



OPINION OF THE SPANISH BIOETHICS COMMITTEE ON CONSCIENTIOUS OBJECTION IN MEDICAL CARE

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1. Conscientious objection in lawful medical care

“Conscientious objection” is the refusal of a person to perform certain actions or participate in certain activities that he/she is bound to do by law in order to avoid a serious conflict of conscience. Insofar as the constitutional state recognises the fundamental right to ideological and religious freedom, it may regulate the exercising of conscientious objection as an expression of the ethical and religious pluralism existing in society. Conscientious objection consists of expressing an incompatibility between the dictates of one’s own conscience and certain rules of law binding on the person, with a view to being discharged from carrying them out without suffering any penalisation. Accordingly, the concept of conscientious objection includes the following elements:

- 1) The existence of a mandatory rule of law, the content of which may affect the religious beliefs or moral standards of individuals, which cannot be avoided without penalty. The contents of the rule of law must be incompatible with the moral or religious convictions of individuals and not merely go against certain personal opinions or interests.
- 2) The existence of unmistakable dictates of individual conscience clashing with the rule of law, regarding which the system may require verification.
- 3) The absence in the legal system of any rules providing a solution for the conflict between one or several rules of law and the individual conscience that enable alternatives acceptable to the objector.
- 4) The indication by the person in question of the conflict between the legal norm and his/her conscience, the mere presumption of a conflict is not sufficient. Consequently, in this respect, the declarations made by third parties on behalf of a group of people are not valid.

Without questioning the ethical basis behind conscientious objection there is no unanimous opinion that objection must be considered and, therefore, regulated as a separate fundamental right, as recognised in Article 16 of the Spanish Constitution, which the State is obliged to protect and guarantee. Some believe that conscientious objection should be recognised as a way of solving the tension produced in certain cases between the individual conscience and the mandatory rules of law. In any case, conscientious objection is related with the fundamental right to “ideological and religious freedom”, established in Article 16.1 of the Spanish Constitution:

“The ideological and religious freedom of individuals and communities is guaranteed, expression of which is limited only insofar as it may be necessary to maintain the public order protected by law”.

As is well known, the only type of conscientious objection explicitly regulated by the Constitution is objection to military service (Art. 30.2). There is, therefore, some dispute as to whether other conscientious objection should be accepted as a general right to act in accordance with the dictates of one’s conscience or whether, on the contrary, the limits and justification of the objection should be specified in each case in order to be recognised in law. The question raised is: Does the Spanish Constitution protect a general right to conscientious objection, in turn protected by the fundamental right to ideological and religious freedom, or does that right not exist if it is not explicitly recognised in the Constitution or law? In the field of medical care, some Autonomous Communities have included specific mention of conscientious objection or, in general, beliefs and convictions of health care providers when regulating, within the scope of their respective territories, living wills, pharmaceutical laws and laws regulating the end-of-life process, the latter option also assumed by the State in the *Bill regulating the rights of the person at the end of life*, currently in progress in Parliament.¹

¹ The draft did not enter in force because de Parliament was dissolved.

As it is known, the Constitutional Court has also ruled on conscientious objection on several occasions with certain qualifications. In some cases, it has expressly recognised the connection between conscientious objection and the fundamental right to ideological and religious freedom, asserting that:

“Both comparative law and legal theory declare a connection between conscientious objection and freedom of conscience. According to legal theory, conscientious objection is a specification of the freedom of conscience, which means not only the right to freely form one’s own conscience but also the right to act according to the imperatives of that conscience” (Judgment of the Constitutional Court 15/1982 of 18 May on military service).

On other occasions, the Constitutional Court has spoken in favour of considering conscientious objection as part of the fundamental right to ideological and religious freedom recognised in Article 16.1 of the Constitution. A declaration of this nature was made as an *obiter dictum*, being an issue aside from judging the constitutional nature of the challenged norm, in the sentence of the Constitutional Court 53/1985 of 11 April, alleging that the right to conscientious objection “exists and may be exercised” regardless of whether or not it has been expressly recognised in Parliament.

In 1987 (Judgment of the Constitutional Court 160/1987 of 27 October), when pronouncing on conscientious objection to military service the Court confirmed its thesis that, although not regulated, the right to conscientious objection “exists and may be exercised regardless of whether or not that regulation has been passed and reiterates that freedom of conscience is part of the fundamental right to ideological and religious freedom recognised in Article 16.1 of the Constitution”.

However, to a certain extent the sentence of the Constitutional Court 161/1987 of 27 October qualifies the foregoing, asserting that “conscientious objection in general [...] is not recognised nor could it be recognised in Spanish or any other law because this would be

tantamount to denial of the State. It may, nevertheless, be allowed as an exception in respect of a specific duty”.

In conclusion, therefore, it is not unanimously accepted that conscientious objection may be considered as being an autonomous right linked to the right to ideological and religious freedom. However, the Parliament clearly has the power to regulate this in order to solve specific conflicts by exempting a person from certain legal obligations, provided the objector can prove the existence of a dilemma between his/her legal obligations and moral convictions. This does not mean that the system must protect any kind of objection, but that such protection must be reserved for sufficiently important issues. It would be just as unacceptable to sacrifice the conscience of the objectors, as it would be to ignore the interests and assets protected by the rules giving rise to objection.

The Spanish Organic Law 2/2010 of 3 March on sexual and reproductive health and voluntary interruption of pregnancy confirmed the constitutional doctrine expressed in the sentence of the Constitutional Court 53/1985, granting the rank of law to conscientious objection to abortion. Therefore, apart from the *constitutional* recognition of conscientious objection to military service (Spanish Constitution Art. 30.2), there is at present also a *legal* recognition of conscientious objection to abortion, pursuant to section 19.2 of the Organic Law 2/2010, which, when stipulating that the medical service for this purpose must be provided at establishments within the public health network, adds:

“The health care providers directly involved in the voluntary interruption of pregnancy shall be entitled to exercise conscientious objection, with no detriment to the access to and quality of the assistance due to the exercise of conscientious objection. Refusal to carry out an interruption of pregnancy for reasons of conscience shall at all times be a personal decision of the medical staff directly involved in performing that voluntary interruption of pregnancy, which must be expressed in advance and in writing. Health care providers shall, in any case, provide adequate

medical attention and treatment to women requiring them before and after an abortion” (s. 19.2)

The Spanish Bioethics Committee pronounced that the Organic Law in its “Opinion on the Organic Law on Sexual and Reproductive Health and Voluntary Interruption of Pregnancy” (October 2009), approved by a majority vote with one dissenting vote against the consideration of abortion as a right or a morally acceptable practice. That majority opinion considered it necessary and urgent to regulate conscientious objection to abortion to ensure that the public health service would guarantee adequate medical assistance for women in any case. In the recommendations, it was specified that “Women requesting interruption of their pregnancy must be attended in such a way consistent with the freedom of health care providers to act in accordance with their convictions in the terms stipulated in the law. Conscientious objection to abortion is a right recognised in the Constitution and in the law, so it is imperative to regulate the exercise of that right, as also recognised in Article 10.2 of the Charter of Fundamental Rights of the European Union”, within the discretion of national laws. The regulation should specify and develop the points stressed in the Organic Law 2/2010, namely: 1) the individual nature of the objection; 2) the right thereto of persons “directly involved in performing the voluntary interruption of pregnancy”; 3) the need to express the objection “in advance and in writing”; and 4) the duty to provide medical treatment for any pregnant women who so request. The need to provide medical assistance to any women whose health is in danger should be added to these requirements, being a compulsory duty which should be highlighted.

In its Resolution 1763 (2010) on the right to conscientious objection in lawful medical care, the Parliamentary Assembly of the European Community (PACE) laid down a set of non-binding recommendations for Member States, within the framework of the discretion corresponding to those States for regulating the matter. The Parliamentary Assembly declared that “no person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human foetus or embryo, for any reason”; it recommended for Member

States to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services, and which: 1) guarantee the right to conscientious objection; 2) ensure that patients are informed of any conscientious objection in a timely manner and referred to another health-care provider, if necessary; and 3) ensure that patients receive appropriate treatment, in particular in cases of emergency.

It should be noted, therefore, that the pronouncement of the Council of Europe refers to the institutional dimension of the objection, mentioning institutions, which may not be coerced either for their refusal to participate in certain actions subject to conscientious objection, presumably by conscientious objectors forming part of them.

2. The convenience of regulating conscientious objection

In view of the government's obligation arising from the Organic Law 2/2010 to regulate conscientious objection to abortion, the question to be considered is whether that objection should be supplemented so as to regulate other situations frequently arising in health and medical care. Conscientious objection in medical care is not only an aspect of a person's right to ideological freedom, but is a reality that cannot be overlooked. There are, in fact, health care providers who refuse to participate in certain medical services alleging that their conscience morally obliges them to refuse. It is also a fact that nowadays the autonomy of individuals is recognised as a fundamental moral principle; a principle upheld by both conscientious objectors and patients seeking lawful medical care from public health care providers. This gives rise to a conflict between the right to freedom of the objecting health care provider and that of the person seeking medical attention that the care provider may refuse to treat. On the one hand, the patient claims his/her right to be attended by the public health service, and on the other objectors uphold their right to ideological freedom to refuse to perform certain practices. In other words, there is a conflict between the duty of the objector to obey his/her conscience and the duty of the same objector, as a health care provider, to meet his/her obligations as a civil servant or public employee.

Obviously this approach may fall outside the strict sense of conscientious objection insofar as it should only be applied when there is a moral conflict with a compulsory legal obligation of the person, as in the case of conscientious objection to military service. There is some dispute as to whether services included within a qualified profession structured into specialities, such as, in general, those included within the area of health sciences, may be considered compulsory obligations for the citizens affected. Having said this, certain sectors are currently seeking a broadening of the concept of conscientious objection to extend it, provided there is a rigorous and a proven conflict between conscience and the law, to situations deriving from a professional contract or civil servant status, assessing the objection of professionals to perform certain services stipulated in that contract or status. On the whole, nobody questions the legitimacy of conscientious objection when it is made in strict terms of conscience versus a mandatory law, but the extension of conscientious objection to the professional area is more widely disputed since neither their incorporation in those areas nor the selection of specialities within them constitute a compulsory obligation or duty of the person in question.

In any case and beyond the above-mentioned considerations, the convenience of regulating conscientious objection is unquestionable. Not to do so would leave open a range of possible objections, without predetermining when and how the objection is legitimate, causing legal insecurity. On the contrary, regulating objection means to limit and control people's freedom to object to the norm when they feel morally obliged to do so. It is imperative to reflect on this subject and promote a public debate to establish the terms on which the conflict should be considered and to determine whether the existence of a law regulating conscientious objection guarantees the rights at issue. With the intention of providing arguments for this debate, the Spanish Bioethics Committee considers that the following fundamental points should be considered.

2.1. *Priority of freedom*

Conscientious objection is an obvious consequence of the recognition of ideological or religious freedom and the principle of tolerance as a characteristic value of plural societies

in which a variety of ethical codes coexist. In democratic societies, citizens are able to disagree with the general rules established in the law if there are unavoidable duties for the individual to fulfil, and the latter has no alternatives for fulfilling that duty. In that case, to respect the freedom of conscience they may even be released from the duty to act according to the compulsory rules of law, including those establishing the rights of third persons to receive certain services.

2.2. *Duties as well as rights*

The citizens of a Constitutional State have not only rights, but also duties. Those duties include making it possible to guarantee the exercise of rights such as equality, the right to education or the right to health protection. Health care providers must make their moral convictions compatible with their professional obligation to attend citizens who require certain medical services established by law, while the State must guarantee the principle of equality to ensure that there is no discrimination for access to treatment or medical services. Conscientious objection is, therefore, seen as a conflict between the fulfilment of a professional duty established by law and the exercise of freedom of religion and beliefs of those who are bound by that duty, which they consider contrary to their principles.

2.3. *Objection, an individual right*

Since we understand conscientious objection as a way of exercising individual freedom, it can only be accepted as a right of the individual, not as a collective right. Only individuals have conscience, not legal entities or other collective bodies. In this regard, a distinction should be made between *conscientious objection* and *civil disobedience*. Both concepts are perfectly legitimate in constitutional states, but both concepts are not the same. In conscientious objection, as its name indicates, a person expresses his/her will not to obey a rule for reasons of conscience, requesting by law the release from that duty without penalization. Civil disobedience, in contrast, may be individual or collective but is always a public, explicit act of breach of a rule. The aim pursued through civil disobedience is for the law in question to disappear or be changed. It is not merely seeking individual non-

compliance but to exercise an influence and pressure on public opinion. The motive for civil disobedience is usually political, while that of objection is moral, religious or scientific. A disobedient person commits an offence for which he/she may be punished, while it is accepted that the objector, as an exception, does not submit him/herself to the law, for moral reasons, which does not give rise to any discrimination. If democratic decisions reflect the opinion of the majority, respect for the objector's conscience represents the will to take into account minority opinions. In any case, an adequate institutional channel must be found for individual to exercise conscientious objection since in most cases the objector works in an institution in which he/she should not be discriminated.

2.4. *Freedom implies responsibility*

In a democratic state governed by the rule of law, freedom must be explicitly linked to responsibility. Nobody should exercise freedom without considering whether he/she is harming or jeopardising another person in doing so. In general, the law marks the essential limits to ensure that the freedom of one person does not interfere with the freedom of others. Consequently, it is ethically appropriate for the regulation of conscientious objection to determine the limits of the objector's freedom and his/her fundamental right not to be "obliged to declare his/her ideology, religion or beliefs" (Constitution, Art. 16.2). As regards the latter, the Constitutional Court has confirmed that the constitutional right not to declare one's religious and ideological principles and beliefs shall not be violated when the individual applies to the State for exemption from a constitutional duty. The Court also recalls that conscientious objection is not unconditional and requires "expression, substantiation and recognition due to the exception it represents to the general duty" established in law." The possible clash with the rights recognised in Articles 16.2 and 18.1 of the Constitution is eliminated upon exercise of the right to objection, which presumes a waiver by the objector to keep his/her ideological reserves secret" (Judgment of the Constitutional Court 160/1987 of 27 October).

2.5. Coherent objection

In connection with the sense of responsibility deriving from the exercise of freedom, it is important to ask about the seriousness and grounds for any possible conscientious objection that may arise. Is it sufficient to object to complying with a law without stating the reasons for that objection? Is there any reason that the individual may consider acceptable be legitimate? If it is concluded that any rule of law may be a subject matter for objection, an absurd situation would be created where anyone and everyone is free to decide whether or not to comply with the law according to the dictates of their own conscience. Affirming the sovereignty of conscience in any circumstances, without any constraints or limits, would convert the constitutional state, governed by the rule of law, into something that is materially impractical. In an ideologically plural and culturally diverse society, the dictates of conscience for religious or cultural reasons are unforeseeable, so it is essential to define which specific reasons can be grounds for objection.

3. Cases in which conscientious objection is not possible

Although conscientious objection is not exclusive to health and medical care, that is where most conflicts arise deriving from an alleged right to objection. This is comprehensible, since protection of health and everything related with people's life are matters especially affected by ideological and religious debate. Even so, it is essential to define what should and what should not be settled under the umbrella of conscientious objection. In particular, conscientious objection is not the right context for solving conflicts deriving from scientific, technical and professional disputes. The inevitable discrepancies arising from a given scientific or technological application must not be exposed as forms of objection if, as previously mentioned, conscientious objection is backed by the fundamental right to ideological and religious freedom, rather than other rights such as the fundamental right to "scientific and technological... production and creation", recognised in Article 20.1.b) of the Constitution, which applies more to scientific disputes regarding the best praxis or the best interpretation of a protocol.

However, the objection expressed against the will of a patient or his/her representatives is not conscientious objection unless that will goes against what is considered to be advisable by scientific knowledge and professional practice. The right to reject a treatment and everything that may derive from that right in terms of palliative care cannot clash with the *lex artis*, which is not sufficient argument for solving such situations. Neither the treatment of Jehovah's Witnesses, nor medical intervention in hunger strikes, can be classified as conscientious objection of the health care provider. This does not detract from the fact that these cases create an ethical dilemma, which must, nevertheless, be resolved according to parameters other than conscientious objection.

This notwithstanding, the refusal by teaching staff to train medical personnel in certain specific services can be included within the concept of conscientious objection. In this regard, it would be necessary to consider what reasons are acceptable for teaching staff to avoid passing on certain knowledge that is necessary to perform services permitted by law but which the specific teacher considers go against his/her conscience, principles and, consequently, his/her vision of professional ethics.

Although the foregoing already greatly limits the strict sense of conscientious objection in health and medical care, it is clearly impossible to foresee all the cases in which it may arise. For this reason, the regulation should lay down the general principles, establishing flexible rules that can be applied to unprecedented situations.

4. Recommendations for developing the regulation of conscientious objection in lawful medical care

In view of the arguments set out in this document, it is clearly advisable to regulate conscientious objection in lawful medical care and develop the provisions established in Organic Law 2/2011. This regulation is convenient:

- a) To guarantee the rights of users and patients of the public health system;
- b) To give conscientious objectors and hospitals legal security;
- c) To define how and when objection really corresponds to the exercise of the ideological and religious freedom protected by the Spanish Constitution.

The Spanish Bioethics Committee considers it sufficient to specify who the objectors are, what actions and what establishments may be included, what procedures must be used for allegation and implicit, or explicit, revocation, and what organisational measures must be set up to guarantee provision of the service.

Accordingly, the Spanish Bioethics Committee makes the following recommendations for the regulation of conscientious objection in lawful medical care, or for the regulation of specific cases within this field:

- 4.1. Conscientious objection must be exercised by individuals.** It must be exercised by individual persons, this right cannot be exercised in a collective or institutional manner.
- 4.2. Hospitals cannot invoke conscientious objection at an institutional level.** Private hospitals that are approved and their services contracted by the Social Security can exclude the objected service from their contract.
- 4.3. The person exercising objection must be involved in the service.** The regulation must specify the possible extent and scope of the objection, which medical practitioners or other employees in medical or pharmaceutical centres are entitled to allege conscientious objection, respecting the principle of equality. The opinion of those medical practitioners and other health care providers must be taken into account when establishing these provisions.
- 4.4. The objection must be specific and refer to specific actions.** The objection cannot be extended to all care cases deriving from possible incidents produced by the medical service giving rise to the objection and forming part of the usual obligations of health care providers.

- 4.5. Hospitals must have the necessary information on the objectors** to enable them to guarantee hospital management and ensure the necessary health care provisions.
- 4.6. “Subsequent objection” and reversible conscientious objection are accepted,** because life is a dynamic process in which the opinions of the individuals might change.
- 4.7. It must be possible to check the coherence of the objector’s actions with his/her ideology and beliefs within his/her overall activity in the medical profession.** It would not be coherent to object in the public health system and not in private practice.
- 4.8. The recognition of conscientious objection is consistent with the establishment by Parliament of an alternative service by the objector.** This service would be established to avoid any imbalance in the provision of medical services.
- 4.9. The Spanish Bioethics Committee understands that both the compliance with the law and the objection must be performed in a responsible way and that the provision of the services established by law must be guaranteed at all times.**

Madrid, 13 October 2011

ANNEX I. DISSENTING OPINIONS

PARTLY DISSENTING OPINION DISSENTING

Submitted by Yolanda Gómez Sánchez, as Member of the Spanish Bioethics Committee, in connection with the ***“Opinion of the Spanish Bioethics Committee on conscientious objection in medical care”***.

I should start by pointing out that I issue this partly concurring and partly dissenting *opinion* not to disagree with the approval of the *Opinion* issued by the Spanish Bioethics Committee (hereinafter CBE) on conscientious objection in medical care, which I supported at the Plenary Session held on 13 September 2011 when it was adopted, but rather to dissent from the specific wording of the document in two issues, which I consider extremely important, as I explain below.

- A) *Regarding the institutional dimension of conscientious objection.* The Opinion of the CBE makes it clear in several places that conscientious objection is a strictly personal, individual right and cannot, therefore, be recognised for legal persons, institutions or groups. This is indicated, for example, in section 2.3 and in “Recommendations” 4.1 and 4.2. However, in section 1 -Conscientious objection in lawful medical care-, when reproducing part of Resolution 1763 (2010) of the Parliamentary Assembly of the Council of Europe, one paragraph states: “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 CBE document adds the following paragraph: *“It should be noted, therefore, that the pronouncement of the Council of Europe refers to the institutional dimension of objection, mentioning institutions, which may not be coerced either for their refusal to participate in certain actions subject to conscientious objection, presumably by conscientious objectors forming part of them”*.

In my opinion, this paragraph clearly contradicts assertions made within the document and confirmed in Recommendations 4.1 and 4.2 mentioned above. The inclusion of this paragraph also incorporates an interpretation that is incompatible with the ethical and legal nature of conscientious objection and is not coherent either with the contents of *Resolution 1763*, since the latter by no means establishes “an institutional dimension” of conscientious objection, but rather urges States not to discriminate against or hold medical institutions liable for the existence of cases of conscientious objection within their organisation and in the performance of their services. The Resolution mentions the “person” and the “institutions” together but then, when mentioning the cases in which they must not be coerced, held liable or discriminated against, it includes cases that can only correspond to one category or another: e.g. institutions cannot “perform” or “assist” an abortion because these are physical actions, although they may “accommodate” it. Yet none of this implies the recognition of an institutional dimension of conscientious objection.

Therefore, I consider it necessary to express my discrepancy with the wording of the document in the paragraph mentioned above.

B) *Regarding conscientious objection in teaching.* The third paragraph of Section 3 of the CBE *Opinion* reads as follows: “*However, the refusal by teaching staff to train medical personnel in certain specific services can be included within conscientious objection. In this regard, it would be necessary to consider what reasons are acceptable for teaching staff to avoid passing on certain knowledge that is necessary to perform services permitted by law but which the specific teacher considers go against his/her conscience, principles and, consequently, his/her vision of professional ethics*”.

As in the case described in A) above, I disagree with the wording of this paragraphs for the reasons explained below. Parliament could undoubtedly recognise conscientious objection by law within the scope of teaching of medical personnel and, therefore, it is not incorrect to say that this case would be included within the scope of debate and regulation of conscientious objection. But the text of this

paragraph should have specified and clarified its meaning. As it is written, it could easily be construed as recognition of a teacher's right to object in respect of any matter and form of passing on knowledge, hence no distinction is made between theoretical teaching, practical teaching, possible compulsory teaching, etc. In my opinion, the possible recognition of conscientious objection within medical teaching could only be restrictive and could under no circumstances affect theoretical teaching or result in the elimination of parts of the training programmes. Any regulation should be particularly careful in this matter. In my humble opinion, the paragraph questioned does not give sufficient weight to the rights and duties of a conscientious objector who is a teacher or the assets that must be protected through the best, most comprehensive training of those who would, in the future, be responsible for the health and medical care of the population.

Therefore, I consider it necessary to express my discrepancy with the wording of the document in the paragraph mentioned above.

While expressing my respect for both the work done by the CBE and the opinions issued by the other members of the Committee, I consider it necessary to express my discrepancy with the wording of the document in the paragraphs indicated in points A) and B) of this Partly Dissenting Opinion; this by no means indicates a discrepancy with the approval of the document itself, which I support.

Yolanda Gómez Sánchez

This opinion is seconded by: Carmen Ayuso, María Casado, César Loris and Pablo Simón Lorda

PARTLY DISSENTING OPINION I issue my opinion concurring with the approval of the CBE Document on Conscientious Objection, except in respect to three issues which I consider of vital importance. In my opinion, the text strays from the social need for which it was issued, or is not sufficiently explicit. The reasons that led me to express these qualifications are briefly described below:

- 1) I think it is excellent that these rights are developed and extended in law and I consider it a democratic breakthrough to establish mechanisms to protect the freedom of conscience, bearing in mind that rights are never absolute, and that there are limits and constraints for exercising them. This means that measures must be provided to protect the rights of others and for this very reason, a Document such as this one, designed to support the recognition of conscientious objection in health and medical care, must also clearly define the limits of such objections.

Since the Spanish Organic Law 2/2010 on sexual and reproductive health and voluntary interruption of pregnancy establishes the duty of providing this medical service to pregnant women who request it within the health system, the provision of the service is the inexorable limit for conscientious objection by the health care providers involved. Therefore, provision of the service is the rule, not the exception.

Apart from that general obligation, there is a compulsory need to provide medical assistance for women whose health is in imminent danger; an unquestionable, priority duty that should be stressed and where no objection is possible.

Using the appropriate management mechanisms at each hospital and medical centre, the State is obliged to organise the services in such a way as to provide assistance without delay or undue obstacles. This is clearly established in the Spanish Organic

Law, especially in section 19.2 ². In my opinion, the interpretation made by the Committee goes *against the law* insofar as it protects the particular case -objection- more than the general provision of the service.

- 2) Moreover, in my opinion, the Committee should have explicitly declared its support for all health care providers who comply with the laws and provide the medical services to which women are entitled under the “Law on sexual and reproductive health and voluntary interruption of pregnancy” - especially when they are socially and professionally delicate services. Respect for autonomy and rights protected by law in accordance with democratically established rules is an ethically correct, commendable conduct.

There was nothing to prevent the Committee from making that declaration to encourage compliance with the law and solidarity, except the opposing opinion of those who disagree with the law on ideological grounds. One of the most important functions of a Committee such as ours is educational work supporting the rules democratically established within the field of bioethics.

- 3) Finally, I express my discrepancy with the way in which the issue of objection in medical teaching has been set down in this Document and I second the dissenting opinion of Yolanda Gomez.

María Casado

This opinion is seconded by César Loris

² “The health care providers directly involved in the voluntary interruption of pregnancy shall be entitled to exercise conscientious objection, with no detriment to the access to and quality of assistance due to exercise of conscientious objection. Refusal to carry out an interruption of pregnancy for reasons of conscience shall at all times be a personal decision of the medical staff directly involved in performing that voluntary interruption of pregnancy, which must be expressed in advance and in writing. Health care providers shall in any case provide adequate medical attention and treatment to women requiring them before and after an abortion” (Art. 19.2).

DISSENTING OPINION

I, César Nombela Cano, member of the Spanish Bioethics Committee, declare that I do not support the document entitled “Conscientious objection in Medical Health” signed by the majority of the Committee members. Therefore, according to the rules of this Committee, I issue the following dissenting opinion for its incorporation in the text of that document.

I admit that the document includes certain essential aspects of recognition of the right to conscientious objection, which I consider positive. However, I am also of the opinion that the document is lacking a clear, unambiguous pronouncement recognising this right as an essential part of the freedom of conscience, exercise of which should not be impaired by lower-ranking legal or administrative provisions. In this regard, two especially important issues from an ethical point of view should not be ignored:

- a) Conscientious objection is contemplated for especially serious issues, such as abortion or euthanasia, which the objector considers go against human beings’ right to life in one of its stages, such as the foetal or adult stages. There is scientific foundation behind the consideration of what human life is, which leads conscientious objectors to consider certain practices contrary to their professional ethics and, as such, incompatible with the morality that should prevail in the performance of their work. It is true that some democratic societies have passed legal provisions authorising such practices, which humanity considered unlawful for centuries. But it is equally true that they are not usually passed with a very broad consensus in society. The essential reason behind objection to abortion cannot be overlooked, namely the consideration that the life of an unborn child –something which is protected by the Spanish Constitution as from conception– cannot be weighed up against other values, which objectors consider of lesser importance.

- b) A health care provider who objects to performing the aforesaid practices, such as abortion and euthanasia, is not claiming the exercise of an unlimited right, but is

merely refusing to participate in actions he/she considers unjust and immoral. The performance of certain practices cannot be graded, which could justify setting limits on the exercise of objection, when dealing with practices of this nature, the consequences of which are irreversible.

I consider the regulation proposed by the Bioethics Committee too restrictive overall, or at least it could be interpreted as being over-restrictive, which would considerably limit the right to objection when there are sufficiently important reasons for it. The document approved insists on relating the recognition of conscientious objection to the guarantee that the objected practice is carried out. By relating the two issues, objection is depicted as a conflict between the personal interests of the objector and the law, which upholds general interests. It would follow from this that recognising the right to object is tantamount to tolerating certain ideas or beliefs, accepting that they are always and necessarily detrimental to the interests of others. It is not taken into account that conscientious objection which deserves to be recognised always endeavours to protect other things which, in the opinion of the objector, are more important, as is the right to life. Exercise by objectors of a right (abstaining from performing an action or operation they consider immoral) cannot be conditional upon there being another person who will perform that action or operation. In any case, the objector could not be held liable if nobody else agrees to perform the action that he/she refuses to do for reasons of conscience, nor is the objector obliged to guarantee any service based on objectionable actions or operations of the nature contemplated here.

Furthermore, I believe that an adequate institutional channel should be found for the conscientious objection that medical practitioners are entitled to exercise, in the manner and on the grounds indicated above. Otherwise, exercise of the objection could be hampered. There is no doubt that conscientious objection, as indicated in the document approved by the majority of the Committee, is an individual right. But institutions are created and managed by persons, who must be able to exercise their right to conscientious objection in the work of the institution. I consider it positive that the document also refers to the part of the Council of Europe Resolution 1763 (2010) that mentions the institutional

dimension of objection. The Council of Europe claims that both persons and institutions—mentioning them both together— should be able to express their 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, without suffering coercion. However, despite accepting that institutional dimension, the document approved by the Committee is restrictive and vague in two fundamental aspects stemming from the institutional dimension it has recognised.

The first aspect is the refusal to accept that a private institution approved and contracted by the Social Security may, on grounds of conscientious objection, exclude certain operations or services, precisely because its sponsors or managers and the staff working in them are entitled to exercise such objection. Recommendation 4.2 of the document accepts the possible institutional exclusion of the service, but on condition that it be considered outside its contract, thereby depriving it of the symbolic value of individuals' conscientious objection, which is the real reason for excluding the corresponding medical service.

The second aspect is concerned with another fundamental aspect, namely teaching, since in my opinion conscientious objection can also be extended to this area, where the right to object is also related with academic freedom. What is the point of allowing a professional to object to practising an abortion, if he is forced to do so when performing his duties as a teacher? The document recognises –quite rightly in my opinion– the teacher's right to refuse to train students in certain “medical services”. But it immediately adds that it would be necessary to define what reasons are acceptable for this refusal. It is a particularly confusing paragraph, since it does not indicate who would be responsible for defining them. Nor does it state, logically, that those reasons will be the same, and just as important, as those justifying recognition of the right to conscientious objection.

It is essential to analyse with common sense what objection means to teaching practices or operations that are considered subject to conscientious objection. The exercise of conscientious objection by a teacher does not mean that he/she is deliberately trying to

create gaps in the knowledge acquired by those he/she is teaching or training. On the contrary, objection to perform certain practices, such as abortion using surgical or chemical procedures, entails having a good knowledge of what they are. The objection stems from that knowledge, since the objector is aware that they entail severing human life at its foetal or embryonic stage, which the objector is not prepared to do. Academic objection must, therefore, be seen as a refusal to perform those practices for educational purposes, since the instruction and training of medical practitioners has a necessarily practical aspect.

In view of all that foresaid, I believe that, in spite of its good points, the document approved by the Committee could be construed as restricting or limiting the freedom of conscience in medical practice. Freedom of conscience must enable medical practitioners to refuse to perform certain actions that go against the ethics of someone who inexorably wants to respect the lives of all human beings at all stages, from conception up to natural death. This right is above all and any laws, but is also established in the Spanish Constitution and should be regulated adequately, preventing any discrimination against anyone who exercises it in his/her professional duties, whether in public, private or semi-private institutions. Obviously, as indicated in the document, a person who conscientiously objects to acting against life cannot object to providing adequate care for anyone requiring it, even if the need arises from having previously submitted to an objectionable operation, because this would be incoherent with the attitude of a person devoted to protecting the life and health of anyone and everyone.

César Nombela Cano