Proposal to inform European Institutions regarding the regulation of Conscientious Objection to abortion

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Abstract:

The aim of this paper is to define a set of proposals to inform European institutions in the regulation of Conscientious Objection to abortion. The board of the European Society of Contraception and Reproductive Health Care (ESC) was informed on the elements that should in the opinion of the authors be included in a future regulation of Conscientious Objection to abortion in Europe. These elements are outlined in this paper and the debate about them could form the basis for recommendations to the international scientific community and the European institutions.

As current measures governing the principle of conscientious objection result in negative consequences regarding women's access to sexual and reproductive health services, they should be changed. Healthcare services should adopt measures to guarantee that a woman's right to voluntary abortion is not limited by the practitioner's stance on the principle of conscientious objection. In the countries where conscientious objection is allowed, the regulation must clearly delineate the extent of the duties and the exemptions of professionals based on the principles of established social consensus. The recommendations included in this document specify measures on the rights of women, the rights and duties of the practitioner, the role of institutions and the role of professional associations.

KEYWORDS

Abortion; Conscientious objection; Health care services; Human rights; Professional associations

INTRODUCTION

The published literature contains a wide variety of positions on the regulation of conscientious objection to abortion [1]. On the one hand, there are arguments based on evidence and extensive experience to eliminate what is called conscientious objection: patients are dependent on medical care (which they also pay for) and have a right to receive it, whereas health professionals adopt their position by choice in the full knowledge of the scope of their duties. Furthermore, health professionals are paid directly or indirectly by the patients whom they have an obligation to serve [2]. On the other hand are those who are opposed to the legalisation of abortion or who accept a culture of conscientious objection. Consequently they advocate for the regulation of conscientious objection so that it may be used as a barrier to women's access to abortion, as is already the case in almost all countries, even within Europe [3]. The reality is that most European countries share common legislation on abortion that includes a clause on professional 'conscientious objection' exclusively for abortion and not for any other activity or action within or outside the field of medicine. This practice effectively undermines access to legal abortion. There are many other issues with regard to sexual and reproductive health where the individual desire for self-determination collides with a paternalistic regulation rooted in the past, such as emergency contraception, assisted reproduction techniques, sex-selection procedures, etc.

In this document, we focus on voluntary abortion because, in practice, conscientious objection is currently the primary mechanism used to jeopardise women's rights with regard to sexual and reproductive health in countries where abortion is legal. Furthermore, both the International Federation of Gynecology and Obstetrics and the European Parliament have made a specific request to prevent conscientious objection from being used as a method for limiting women's access to voluntary abortion and to ensure a common professional approach to address this issue [4-7]. Finally, the heterogeneous practice of conscientious objection among the different European countries contributes to the undermining of the right to voluntary abortion [3].

Conscientious objection has been defined as 'the refusal to participate in an activity that an individual considers incompatible with his/her religious, moral, philosophical, or ethical beliefs' [8]. On the basis of this definition, this paper notes that

conscientious objection is widely considered to be a recognised right for all professionals, although its undemocratic practice counteracts the application of democratically passed laws to legalise abortion. Today, a regulation on CO should satisfy health care professionals invoking CO and at the same time guarantee women's right to safe and easily accessible abortion. This issue was discussed at the European Society of Contraception and Reproductive Health (ESC) conference, held in 2014 in Lisbon, at a round table of several guest experts. On that occasion, the need for a consensus in the matter within the ESC was made clear [5-7].

EXPERT OPINION METHODOLOGY

We performed a survey to explore the opinions of both the expert group on abortion (seven members, over the course of January 2015) and the ESC Board (48 members). The aim of the survey was to understand how and why the context of the application of conscientious objection to voluntary abortion has an impact on information about abortion and on women's access to it.

While the methodology does not allow us to establish a direct causal relationship between allowing conscientious objection and access to abortion [9], it did provide information on the existing reality. In order to obtain a more complete picture of the reality on the ground, the expressions used by participants were also studied, since they reflected their personal experience [10, 11].

Data collection was achieved through semi-open-ended questions, using a pre-scripted list of questions in order to establish the possible categories of analysis to be covered. The information gathered was subsequently encoded and analysed following Miles and Huberman's approach to data analysis [12]. Data collection and analysis were carried out in parallel [9, 12].

REVIEW OF THE SCIENTIFIC LITERATURE ON CONSCIENTIOUS OBJECTION

With the aim of identifying documents on conscientious objection and abortion, we performed a systematic computerised literature search of PubMed, Google Scholar and Google: 20,000 documents were found in Google Scholar and 187,000 in Google.

Only the first 50 related documents for each search were taken into account. The search on PubMed was conducted using the following syntax: conscientious [All Fields] AND objection [All Fields] AND (‘abortion, induced’ [MeSH Terms] OR (‘abortion’ [All Fields] AND ‘induced’ [All Fields]) OR ‘induced abortion’ [All Fields] OR ‘abortion’ [All Fields]). Searching produced 110 references, 20 of which were selected for examination of the full text, after screening the abstracts, together with the documents obtained from the research in Google Scholar and Google. References from retrieved articles are given in the reference list at the end of this paper [1-8, 13-34]. These articles show different, even conflicting, positions with respect to the above-mentioned points to be included in the consensus. The articles were selected according to their title and abstracts in order to identify those related to the consequences of a regulation in terms of accessibility for women. Extensive use has been made of two reviews: ‘Conscientious objection and refusal to provide reproductive healthcare: a White Paper examining prevalence, health consequences, and policy responses’ by Chavkin et al. on behalf of Global Doctors for Choice [3]; and ‘“Dishonourable disobedience” – why refusal to treat in reproductive healthcare is not conscientious objection’ by Fiala and Arthur [2]. While Fiala and Arthur recommend that conscientious objection simply should not be allowed, Chavkin et al. propose to develop policies to manage it. Although the papers reach different conclusions about how conscientious objection should specifically be addressed, they share the objective that every regulation should guarantee that women’s rights to information and abortion services are respected. The rationale behind our recommendations is that without taking a position on the prohibition of conscientious objection, when regulation exists, it does need to satisfy certain criteria in order to safeguard women’s rights.

RECOMMENDATIONS PROPOSED TO THE ESC

Rights of women

Despite the enormous progress made in access to contraception, there are still many reasons why contraception repeatedly fails. Not everyone has the same opinion about abortion, but we have to agree on the fact that deciding whether and when to conceive is one of the most intimate and important decisions a person can make. Every woman has the fundamental right to choose to bear a child. Denying or interfering with this

right is discrimination. Access to voluntary abortion is an integral part of the right of women to sexual and reproductive health and this includes the provision of information relating to birth control including voluntary abortion. We recommend that the right to information should be regulated in order to guarantee that ideas such as conscientious objection do not override this right by objectors refusing to inform women about abortion.

Furthermore, objector status should be made public, because women have a right to know the motivation of the professionals who treat them.

Rights and duties of the practitioner

The practitioner who claims status as a conscientious objector should not work in abortion care, and women should have access, without delay, on the same day to another practitioner who is not a conscientious objector in order to ensure optimum treatment. Contraceptive information including information on voluntary abortion must be made available to the woman. Since waiting for an abortion imposes psychological stress on women who have made a decision to terminate their pregnancy, delays should be avoided [34].

Institutions

Health authorities should organise public, non-religious hospitals so that each area has a public hospital that provides care for women seeking abortion. As current measures governing the principle of conscientious objection negatively impact women's access to sexual and reproductive health services, these measures should be changed. Health care services should adopt measures to guarantee that a woman's right to voluntary abortion is not limited by the practitioner's stance on the principle of conscientious objection.

In European countries (except in northern Europe), current regulations on contraceptive matters harm women by hindering access to information and their ability to actively exercise their rights. These regulations also avoid sanctioning professionals who violate or impede the realisation of women's rights. Most regulations have major policy gaps and are unworkable. Although there have been

regulatory developments in different countries, there is a lack of regulatory frameworks that have been effective in safeguarding women's rights. Furthermore, very few countries have abortion laws that protect women’s rights and safety, and in most countries abortion laws still fall within the penal code.

Professional associations

Professional associations (like the ESC) should become involved in drawing up measures to improve reproductive health and rights, and strive to improve and disseminate knowledge on the use of contraception, abortion, sexually transmitted infections and reproductive health care throughout Europe, as well as promote the harmonisation of different policies concerning access to contraception and reproductive health care in the countries of Europe.

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