Conference “Christian Women Under Pressure for their Faith, II”

Swedish midwives’ conscientious objection to abortion

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Introduction

Freedom of thought, conscience, and religion is an international human right enshrined in all major human rights conventions and interpreted by international tribunals. Despite its foundational value and its legal recognition in the major human rights treaties and subsequent documents, soft law instruments, and jurisprudence, the protection given to this fundamental freedom has proven insufficient and ineffective in practice.

Growing limitations on the right to freedom of thought, conscience, and religion are particularly visible in the area of conscientious objection (based on religion or belief) to life-ending medical procedures. Increasingly, Christian women working in the medical sphere are not free to live according to their basic moral principles without risking personal or professional ruin. Expressing conscientious objections to abortion can lead to, in certain parts of Europe, dismissal from employment, financial penalties, loss of reputation due to negative media coverage, or permanent unemployment.

In what follows, this paper will put forward two examples representative of the failure to adequately protect the right to freedom of conscience and freedom of religion in situations where Christian women are under pressure for their faith. Finally, this paper will analyze the cases through the lens of international human rights law.

Christian midwives under pressure

Bringing life to the world is certainly something that attracts women predominantly: this is why so many women decide to enter the medical profession as midwives and nurses.

As one of the cornerstones of the medical profession, professional freedom encourages the exercise of professional knowledge and abilities to ascertain and put into practice professional judgment. Professional judgments therefore, are not to be reached in a vacuum, or in isolation
from moral judgment. Judgments of conscience are expressed through the concrete determination of how one ought to proceed in a particular situation: to perform a specific procedure, to refer the case, to provide specific medication, etc. This argument is even more compelling with regard to life-ending procedures, to which medical staff may conscientiously object.

**Case of Midwife Linda Steen**

In March 2015, Swedish midwife Linda Steen was denied employment as a midwife because she objected to assisting with abortions for reasons of conscience. After explaining her position to the nursing unit manager, the Women’s Clinic of Nyköping refused to hire Ms Steen. She received a letter from the management stating, ‘It is not our policy or our approach to leave any opening for a conscience clause. We have neither the ability nor the intention to work with such exceptions.’ The manager went even further by contacting another potential employer about Ms Steen’s convictions, who consequently cancelled Ms Steen’s job interview. Ms Steen currently has a case challenging this treatment pending with an appeal in Sweden.

**Case of Midwife Elinor Grimmark**

Ellinor Grimmark is a Christian midwife with a life-long passion to bring life into the world. However, she has been refused employment by a number of medical clinics in Sweden because of her pro-life stance.

Ms Grimmark applied for a position as a midwife at Höglandssjukhuset women’s clinic in 2013. After initially offering the job, the clinic then rescinded their offer when Ms Grimmark explained she could not, in good conscience, participate in abortions. As a midwife and a Christian, she desired for her work to be about saving lives, not taking them.

The head of the maternity ward left her a telephone message saying that ‘she was no longer welcome to work with them,’ and questioned ‘whether a person with such views actually can become a midwife.’ A few months later, Ms Grimmark tried to obtain employment with Ryhovs women’s clinic, and was told that a person who refuses to perform abortions does not belong at a women’s clinic.

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Ms Grimmark eventually found a job at Värnamo Hospital, but before she was able to begin working, the hospital learned she had filed a complaint against the first clinic and withdrew the job offer. Ms Grimmark was back where she started. Recognizing her experiences had raised important questions about the protection of conscience in the medical profession, Ms Grimmark decided to pursue legal action.

The district court of Jönköping County Council ruled against her, and to make matters worse, the court ordered that she would pay the local authorities’ costs (of the trial) of more than SKr 1m (EUR 100,000). On 12 April 2017 her appeal to the Swedish Labour Court was denied. Ms Grimmark will now take her case to the European Court of Human Rights.  

**Legal overview**

In what follows, this paper will set out the core international and European instruments which build the legal framework through which conscientious objections should be assessed.

Freedom of thought, conscience, and religion is a fundamental right enshrined in all major human rights conventions. It is a foundational human right which EU Member States have an obligation to promote and to respect.

This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private. According to well-established law, no one can be subject to coercion with regards to religion or beliefs. Freedom to manifest one's religion and beliefs cannot be deliberately curtailed or annulled; it may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others. When authorities impose limitations, they must show the legitimate aim pursued,
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outlining that there had been no less restrictive means, that there had been a balancing of the rights and interests at stake, and that the limitation was necessary and proportionate.

With regard to the issue of the rights of medical professionals, the Parliamentary Assembly of the Council of Europe (PACE) adopted unequivocal language in 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.5

The Resolution was passed by a majority of votes (representing a majority of countries), which indicates strong support for protecting the right of conscientious objection for medical professionals who are often confronted with difficult moral situations.6

The fundamental nature of the right to conscientiously object to life-ending procedures is not opposed by any fundamental right. It is clear there is no international right to abortion. 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 affirmed that governments have an obligation to eliminate and reduce abortions and to help women avoid repeated abortions.7 The outcome documents also clearly hold that abortion should never be promoted as a method of family planning.8

While there is a strong European consensus on the protection of individual rights of conscience in Europe, no right to abortion exists in international law. The European Court of Human Rights (ECtHR) has explicitly stated that the Convention does not contain a right to abortion.

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5 Council of Europe Parliamentary Assembly, ‘The right to conscientious objection in lawful medical care’ (Resolution 1763 Final version, 2010).
While tackling conscientious objection to military service, the ECtHR put forward broad principles applicable to other types of conscientious objection, according to which States should protect citizens’ deeply and sincerely held convictions, and should not impose penalties on them, particularly when there are viable alternatives available.\(^9\)

The ECtHR held 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 penalizing those who refused to perform military service.’\(^10\) In so doing, the national authorities failed to strike a fair balance between the interests of society and the interests of the applicant. *A fortiori* in the context of medical staff and the performance of abortions, without a clear textual reference to the contrary, the failure of a state actor to recognize conscientious objection runs contrary to the obligation to strike a fair balance between the interests of society and those of the medical staff.

**Conclusion**

It is self-contradictory and a violation of human rights law that the desire to protect life (which is what leads many midwives and nurses to enter the medical profession in the first place) is used as grounds to dismiss pro-life midwives from employment. State measures, such as the ones taken by Sweden, are a serious breach of international law and an insurmountable obstacle for a large segment of the population to entering the medical profession solely by virtue of their moral or religious convictions.

Instead of forcing much-needed midwives out of a profession, States should look to safeguard their freedom, and ensure no one is coerced to act against sincerely held moral beliefs.

The need for such protections – either at the national, regional, or international level – has become extremely important. In recent years, a growing number of medical professionals have been given an ultimatum: either to violate their deeply held convictions and the moral code which says they cannot take a life, or risk their livelihood and careers by staying true to them. Such an insurmountable conflict is in stark contradiction with the European desire, expressed

\(^9\) *Bayatyan v. Armenia* [GC], App No 23459/03 (7 July 2009).
\(^10\) *Bayatyan v. Armenia* [GC], App No 23459/03 (7 July 2009) 50-70.
after the atrocities of the two world wars, that all citizens live in accordance with their deeply held beliefs.