



## Protection of Conscience Project

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# Submission to the Parliamentary Assembly of the Council of Europe

Re: Women's access to lawful medical care: the problem of  
unregulated use of conscientious objection.

6 October, 2010

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The Protection of Conscience Project is a non-profit, non-denominational initiative that advocates for freedom of conscience in health care. This letter concerns the Report from the Social Health and Family Affairs Committee that will be considered by the Assembly on 7 October, 2010.

The Project's submission will be brief, since others, notably the European Centre for Law and Justice, have provided the Assembly with detailed critiques of the Report.<sup>1</sup> Resources that are relevant to the Report's claims and recommendations are available on the Project website, which one of the experts consulted by the Committee<sup>2</sup> considers "excellent and informative."<sup>3</sup>

Turning to the Report, the Social, Health and Family Affairs Committee asserts that it is "deeply concerned about the increasing and largely unregulated occurrence" of the exercise of freedom of conscience in Europe.

According to the Committee, too many European citizens in positions of responsibility refuse to do what they believe to be gravely wrong. The Committee recommends that member states adopt "comprehensive and clear regulations" to address this problem.<sup>4</sup>

The Committee suggests a number of rules that should be included in such regulations. Specifically, it recommends that those who intend to exercise freedom of conscience

- should be made to prove that their intention is based upon morality, ethics or religion;
- should be made to prove that they are honest and sincere;
- should be made to notify employers and others of their intention to make moral or ethical decisions;
- should be formally registered, at least by employers, as persons who intend to make moral or ethical decisions

Having complied with these requirements, citizens will be permitted to exercise freedom of conscience within limits that have been carefully defined by the Committee. Specifically, if asked to do something they believe to be wrong, they may refuse to do it, but they must ensure that the wrongful act is done by someone else.<sup>5</sup> If this is not possible, they must do it themselves.<sup>6</sup>

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The Committee notes the need to institute “oversight and monitoring” to ensure that people do what they believe to be wrong when it is required of them. It also recommends that “effective complaint mechanisms” be established so that unauthorized or erroneous exercise of freedom of conscience can be denounced to appropriate authorities.<sup>7</sup>

Finally, the Committee asserts that individuals can exercise freedom of conscience “and, therefore, institutions such as hospitals” cannot.<sup>8</sup> On the face of it, this means that because an individual can make moral or ethical decisions, two or more individuals acting in concert cannot - or should not - be allowed to do so. Hence (the Committee argues) a hospital cannot have a code of ethics or morality that governs its operations.

In that case, of course, neither can the medical profession. And if the Committee is correct in its view that a collective incorporated as an institution cannot establish policies or rules about moral or ethical behaviour by its members, the member states of the union cannot make the regulations recommended by the Committee. All of this suggests that the Committee’s reasoning on freedom of conscience as it relates to institutions and collectives is incoherent.

This incoherence arises from the limited perspective of the Committee. In stating the case as a problem of conscientious objection in health care, it has framed the issue too narrowly and adopted an inadequate framework for reflection and analysis.

What is at issue here is the meaning and importance of freedom of conscience as a fundamental good of the human person and society, and the implications for that in working out the requirements of rational pluralism. Considering the Report from this broader perspective, as we do here, it becomes apparent that its recommendations are offensive to human freedom and dignity and repugnant to fundamental principles of liberal democracy.

It may be argued that the narrow focus of the Report results from its attention to a specific kind of conflict that exists primarily in health care. This explanation is reasonable, as far as it goes, but still insufficient. Granted the focus on a particular type of conflict, why, absent careful consideration of the broader issues, attribute the cause of the conflict to “the problem of conscientious objection” rather than “the problem of inordinate expectations”?

And if conflict exists primarily in health care, why is this so, and what response does it call for? After all, people in other walks of life are probably, on the whole, no more or less moral or ethical than physicians and other health care workers. If this conflict exists primarily in health care, surely it must be because health care workers are, more often than others, asked (or told) to do what they believe to be wrong. This is surely a reason to provide health care workers with more robust protection for freedom of conscience, not an excuse to deprive them of fundamental freedoms that their fellow citizens take for granted.

In sum, the Report does not provide the Assembly with an adequate basis upon which to formulate recommendations to member states in the Union, and is, moreover, surprisingly inconsistent with the best philosophical and political traditions of European nations.

## Addendum

### Select Resources on the Project website

Freedom of Conscience and the Needs of the Patient  
<http://www.consciencelaws.org/issues-ethical/ethical023.html>

The Illusion of Moral Neutrality  
<http://www.consciencelaws.org/issues-ethical/ethical037.html>

Establishment Bioethics  
<http://www.consciencelaws.org/issues-ethical/ethical016.html>

The Problem of Complicity  
<http://www.consciencelaws.org/issues-ethical/ethical082.htm>

Why 'Public' Should Not Mean 'Atheist'  
<http://www.consciencelaws.org/issues-legal/legal053.html>

Respect for Conscience Must be a Social Value  
<http://www.consciencelaws.org/issues-ethical/ethical108.html>

Freedom of conscience- "the heart of our democratic political tradition"  
<http://www.consciencelaws.org/speeches/2010-06-03-faith-freedom.html>

Conscientious Objection as a 'Crime Against Humanity'  
<http://www.consciencelaws.org/issues-legal/legal038.html>

Submission to the College of Physicians and Surgeons of Ontario Re: Physicians and the Ontario Human Rights Code  
<http://www.consciencelaws.org/submissions/2008-09-11-cpso.htm>

### House of Lords Select Committee on Assisted Dying for the Terminally Ill Bill (First Report)

- Duties of physicians, and conscientious objection  
[http://www.consciencelaws.org/issues-legal/legal027.html#Clause\\_7\\_Duties\\_of\\_physicians,\\_and\\_conscientious\\_objection\\_](http://www.consciencelaws.org/issues-legal/legal027.html#Clause_7_Duties_of_physicians,_and_conscientious_objection_)
- Practical Issues- Conscientious Objection  
[http://www.consciencelaws.org/issues-legal/legal027.html#From\\_Chapter\\_4:\\_Practical\\_Issues](http://www.consciencelaws.org/issues-legal/legal027.html#From_Chapter_4:_Practical_Issues)
- Conclusions - Responsibilities of Physicians  
[http://www.consciencelaws.org/issues-legal/legal027.html#From\\_Chapter\\_7:\\_Conclusions](http://www.consciencelaws.org/issues-legal/legal027.html#From_Chapter_7:_Conclusions)
- Examination of witnesses  
<http://www.consciencelaws.org/issues-legal/legal028.html>
- Written evidence  
<http://www.consciencelaws.org/issues-legal/legal029.html>

### House of Lords & House of Commons Joint Committee On Human Rights Twelfth Report Assisted Dying for the Terminally Ill Bill

- Conscientious Objection  
[http://www.consciencelaws.org/issues-legal/legal027.html#Joint\\_Committee\\_On\\_Human\\_Rights](http://www.consciencelaws.org/issues-legal/legal027.html#Joint_Committee_On_Human_Rights)

## Belgium: mandatory referral for euthanasia

<http://www.consciencelaws.org/issues-background/euthanasia/euthanasia08.html>

- België: verplichte verwijzing voor euthanasie  
<http://www.consciencelaws.org/dutch/backeuthanasia08a.html>

## Notes

1. European Centre for Law and Justice, Memorandum on the PACE Report, Doc. 12347, 20 July, 2010 (September, 2010)  
([http://www.eclj.org/pdf/ECLJ\\_MEMO\\_COUNCIL\\_OF\\_EUROPE\\_CONSCIENTIOUS\\_OBJECTION\\_McCafferty\\_EN\\_Puppink.pdf](http://www.eclj.org/pdf/ECLJ_MEMO_COUNCIL_OF_EUROPE_CONSCIENTIOUS_OBJECTION_McCafferty_EN_Puppink.pdf)) Accessed 2010-10-04
2. *Report, Social Health and Family Affairs Committee, Women's access to lawful medical care: the problem of unregulated use of conscientious objection.* Doc. 12347 (20 July, 2010) (Hereinafter "*the Report.*") Explanatory memorandum by Mrs. McCafferty, Part 1, paragraph 2, note 5 (Joanna Mishtal).  
(<http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12347.pdf>) Accessed 2010-10-04
3. E-mail from Joanna Mishtal to the Project Administrator, 17 June, 2010.
4. “. . . the Social, Health and Family Affairs Committee is deeply concerned about the increasing and largely unregulated occurrence of [conscientious objection]. . . The Parliamentary Assembly should thus invite member states to develop comprehensive and clear regulations that define and regulate conscientious objection. . .” *The Report*, Summary, p. 1.
5. *The Report*, Part A. (Draft Resolution) paragraphs 4.1.2.2 - 4.1.2.3
6. *The Report*, Part A. (Draft Resolution) paragraph 4.1.3
7. *The Report*, Summary, p. 1
8. “According to international human rights law, the right to freedom of thought, conscience and religion is an individual right and, therefore, institutions such as hospitals cannot claim this right.” *The Report*, Section 4.2, paragraph 25. Despite the claim that this assertion has a basis in law, no authority is cited to support it.