



# European Humanist Federation

international non-profit association under Belgian law

## Fédération Humaniste Européenne

association internationale sans but lucratif de droit belge

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18 October 2010

Dear Party President / Vice-President

I am writing to express the dismay of the European Humanist Federation at the lack of commitment by so many members of the Parliamentary Assembly, including many in your Group, who failed to attend the Assembly for the vital vote on the proposed resolution on the unregulated use of conscientious objection in health services is resulting in denial of lawful services to patients.

The result is a terrible resolution that not only contravenes basic human rights principles but is confusing and contradictory. (For example, it notes that the practice of conscientious objection is adequately regulated (para 3), yet goes on to invite member states to develop regulations (para 4). Again, it could allow doctor as well as any medical facility to refuse to provide emergency obstetric care to a woman in need of an abortion (para. 1), yet recognizes the need to ensure that patients receive emergency care (para. 4.3). The explanatory memorandum and the resolution are completely at odds and have conflicting titles with different meanings.)

Far worse is it that the resolution contradicts universally recognized fundamental human rights and rule of law principles by:

- a. removing from liability any person or institution for their conduct. This contradicts basic concepts of lawfulness and the rule of law in a democratic society that require that persons who have been harmed have a right to have access to review procedures before an independent body.<sup>1</sup>
- b. implying that foetus's interests stand above women's right to life and health. This completely contradicts human rights principles, as recognized by the European Court of Human Rights which noted that any rights of the 'unborn' (foetus) are limited by the 'mother's' (pregnant woman's) rights and interests and UN human rights standards which call on countries to liberalize restrictive laws.<sup>2</sup>
- c. recognizing that providers can refuse to treat women in emergency situations, which contradicts basic medical ethics, World Health Organization standards and laws in many countries.
- d. recognizing, by implication, institutional objection contravening European Convention on Human Rights

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<sup>1</sup> In *Tysiak v Poland*, the European Court held that 'Once the legislature decides to allow abortion, it must not structure its legal framework in a way which would limit real possibilities to obtain it.' The Court found Poland in violation of the right to private life for failing to have in place a mechanism to resolve disputes between a patient and her doctor (*Tysiak v. Poland* (2007), ECtHR, Appl. No. 5410/03, paras 116, 118, 128-30).

<sup>2</sup> See *Vo v France* (2005) 40 EHRR 12, para. 80. PACE's own resolution 1607, Access to Safe and Legal Abortion in Europe (2008) <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta08/eres1607.htm> is also in stark contrast.

case law which notes that the right to freedom of conscience (Article 9) is by its very nature an individual right and therefore it can't be exercised by an institution.<sup>3</sup>

The resolution claims that practice is adequately regulated (para 3) but this contradicts the explanatory memorandum and the emerging international standards on this field. For instance, various UN Human Rights bodies have expressed that this is a problem including CEDAW in its recommendations to Slovakia in 2008<sup>4</sup>. A case pending before the European Court of Human Rights against Poland also reflects the problems of the unregulated practice of conscientious objection in Europe. Additional problems in many other countries, including in western Europe, are mentioned in the explanatory memorandum.<sup>5</sup>

**This is a sad breach of PACE's honourable and liberal tradition in this area. It appears to have resulted from a concerted campaign by a powerful religious lobby to impose its own standards on everyone else, regardless of their beliefs. This is a totalitarian approach, incompatible with the needs of modern multi-belief societies that demand tolerance and acceptance of difference.**

**We should welcome your comments on the situation and how it might be remedied.**

Yours sincerely



David Pollock  
President

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<sup>3</sup> Kontakt-information-Therapie and Hagen v Austria, admissibility decision, 11921/86; See also scholar and ethicist, B.M. Dickens, noting that institutions "have no eternal soul that they may claim an entitlement to protect." (B.M. Dickens, "Reproductive Health Services and the Law and Ethics of Conscientious Objection, MedLaw 2001)

<sup>4</sup> CEDAW to Slovakia (July 2008): "While noting the measures taken by the State party to facilitate women's access to health care, including reproductive health, the Committee is deeply concerned about the insufficient regulation of the exercise of conscientious objection by health professionals with regard to sexual and reproductive health....The Committee recommends that the State party adequately regulate the invocation of conscientious objection by health professionals so as to ensure that women's access to health and reproductive health is not limited. The Committee calls the attention of the State party to its general recommendation No. 24, which states that it is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women. It recommends that, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers." (paras. 42-43)

<sup>5</sup> In a number of European countries, including Italy, Poland, Hungary, and Croatia, there are laws requiring doctors to inform patients of any conscientious objection to a procedure and refer the patients to another provider, but there is no oversight mechanism. For example, the Center is currently working closely with the Polish Federation for Women and Family Planning and the Warsaw University Law Clinic on a lawsuit against Poland in the European Court of Human Rights for the death of a woman who was refused treatment for colon disease because doctors feared it would harm the fetus. Z was two months pregnant when she was diagnosed with the painful colon disease which was aggravated by her pregnancy. When she sought medical care in her Polish hometown and other cities, however, doctor after doctor refused to treat her illness because she was pregnant. They repeatedly expressed concern about the fetus, but none of them formally raised a moral or religious objection so they did not have to refer Z to a doctor that would treat her. Z's symptoms grew worse until she miscarried and eventually, died. The lawsuit aims to ensure that Poland maintains enough healthcare workers who are willing to provide all legal health services and that patients get timely referrals. The suit also asks the court to prohibit hospitals and other institutions