section 11	'...Freedom of religion and conscience entails the right to profess and practice a religion, the right to express one's convictions and the right to be a member of or decline to be a member of a religious community. No one is under the



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Member State		Relevant Law	Provision	Details
				obligation, against his or her conscience, to participate in the practice of a religion.'
France	General	Declaration of Human and Civic Rights of 26 August 1789	Art 10	'No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order.'
		Act of 9 December 1905 on the separation of Church and State	Art 1	'The Republic shall ensure freedom of conscience. It shall guarantee the free practice of religion, subject only to restrictions imposed in the interests of public order.'
	Specific	Code of Public Health (Code de la santé publique)	Art L.2212-8	Allows medical physicians to invoke a 'conscience clause' on the basis of which they may refuse to perform an abortion. However, they are obliged to inform the woman seeking abortion without delay of their intention to invoke the clause.
		<i>CC decision no. 2001-446DC</i> , June 27, 2001, Rec 74, [11]-17] (Fr)	-	This decision of the French Constitutional Court recognized the principle that conscientious objection is a right afforded to individuals, not institutions, and upheld the repeal of paragraphs of the Code of Public Health, removing the possibility that departments heads of public health establishments could refuse to allow the provision of abortion services in their departments.
		Loi No 2013-404 du 17 Mai 2013 ouvrant le mariage aux couple de personnes de meme sexe; Circulaire du 13 Juin 2013	-	This recent French statute modified the French Code Civil to achieve marriage equality in France. A regime of sanctions imposable on officials who refuse to perform same-sex marriages was summarised by a circulaire of 13 June 2013. The Conseil Constitutionnel dismissed a challenge by seven mayors alleging that the statute failed to provide a conscience clause and thus interfered with their freedom of conscience. The matter has moved to Strasbourg as of 24 February 2014. See further D Marrani, 'France: no conscientious objection defence for mayors refusing to marry same-sex couples' [2014] PL 337.
Germany	General	Basic Law for the Federal Republic of Germany (Grundgesetz) (adopted 8 May 1949)	Art 4(1)	'Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.'
	Specific		Art 4(3)	'No person shall be compelled against his conscience to render military service involving the use of arms. Details shall be regulated by a federal law.'
			Art 12a(2)	'Any person who, on grounds of conscience, refuses to render military service involving the use of arms may be required to perform alternative service...'
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Member State		Relevant Law	Provision	Details
		1990, 880-82 (FRG); <i>Judgment of the Federal Administrative Court of 12/13/1991</i> , BVerwGE 89, 260-70 (FRG)		advertisement for a chief physician in a women's hospital, which included a requirement that the physician in a women's hospital, which included a requirement that the physicians be willing to perform abortions, was not in violation of a law providing that no one is obligated to perform abortions.
Greece	General	Constitution of Greece (revised 6 April 2001)	Art 13(1)	'Freedom of religious conscience is inviolable. The enjoyment of civil rights and liberties does not depend on the individual's religious beliefs.'
			Art 13(5)	'No person shall be exempt from discharging his obligations to the State or may refuse to comply with the laws by reason of his religious convictions.'
			Art 16(2)	'Education constitutes a basic mission for the State and shall aim at the moral, intellectual, professional and physical training of the Greeks, the development of national and religious consciousness and at their formation as free and responsible citizens.'
	Specific	Law 3418/2005	Art 31	'Doctors can involve the principle of moral conscience and refuse to participate in artificial termination of pregnancy, unless inescapable risk to the life of the pregnant woman or risk of serious and permanent damage to health...'
Hungary	General	Constitution of the Republic of Hungary (Act XX of 1949)	Art 60(1)	'In the Republic of Hungary everyone has the right to freedom of thought, freedom of conscience and freedom of religion.'
			Art 60(2)	'This right shall include the free exercise or acceptance of a religion or belief, and the freedom to publicly or privately express or decline to express, exercise and teach such religions and beliefs by way of religious actions, rites or in any other way, either individually or in a group.'
		Specific	Judgment 64/1991, (XII.17) AB hatarozat	-
Ireland	General	Constitution of Ireland (adopted 29 December 1937)	Art 44(2)(1)	'Freedom of conscience and the free profession and practice of religion are, subject to public order and morality,





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Member State		Relevant Law	Provision	Details
				guaranteed to every citizen.'
	Specific	Protection of life during pregnancy Act 2013	Section 17	'...nothing in this Act shall be construed as obliging any medical practitioner, nurse or midwife to carry out, or to assist in carrying out, any medical procedure [including abortion] ... to which he or she has a conscientious objection...'
Italy	Specific	Law No 194 of 22 May 1978 on the social protection of motherhood and the voluntary termination of pregnancy, Gazz. Ugg., Part I, 22 May 1978, No 140, 3642-46 (Italy)	Art 9	Section 9 requires health care personnel to submit a written declaration of their conscientious objection to abortion to the medical director of their employer healthcare institution and to the regional medical officer.
Latvia	General	Constitution of Latvia (adopted 15 Feb 1922, significantly amended 1998)	Art 99	'Everyone has the right to freedom of thought, conscience and religion. The church shall be separate from the State.'
Lithuania	General	Constitution of Lithuania	Art 26(1)	'Freedom of thought, conscience, and religion shall not be restricted.'
	Specific		Art 139(2)	'The citizens of the republic of Lithuania must perform military or alternative national defence service according to the procedure established by law.'
		Law on national conscription: No 1593/1996 (amended 2015)	Art 4	Substitute service available for 'those who due to religious or pacifist beliefs may not serve under arms.'
Luxembourg	Specific	Law of 17 December 2014	Art 13	'No doctor will be required to perform an abortion. Similarly no health professional will be required to contribute to such an intervention.'
Malta	General	Constitution of Malta (adopted 21 September 1964)	Art 40(1)	'All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship.'
Netherlands	Specific	Constitution of the Kingdom of the Netherlands 2008	Art 99	'Exemption from military service because of serious conscientious objections shall be regulated by Act of Parliament.'
		Law on the termination of pregnancy of 1 May 1981	Section 20	'No person shall be obliged to provide a woman with treatment intended to terminate pregnancy or to assist in providing such treatment...'
		Opinions 1997-46, 2000-13 and 2002-26 of the independent equality body (Commissie Gelijke Behandeling (CGB))	-	The CGH allowed the claim of the applicant, who was public servant who for religious reasons refused to celebrate a same-sex marriage and whose contract was not renewed on that ground. The CGB found that the Gender Equal Treatment Act had been violated as other public servants were available and prepared to perform same-sex marriage so that there were insufficient reasons to renew the contract of the applicant. The CGB observed that in preparing the Gender Equal Treatment Act, the legislator had acknowledged that conscientious objections on religious grounds do occur and that, in principle, they ought to be respected.
Poland	General	Constitution of the Republic of	Art 53	'Freedom of conscience and religion shall



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Member State		Relevant Law	Provision	Details
		Poland (adopted 2 April 1997)		be ensured to everyone.'
	Specific	Law on the professions of physician and dentist (1996)	Art 39	'... a physician may refrain from applying medical treatment conflicting with his conscience, however he shall not be absolved of the duty to indicate actual possibilities of obtaining the treatment from another physician and/or another medical institution and of the duty to state reasons and include this decision in the medical file ...'
Portugal	General	Constitution of the Portuguese Republic (7 <sup>th</sup> revision, 2005)	Art 41(1)	'Freedom of conscience, religion and worship shall be inviolable.'
			Art 41(6)	'The right to be a conscientious objector, as laid down by the law, shall be guaranteed.'
	Specific	Law of Religious Freedom 2001 (Law n° 16/2001)	Art 12(1)	'Freedom of conscience includes the right to object to the compliance of laws that contradict the imperative commands of one's own conscience, within the limits of the rights and duties imposed by the Constitution and under the terms of the law that may regulate the exercise of the conscientious objection.'
			Art 12(2)	'The commands of conscience that are considered as imperative are those whose infringement involves a serious offence to one's moral integrity and, consequently, make any other behaviour as not mandatory.'
			Art 12(3)	'Conscientious objectors to military service, without excluding those who also invoke a conscientious objection to civil service, have the right to a civil service system, which respects the commands of their conscience, as long as it is compatible with the principle of equality.'
General	Constitution of Romania	Art 29(2)	'Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.	
Specific	Medical Deontological Code of 30 March 2012 published in the Official Journal No. 298	Art 33	'The refusal to offer medical service can be expressed under the strict conditions provided by the law, if the doctor is requested to perform acts which would infringe his professional independence, his image or his moral values or if the request is not in conformity with the fundamental principles of the goals and the social role of the medical profession.'	
Slovakia	General	Constitution of the Slovak Republic	Art 24(1)	'The freedoms of thought, conscience, religious creed and faith are guaranteed. This right also encompasses the possibility to change one's religious creed, or faith. Everyone has the right to be without religious creed. Everyone has the right to publicly express his thoughts.
	Specific		Art 25(2)	'No one may be forced to perform military service if it is against his conscience or religious creed. Details will be laid down



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Member State		Relevant Law	Provision	Details	
				by law.'	
		Act no 578/2004 on healthcare providers, health workers and professional organizations in health	Annex, Health workers and the exercise of his/her profession, para. 3	'Health workers cannot be required to perform or to assist in performance of a procedure that is contrary to his or her conscience, except in cases where the life, health or rights of the patient are threatened.'	
		Act 576/2004 on healthcare, and services related to healthcare	Para 12	'...Healthcare providers may refuse to enter into contracts for the provision of healthcare if...they are prevented on the grounds of personal conviction.... [This is] applicable only to abortion, sterilization and assisted reproduction technologies.'	
Slovenia	General	Constitution of the Republic of Slovenia	Art 41	'Freedom of Conscience: Religious and other beliefs may be freely professed in private and public life. No one shall be obliged to declare his religious or other beliefs...'	
			Art 46	'The right of conscientious objection shall be permitted in such circumstances as are determined by statute, to the extent that the rights and freedoms of others are not affected.'	
	Specific	Health Services Act	Art 56	'Healthcare workers may reject a medical intervention if they believe that it is not in accordance with their conscience and with international rules of medical ethics. Healthcare workers must notify the healthcare institute of their conscientious objections. Healthcare institutes must take these into consideration, but must ensure that patients' healthcare rights are exercised without disruption. Healthcare workers may not refuse to provide emergency medical assistance.'	
			Slovenian Code of Medical Deontology Practice	Art 5	'In pursuing their profession physicians shall, within the limits of their professional capabilities, be fully independent and shall answerable to their own consciences, to their patients and to society for their work.'
				Art 14	'Physicians shall be obliged to pursue their profession responsibly, professionally, conscientiously and precisely for every patient, irrespective of race, sex, ethnicity, religious persuasion, political convictions, and socio-economic position and irrespective of their personal relationship with the patient or the family thereof. Physicians shall be free to choose methods and means of treatment, whereby they shall be obliged to consistently take into consideration the achievements of medical science and the principles of professional behaviour. Physicians shall be obliged to reject any intervention that according to



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Member State		Relevant Law	Provision	Details
Spain				their professional convictions and conscience could be unethical or harmful to the patient.’
			Art 42	‘Physicians may refuse to carry out an abortion or sterilisation if it is not in accordance with their beliefs and conscience and it is not a case of emergency medical assistance. They shall be obliged to refer the patient to another capable physician, or must inform the healthcare institute of their refusal in order to ensure the execution of such interventions in accordance with the law.’
	General	Constitution of Spain (October 31 1978)	Div 2, s 16(1)	‘Freedom of ideology, religion and worship is guaranteed, to individuals and communities with no other restriction on their expression than may be necessary to maintain public order as protected by law.’
	Specific		Div 2, s 30(2)	‘The law shall determine the military obligations of Spaniards and shall regulate, with all due guarantees, conscientious objection as well as other grounds for exemption from compulsory military service; it may also, when appropriate, impose a community service in place of military service.’
		Law 1/2003 of 28 January 2003 on the rights and information of the patient in the Community of Valencia ( <i>Ley 1/2003, de 28 de enero, de la Generalitat, de Derechos e Información al Paciente de la Comunidad Valenciana</i> (DOGV de 31 de enero))	Art 17(2)	This specific legislation adopted by the Autonomous Community of Valencia recognizes the right for each patient to adopt a ‘life will’ according to which she may express the will not to be artificially kept alive in certain circumstances where life-saving medical treatment would have to be delivered. It allows for a conscientious objection clause benefitting health care practitioners, which they may invoke in order not to have to be instrumental in executing that will. But it also provides an obligation for the public authorities, where such conscientious objection is raised, to adopt the necessary measures to ensure that the will of the patient is respected. In practice, this means that another health care practitioner must be available to execute the will of the patient, and that it is the duty of the public administration to ensure this availability.
		STC 53/1985, judgment of 26 August 1988	-	The Constitutional Court held that although the Organic Law 7/1980 on freedom of religion ( <i>Ley Orgánica 7/1980, de 5 de julio, de libertad religiosa</i> (BOE del 24 de julio)) does not refer to conscientious objection, this is without prejudice to the interpretation which could be given to Article 16 of the Constitution, which is to be interpreted in accordance with international and European human rights treaties.



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Member State	Relevant Law	Provision	Details
	STC 19/1985, judgment of 13 February 1985	-	The Constitutional Court held that religious objection may not be invoked in order to modify unilaterally the existing contractual relationships with the employer.
	<i>Auto del Juzgado Contencioso-Administrativo No 3 de Málaga</i> , Piezaseparadamedidasprovisionales n° 12.1/2011. Pmto, Especial protecciónderechos fundamentales n° 39/2011. 29 March, 2011.	-	A judge in Málaga held that the conscientious clause in the abortion law, allowing providers to refuse to provide services, applies only to the performance of a termination of pregnancy and not to the provision of information and referrals to non-objecting providers.
Sweden	-	-	-
United Kingdom	Specific	Abortion Act 1967, s 4	Section 4 ‘...no person shall be under any duty whether by contract or by 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 proceeding the burden of proof conscientious objection shall rest on the person claiming to rely on it.’
		Human Fertilisation and Embryology Act 1990, s 38(1)	Section 38(1) ‘No person who has a conscientious objection to participating in any activity governed by this Act shall be under any duty, however arising, to do so.’ (NB: There is no definition of ‘conscientious objection’ in the Abortion Act 1967 or the Human Fertilisation and Embryology Act 1990.)
		Marriage Act 1949 (as amended by the Gender Recognition Act 2004) s 5B(1)	Section 5B(1) ‘A clergyman is not obliged to solemnise the marriage of a person if the clergyman reasonably believes that the person’s gender has become the acquired gender under the Gender Recognition Act 2004.’
	Section 5B(2) ‘A clerk in Holy Orders of the Church in Wales is not obliged to permit the marriage of a person to be solemnised in the church or chapel of which the clerk is the minister if the clerk reasonably believes that the person’s gender has become the acquired gender under that Act.’		