CONSCIENTIOUS OBJECTION TO VOLUNTARY ABORTION

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Abstract

This paper is the result of exploring the contact zone between the freedom of conscience (and religion) exercised by professionals providing healthcare services, in the form of conscientious objection, and the right to voluntary abortion as invoked by the beneficiaries of these services. Is there a right to voluntary abortion or any positive obligation of the State to provide or to ensure these services are provided on an effective basis, what is the legal nature of the conscientious objection, do the two conflicting rights ever meet in the same plan and, if so, under what conditions one of them prevails or their balance is supposed to stand, at what point discrimination is set to arise in the equation are deeply sensitive topics which have the tendency to elude shaping a comprehensive theory. Without undervaluing the creative effect which court case law might eventually have while settling disputes, the legal science holds the burden to build such a theory, providing answers meant to serve as ante factum guidelines.

The broadness of the legal conditions for voluntary abortion should truthfully reflect the general moral attitude within the society concerning the exercise of this choice, since only maintaining this equation can effectively hold the basis for balancing the two conflicting rights, which both express the same principle of personal autonomy.

Keywords: *conscientious objection, voluntary abortion, positive obligations, non-discrimination, balancing conflicting rights*

1. Introduction

Voluntary abortion appears to be legal in Romania only because it is not anymore incriminated by the criminal law, starting the abrogation, by Decree-Law no. 1/1989[1], of articles 185-188 of the former Criminal Code, concerning the criminalisation of abortion, and of Decree no. 770/1966 regarding the regulation of the termination of pregnancy. The conscientious objection to voluntary abortion also appears legal just because it is not expressly prohibited.

As the conscientious objection is traditionally associated with different legally recognized avatars, of which the matter of voluntary abortion is just one, the legal science has been quite reluctant to recognizing a general applicability in this regard. Even though it has been defined in reference to a context "when a deeply held belief based on the deeply held moral values of a group or of an individual runs into the demands or determinations of the law"[2], it is barely seen "in most cases [as] the outcome of tolerance"[3]. However, the State is supposed to grant rights, not just to be tolerant. The emphasis on tolerance leads to the idea of the State discretionary power to grant conscientious objections only in separate cases and following solely its sovereign assessment, secured from any charge of discrimination. Its qualification as a right values the true mission of the State and forms the basis for a general application of the conscientious objection, subject only to legitimate restraints under the conditions provided for all restraints to freedom of conscience.

It is therefore no negligible theoretical effort to ascertain that the conscientious objection is provided, as a principle, by article 29 paragraphs 1 and 2 of the Constitution[4], regarding the freedom of conscience, so interpreted in accordance with article 9 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms[5], as stipulated in article 20

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[1] Published in Monitorul Oficial al României no. 4 of 27 December 1989.

[2] Yossi Nehushtan, *Intolerant Religion in a Tolerant-Liberal Democracy* (Oxford and Portland, Oregon: Hart Publishing, 2018), 127.

[3] *Idem*, 137; though, the author rightfully acknowledges that „tolerance is normally accompanied by a grudge" – *Idem*, 20, that is at least by disproval if not by resentment.

[4] Article 29, titled „The freedom of conscience", paragraphs 1 and 2 of the Constitution of Romania, republished in Monitorul Oficial al României, partea I, no. 758 of 29 October 2003, reads: „(1) The freedom of thought and opinions, as well as the freedom of religious beliefs cannot be restrained in any way. Nobody can be constrained to adopt an opinion or to adhere to a religious belief, contrary to his or her convictions. (2) The freedom of conscience is guaranteed; it has to be manifested in spirit of tolerance and mutual respect".

[5] Article 9 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms – https://www.echr.coe.int/Documents/Convention_ENG.pdf, ratified by Law no. 30/1994, published in Monitorul Oficial al României, partea I, no. 135 of 31 May 1994, reads: „Everyone has the right to freedom of thought, conscience and religion; this right includes the freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance".

paragraph 1 of the Constitution[6]. In the same time, the right to voluntary abortion will prove to be generally guaranteed by the Constitution, especially under article 26, concerning the respect for the intimate, family and private life, but also under article 22 regarding the right to life, to physical and psychological integrity, and not to be submitted to an inhuman or degrading treatment. None of the two rights is absolute, as they may be restrained under the general conditions of article 53 of the Constitution, when they tend to manifest against each other.

Both conscientious objection and voluntary abortion are under-regulated legal realities and this situation may lead to a practical difficulty when one of them is pretended to hold supremacy over the other. While our enterprise is a long beat plea for freedom of conscience, it is also an affirmation of the need to balance the conflicting rights.

In this regard, we are to determine the comparable nature of these rights and whether the acknowledgement of an absolute character for any of them, at least in consideration to protecting the rights of others, might result in suppressing the competing right and in discrimination.

Our research follows the Romanian constitutional framework, which includes within the domestic law, according to articles 11 and 20 of the Constitution, the ratified international treaties, of which those regarding human rights take prevalence over the domestic law. Therefore, an increased attention is paid to the case-law of the European Court of Human Rights [hereinafter referred to as ECHR]. However, since the conscientious objection to voluntary abortion has not been addressed directly by the Court, due consideration will be given to the relevant recommendations of the Parliamentary Assembly of the Council of Europe and to comparative law, stemming from the constitutions and secondary legislation of other States.

2. The right to voluntary abortion

2.1. Is it a right or just a permission?

The premises of this paper are that voluntary abortion is allowed on request, under either broad or restrictive conditions, but in the same time medical practitioners are entitled to manifest their freedom of conscience, in the form of conscientious objection to performing a termination of pregnancy. Should there be no right to voluntary abortion, but instead a right to life of the foetus, the law itself would oppose this practice and a conscientious objection would not be needed any longer.

We narrow our research to the topic of voluntary abortion because we find the situation when choice prevails over necessity to be the core of the matter. Our conclusions will be, *mutatis mutandis*, applicable when necessity outweighs choice, only then the impact of conscience over treatment will be much less significant than in the case of a mere expression of personal autonomy. Omission to apply a scientifically necessary medical procedure cannot be justified in terms of conscience if it leads to affecting life or physical or psychological integrity; it may only allow a prompt referral to a non-objecting practitioner, provided that the patient's life or physical or psychological integrity is not put under any threat.

Voluntary abortion is generally allowed in States practicing Western standards on human rights, in consideration of "health, safety and autonomy of the mother"[7], thus appearing as a component of the right to respect for the individual's private life[8]. The ECHR indirectly acknowledged that this fundamental right encompasses the right to voluntary abortion, finding that the prohibition of such a procedure constitutes an interference with the right provided by article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[9]. Therefore, the Court's assertion that "article 8 cannot be interpreted as conferring a right to abortion"[10] remains to be interpreted only in the sense that this right is not absolute, so it may be restrained according to paragraph

[6] Article 20 paragraph 1 of the Constitution of Romania reads: „The constitutional provisions regarding the rights and liberties of the citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, with the covenants and with the other treaties to which Romania is a party".

[7] S. I. Strong, *Transforming Religious Liberties. A New Theory of Religious Rights for National and International Legal Systems* (Cambridge: Cambridge University Press, 2018), 282.

[8] This principle is based upon the conception that the right to respect or the private life, mainly its component of personal autonomy, „incorporates the right to respect for both the decisions to become and not to become a parent". – ECHR, Grand Chamber, judgment of 10 April 2007, Evans v. United Kingdom (application no. 6339/05), http://hudoc.echr.coe.int/eng?i=001-80046, paragraph 71.

[9] ECHR, Grand Chamber, judgment of 16 December 2010, A., B. and C. v. Ireland (application no. 25579/05), http://hudoc.echr.coe.int/eng?i=001-102332, paragraph 216; the Court enunciated that this right is not absolute and may be subject to suffer restraints, so that „[t]he woman's right to respect for her private life must be weighed against other competing rights and freedoms invoked including those of the unborn child" (paragraph 213); „it would be equally legitimate for a State to choose to consider the unborn to be such a person and to aim to protect that life" (paragraph 222), the state enjoying a broad margin of appreciation in this regard, due to the lack of international political and scientific consensus related to the moment life begins (paragraph 237) and the ethical nature of the matter (paragraph 233). However, the Court avoided to state whether the unborn are to be regarded as persons, so that the prohibition in question to be interpreted as protecting their rights, but instead found that the sole legitimate aim pursued by the State (despite being proclaimed for "health and/or well-being reasons") was found to be one of ideological nature, namely the protection of the "profound moral values concerning the nature of life which were reflected in the stance of the majority of the Irish people against abortion during the 1983 referendum and which have not been demonstrated to have changed significantly since then" (paragraph 226).

[10] ECHR, Fourth Section, judgment of 30 October 2012, P. and S. v. Poland (application no. 57375/08), definitive on 30 January 2013, http://hudoc.echr.coe.int/eng?i=001-114098, paragraph 96.

2 of the said article[11], but however not in the sense that it exceeds its scope.

For better or for worse, the recognition of a "right to life of the unborn […], equal to the right to life of the mother", as article 40 paragraph 3.3 of the Irish Constitution used to provide until 18 September 2018[12], would entail a set of consequences which are highly unlikely to be assumed: the foetus would be regarded as a person and therefore the abortion would become an interference with the right to life; the circumstances in which the pregnancy occurred, even in cases of rape or under-age, would become irrelevant.

Moreover, in a state of necessity concerning the life of the mother, when only one may or is scientifically likely to survive, a choice would have to be made, since an "equal right" theory becomes useless, according to nothing more than ideological grounds, be they ethical or just political. This eventually leads the matter where it all started, that is in the area of a chosen social ideology favouring natality over choice, the mother over the foetus or vice-versa, where prevailing imperatives are utterly separate from the protection of human rights: a policy to increase or, on the contrary, to decrease the birth rate for mainly economic reasons (to ensure a steady economic growth), but also military (to ensure enough soldiers), ecological (to prevent overpopulation and eventually the destruction of natural resources) or even racist motives (to prevent the need for mass immigration, which appears when the population is constantly declining). And since a mainly political choice would most of the time favour the mother or the foetus in a state of necessity, it will continue to govern the matter in any conditions. Once a mainly political choice gets to prevail outside the paradigm of human rights, the whole debate about the right to life becomes irrelevant.

It is actually the original blending of external moral and political arguments that make the accommodation of the mother's rights to those of the foetus' rights, should the latter be eventually recognized, logically impossible in terms of human rights; if these rights become contending, meaning mainly that the mother does not want to give birth, but also that she endangers her life or health by doing this, one of these rights will have to concede. If there is a risk to the mother's life, it would be ethically impossible to determine whose life is more important, so the choice will be made according to additional criteria. Considering the rights of others, mainly the family members, it will be the mother whose life might appear to be more important; but this is just a social criterium and it is not valid all the time, for example when the mother has no close family. An economic approach aimed to increase the birth rate would favour the mother, since she is an economically active adult, she has other children to raise and at least she may give birth to several children in the near future. Only, allowing an economic approach in this matter might just prove that this is the real motivation followed by the State. After all, the Romanian communist regime did not ban voluntary abortions for ethical reasons, nor by recognizing the right to life of the foetus, but for purely economic grounds, to produce a fast growth of the population. On the other hand, an economic approach aimed to decrease the birth rate, like that followed in China during the one-child policy, would necessarily favour voluntary abortion.

Even the above-mentioned article of the Irish Constitution was logically incompatible with the right to receive information about abortion services legally provided abroad, as the same article stated in order to ensure the compatibility of the overall illegality of voluntary abortion with the right to receive information, as a part of the freedom of expression[13]. If the life of the unborn was really protected equally as the life of the mother, then any kind of aid facilitating a voluntary abortion as an illegal act, including providing information, in conditions exceeding a state of necessity arising from a threat to the mother's life, would also be illicit. It is only the prevalence of the mother's undiminished and legitimate choice, despite voluntary abortion being forbidden, that lead the ECHR to the conclusion that restricting the access to information about abortion facilities abroad is a violation of article 10 of the Convention. However, at least when the prohibition of voluntary abortion applies only on the national territory and there are no restrictions to travel abroad and no concern for physical and psychological integrity is applicable, the Court has not found that this prohibition was, in principle, a violation of article 8 regarding the right to the respect of private life[14].

It follows that the conflict between the right to life of the mother and, if even recognized, the right to life of the foetus, is inextricable in terms of human rights, since a life is as important as the other, no matter the

[11] European Commission of Human Rights, decision of 19 May 1976, Brüggemann and Scheuten v. Germany (application no. 6959/75), http://hudoc.echr.coe.int/eng?i=001-74824, paragraph 5: „the legal regulation of abortion is an intervention in private life which may or may not be justified under Article 8 (2)".

[12] According to the 36-th Amendment to the Constitution of Ireland, article 40 paragraph 3.3 currently reads: „Provision may be made by law for the regulation of termination of pregnancy." – *Bunreacht na hÉireann. Constitution of Ireland* (Dublin: The Stationery Office, 2018), xiv; 154.

[13] Considering that under the Irish law it was not a crime to travel abroad in order to have an abortion, the European Court of Human Rights had found that restricting the provision of information concerning abortion facilities abroad was in violation of article 10 of the Convention, since this information „may be crucial to a woman's health and well-being" and „the injunction has created a risk to the health of those women who are now seeking abortions at a later stage in their pregnancy, due to lack of proper counselling, and who are not availing themselves of customary medical supervision after the abortion has taken place". – ECHR, Plenary, judgment of 29 October 1992, Open Door and Dublin Well Woman v. Ireland (application no. 14234/88 and 14235/88), http://hudoc.echr.coe.int/eng?i=001-57789, paragraphs 72 and 77.

[14] ECHR, A., B. and C. v. Ireland, *precited*, paragraph 241.

social implications, including the effects suffered by other people. This is valid both in a state of necessity, when the mother's life or health is in a scientifically proven danger, and outside such a state, when the pregnancy is the result of a rape or when the mother is herself a child, because the foetus cannot be blamed for the circumstances of its conception. In the end, it is not possible to interfere with the foetus' right to life without killing it, which means that, if its right to life is ever to be recognized, there will be no right to voluntary abortion, no matter the circumstances[15]. Moreover, since we find it hard to believe that it can be proven in due time that a certain pregnancy is absolutely impossible to contribute to the mother's death or injury, or at least to some deterioration of her health, this being actually treated in terms of conjectural (im)probability, any pregnancy involves a risk to life of both the mother and the foetus.

Therefore, in order to avoid the impossible choice in favour of any of them in terms of human rights and the transfer of this choice towards additional external criteria, mainly of political and economic nature, it has to be agreed that the only way to ensure the coherence of the human rights system is, indeed cynically, to prevent the affirmation of the right to life of the foetus, with the consequence of recognizing a right to voluntary abortion[16].

2.2. The positive obligation of the State to ensure voluntary abortion services being provided effectively

"Medical termination of pregnancy, performed in accordance with the law of the State in which it is carried out, constitutes a service"[17] and therefore falls into the scope of the freedom to provide services, stated in article 56 of the Treaty on the Functioning of the European Union[18]. This does not mean, in terms of EU law, that the provision of these services may not be forbidden in a Member State and, regardless of the doubts expressed about them not being possible to forbid, by a State who decides to ban them on its own territory, to its own nationals even when they access them in another Member State, where they are legal[19], article 56 of the Treaty actually prevents a ban from being exported to another Member State, even in the consideration of the banning State's nationals[20].

Generally, the State cannot be responsible for organizing and facilitating the performance of all that is not prohibited, nor for establishing public services corresponding to all aspects of human freedom which are transposed into rights and freedoms. For example, the individuals enjoy the freedom of religion, but it is not for the State (at least for the democratic one) to create religions and set-up churches; they have the freedom of assembly, but it is not the State's duty to provide reunion halls; they have the freedom of expression, but the State does not have to come up with partners for one to discuss with, a place within the media or instruments of writing. If, however, the State decides to provide public services, like renting reunion halls or selling pens and paper, this does not necessarily mean that it has assumed a positive obligation in this regard.

Theoretically, the mere fact that a medical procedure like the voluntary abortion is not prohibited doesn't necessarily mean that the State is under an obligation to perform it, unless a positive obligation is identified in this regard. But since in practice the State regulates the healthcare system and also provides most of the medical services, operating a healthcare insurance scheme to sustain the system, it becomes responsible for the supply of lawful abortion services, as well as, like any public or private service operator, for the non-discriminatory nature of its services.

Therefore, *ab origine*, there is no obligation for the State to perform these procedures by itself, in State owned facilities and by State employed medical staff, but only to ensure their proper functioning. But when the private market of these services is underdeveloped or when such private services are inaccessible, even for only certain individuals, the State, whose primary role is that of organizer, will have to undertake the role of provider as well.

A positive obligation of the State to actively engage with abortions being carried out arises firstly when the mother's life or physical and psychological integrity are threatened by the pregnancy. In such a case, the positive obligations of the State to act in order to preserve these values correspond to guaranteeing her right to life or, respectively, her right to physical and psychological integrity, the latter falling, as a distinct component, under article 8 of the ECHR concerning the

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[15] According to article 53 paragraph 2 of the Constitution of Romania, a legitimate restraint of a right cannot affect the existence of that right. Hence, there is no possible way to restrain the right to life; once it exists, it is either respected or violated.

[16] Otherwise, there will always be room for equivocal proclamations, like that of the right to life being protected, „*in general*, from the moment of conception", as article 4 paragraph 1 of the American Convention of Human Rights provides. – http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

[17] European Court of Justice, Sixth Chamber, Judgment of 4 October 1991, C-159/90, The Society for the Protection of Unborn Children Ireland Ltd, curia.europa.eu/juris/showPdf.jsf;jsessionid=B9BA9ACFB9FD4DBD6167705C348F3325?text=&docid=97366&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1898071, paragraph 21.

[18] Published in the Official Journal C 326/26 October 2012; according to article 56, first thesis, „[w]ithin the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended".

[19] Paul Craig, Gráinne de Búrca, *Dreptul Uniunii Europene. Comentarii jurisprudenţă şi doctrină*, sixth edition, translated by Georgiana Mihu and Laura-Corina Iordache (Bucureşti: Hamangiu, 2017), 927.

[20] Damian Chalmers, Gareth Davies and Giorgio Monti, *European Union Law. Cases and materials*, second edition (Cambridge: Cambridge University Press, 2010), 812.

right to respect for private life[21]. When a risk of this kind is exhibited, even when voluntary abortion is generally forbidden and only allowed in such exceptional cases, the State has the positive obligation to provide „an accessible and effective procedure"[22] for establishing such a risk.

Consequently, even when abortion is generally prohibited and only allowed in exceptional circumstances, and *a fortiori* when it is generally allowed, the State holds a positive obligation to preserve the woman's life or physical and psychological integrity by ensuring, when these values are at an immediate or concrete risk, the access to medical services performing voluntary abortions[23].

This positive obligation extends to the situations when abortion is generally allowed in respect for the private life, as a legal manifestation of personal autonomy.

In this regard, it should me borne in mind that abortion holds by its own nature an urgent character, even when life or physical and psychological integrity are not in concrete peril, since the medical risks of this procedure have the tendency to increase during the pregnancy, until a point when abortion is no longer feasible; by that moment, if procrastination is imputable to the State, finding a violation of article 8 of the Convention is unavoidable.

Moreover, when access to a lawful abortion or to receiving a scientifically trustworthy diagnosis regarding the situation of the foetus, in order to make an informed decision to have an abortion or not, is rendered excessively heavy and time-consuming, the suffering induced to the patient may result in a violation not only of the right to respect for the private life, but also in an inhuman or degrading treatment, prohibited by article 3 of the ECHR[24].

3. The right to conscientious objection

3.1. The legal nature of the conscientious objection

The conscientious objection is a manifestation of freedom of conscience, in the form an opposition to civic or professional duties which entangle with a person's sincere moral convictions about essential individual and social issues. It is a typical individual manifestation of freedom of conscience and one of the most important aspects defining the derogatory nature of this fundamental right, as compared to the freedom of expression, since the general terms of the latter provide only a right to express an opinion, but not a right to resist performing an obligation.

A conscientious objection may be religiously or philosophically grounded, but its constant lies with deeply held moral values, for which a distinction concerning the individual attitude towards religion is irrelevant. In order to refuse a conscientious objection, insincerity must be proven without a doubt.

Its prominent avatar is the conscientious objection to military service, which is recognised equally in the consideration of religious[25] and non-religious[26] convictions. Sometimes it is strategically hidden between different constitutional provisions, as it happens in article 9a paragraph 4 of the Constitution of Austria, related to the alternative military service[27], or in article 42 paragraph 2 letter a) of the Constitution of Romania, providing that the work performed instead of

[21] ECHR, A., B. and C. v. Ireland, *precited*, paragraph 245.

[22] Ibidem, paragraph 267; in this regard, the Court did "not consider that the normal process of medical consultation could be considered an effective means of determining whether an abortion may be lawfully performed in Ireland on the ground of a risk to life" (paragraph 255) and „it is not clear how the courts would enforce a mandatory order requiring doctors to carry out an abortion" (paragraph 260).

[23] In this regard, it has been pointed out that „[a] ban on abortions does not result in fewer abortions but mainly leads to clandestine abortions, which are more traumatic and increase maternal mortality and/or lead to abortion "tourism" which is costly and delays the timing of an abortion and results in social inequities." – Parliamentary Assembly of the Council of Europe, Resolution 1607 (2008) – Access to safe and legal abortion in Europe, paragraph 4, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17638. Consequently, the Parliamentary Assembly invited the Member States to „guarantee women's effective exercise of their right of access to a safe and legal abortion" (paragraph 7.2) and to „allow women freedom of choice and offer the conditions for a free and enlightened choice without specifically promoting abortion" (paragraph 7.3) – Ibidem.

[24] ECHR, Fourth Section, judgment of 26 May 2011, R. R. v. Poland (application no. 27617/04), definitive on 28 November 2011, http://hudoc.echr.coe.int/eng?i=001-104911, paragraphs 159-161; to the same effect, see Human Rights Committee, V.D.A. v. Argentina, views of 29 March 2011, communication no. 1608/2007, http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhspbttFNxTkgvXTPJWIZn3vm5evvVMbjUBZtxyjt0k4pqGQ0t5I6FG%2FeF%2FQHB9ks%2FDU0FCDf4pgigJXjf6%2BfTsVEuWpuVhZfLeUcUw%2FlIFaK%2BFXH0UIxHcF%2BGLAv%2BSE9l3Q%3D%3D, where the Committee found a violation of article 7, regarding the right not to be submitted, *inter alia*, to "cruel, inhuman or degrading treatment", of the International Covenant on Civil and Political Rights, adopted on 16 December 1966 at New York by the United Nations General Assembly, ratified by State Council Decree no. 212/1974, published in Buletinul Oficial no. 146 of 20 November 1974; according to paragraph 9.2, the "Committee considers that the State party's omission, in failing to guarantee L.M.R.'s right to a termination of pregnancy, as provided under article 86.2 of the Criminal Code, when her family so requested, caused L.M.R. physical and mental suffering constituting a violation of article 7 of the Covenant that was made especially serious by the victim's status as a young girl with a disability".

[25] ECHR, Great Chamber, judgment of 7 July 2011, Bayatyan v. Armenia (application no. 42730/05), http://hudoc.echr.coe.int/eng?i=001-105611), paragraph 125.

[26] ECHR, Second Section, judgment of 12 June 2012, Savda v. Turkey (application no. 42730/05), definitive on 12 September 2012, http://hudoc.echr.coe.int/eng?i=001-111414, paragraph 96.

[27] Article 9a paragraph 4 of the Constitution of Austria reads: „Conscientious objectors who refuse the fulfilment of compulsory military service and are exonerated therefrom must perform an alternative service (civilian service)." – https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930 _1.html.

military obligations for reasons of religion or conscience does not constitute forced labour.

With all the declaratory tendency to state its exceptional nature, subject to an express provision of the law[28], the conscientious objection is a general principle of freedom of conscience. Therefore, it can be refused only as a restriction of this fundamental right, under the standards of article 9 paragraph 2 of the ECHR[29]. This renders ineffective, at least under the standards of this international instrument, any intention to generally deny it, as a result of interpreting national constitutional provisions, no matter their more[30] or less[31] categoric terms.

There is a difference concerning the effects of the conscientious objection, as it implies duties meant to satisfy exclusively the State's interest, like the military obligations, or happen to be integrated in a framework of conflicting fundamental rights. As this distinction falls outside the scope of this paper, because the first hypothesis is logically excluded in the matter of voluntary abortion, it suffices to point out that dealing with conflicting fundamental rights creates a necessity for balance, meaning that, as a matter of principle, restricting all of them to the concurrence of the balance point, or better to say balance margin, may prove the only way to respect all, meaning not to suppress or render ineffective any of the rights involved and still grant them to most possible extent.

We find it undoubted that voluntary abortion involves a moral choice and fundamental implications for the individual conscience, notoriously sustained by religious or secular doctrines who tend to give prevalence to the value of life of the foetus and its human nature; therefore, there is no point in empirically demonstrating that there are people who, for reasons of conscience (involving both religious and non-religious convictions), so in exercising their fundamental right to freedom of conscience, are in the position to resist a legal or contractual obligation to take part in a voluntary abortion, as a medical procedure.

The fact that medical practitioners have voluntarily chosen their job is irrelevant in respect to the conscientious objection, since this is not an argument to deny it[32].

There is no much need for balancing fundamental rights when, for example, one out of many physicians in a medical facility refuses to carry out a voluntary abortion, because there would be no impediment that the issue is dealt by one of the other physicians. The workload will be possible to balance, considering other medical activities. At least the whole matter may unhappily result in a disciplinary procedure, in which only the doctor's freedom of conscience will be involved, so there will be no reason why, being the only fundamental right in question, it should not prevail over his or her general legal or contractual obligations.

In the modified version the Hippocratic Oath provided by the Romanian Law[33], any physician undertakes the obligation to fulfil his or her profession "with conscience and dignity", as well as not to accept any religious considerations interpose between his or her duty and the patient. Even if this is an obvious alteration of the original oath providing the obligation not to "give a woman a destructive pessary"[34], this modern oath insists upon guarding, even under threat, "full respect for human life from its beginnings", implying that, in a systematic approach, defining the beginnings of life (which is far from a purely scientific concept, since the word is used in its plural form, suggesting a rather ideological meaning) is subject not just to material law, but also to conscience[35]. It follows that the above-mentioned religious considerations, which may not interpose between the doctor's professional duties and the patient, refer only to a duty of non-discrimination on grounds of patients' religion or lack of religion, but not of religious self-neutralization of the physician, by forbidding a conscientious objection as a general manifestation of conscience.

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[28] Adrian-Dorel Dumitrescu, *Obiecţia de conştiinţă în dreptul român şi în dreptul altor state* [Conscientious objection in Romanian law and in other States' law], Dreptul no. 6/2009, 59.

[29] Article 9 paragraph 2 of ECHR reads: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

[30] Article 58 paragraph 2 of the Constitution of Bulgaria reads: „Obligations established by the Constitution and the law shall not be defaulted upon on grounds of religious or other convictions." – https://www.mrrb.bg/en/constitution-of-the-republic-of-bulgaria.

[31] Article 70 of the Constitutional Act of Denmark reads: „No person shall by reason of his creed or descent be deprived of access to the full enjoyment of civic and political rights, nor shall he escape compliance with any common civic duty for such reasons." – https://www.thedanishparliament.dk/~/media/pdf/publikationer/english/my_constitutional_act_with_explanations. ashx. Also, article 6 paragraph 1 of the Constitution of the Netherlands reads: „Everyone shall have the right to profess freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law." – https://www.government.nl/binaries/government/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008/the-constitution-of-the-kingdom-of-the-netherlands-2008.pdf.

[32] Heiner Bielefeldt, Nazila Ghannea and Michael Wiener, *Freedom of religion or belief. An international law commentary* (Oxford: Oxford University Press, 2017), 301.

[33] Article 384 paragraph 1 of Law no. 95/2006 regarding the reform in the field of Healthcare, republished in Monitorul Oficial, partea I, no. 652 of 28 August 2015. This provision attempts to reproduce the Hippocratic Oath as adopted by the World Medical Association's Declaration of Geneva form 1948, in a form which is not anymore reflecting the content of this Declaration, which instead reads: "I will maintain the utmost respect for human life", without any reference to its beginning(s). – https://www.wma.net/policies-post/wma-declaration-of-geneva.

[34] Stephen H. Miles, *The Hippocratic Oath and the Ethics of Medicine* (Oxford: Oxford University Press, 2004), xiv.

[35] B. M. Dickens, R. J. Cook, *The scope and limits of conscientious objection,* International Journal of Gynecology & Obstetrics 71 (2000), 73.

There will be however a need for balance when the exercise of the conscientious objection by several medical practitioners will result in rendering the voluntary abortion service ineffective or significantly difficult, provided that the State has a positive obligation to ensure the functionality of these services, as a guarantee for a concurring fundamental right (respect for the private life, if not other rights), a matter which will be approached further on.

3.2. The right to voluntary abortion colliding against the freedom of conscience

Both these rights originate in the principle of personal autonomy, involving a personal critical appreciation of the good, as a common value shared as well by the whole society. It is this common origin that makes any abstract choice between the two rights the result of a moral choice, which is usually ideologically integrated. This remark is no more than a mere application of the general postulate stating that "[e]very individual judges in terms of conscience the orders and the social norms whose addressee is"[36], because any law is, essentially, no more than a result of a conscientious choice and conscience is naturally and continuously challenging its products.

In a case where voluntary abortion was allowed only under restrictive conditions, including when the pregnancy is the result of a rape, the ECHR found that, such conditions being met, the "unwillingness of numerous doctors to provide a referral for abortion or to carry out the lawful abortion as such constituted evidence of the State's failure to enforce its own laws and to regulate the practice of conscientious objection"[37].

In follows that, since the right to voluntary abortion is, under restricted or *a fortiori* under broad conditions, a component of the right to respect for the private life, the State has the positive obligation to ensure the functionality of such procedures; this obligation includes a predictable use of conscientious objections, so that this does not transform into a *de facto* denial of the right in question. Once the State has instituted either broad or restrictive conditions for voluntary abortion, "the legal framework devised for this purpose should be shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention"[38].

"States are obliged to organise their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation"[39].

In the presence of a conflict between individual rights, the right to respect for the private life on the part of the patient and the freedom of conscience on the part of the medical staff, it is not a solution of prevalence which is to be sought, but one of proper balance. In principle, there is no way the medical practitioner's right to object is guaranteed differently than by allowing him, when motives of conscience are involved, to refuse the performance of a voluntary abortion. However, if theoretically all doctors were to raise the same issue, there would be none left to perform this otherwise lawful service. Finding a proper balance between the interests involved may be based on the premise that such an extreme scenario is not happening and only some of the medical practitioners actually raise conscientious objections. Should it indeed happen, a rational exercise shows that it would be an expression of the largely shared moral views within the society which would consequently result in more restrictive conditions for voluntary abortion, equating in congruent restrictive conditions for the conscientious objections.

Thus, when conflicting individual rights are involved, it appears that the conscientious objection has a quantitative dimension, showing that its width is indirectly proportional with the percentage of objectors. When they become a majority, either they can change the law, so there will be no need to object anymore, or, not being able to change it because that would make it undemocratic, a similar outcome will apply to their objection.

Therefore, in the case here discussed, the conscientious objections raised by medical practitioners will be more successful as they form a narrower minority; when a physician will not perform a voluntary abortion due to a matter of conscience, but there is a colleague right next door with no impediment in this regard or any other, there are no individual rights to balance; the patient will be easily able to resort to the other physician. When it is more difficult to find another one, due to any practical reasons, the objecting physician will have to refer the patient to a compatible colleague. The ECHR found this practice, together with that of communicating the objection in writing to the patient, to be compatible in principle with both rights involved[40].

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[36] Grégor Puppinck, *Objection de conscience et droits de l'homme. Essai d'analyse systématique*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2972502, 7.

[37] ECHR, P. and S. v. Poland, *precited*, paragraph 81; furthermore, „once the State, acting within its limits of appreciation, adopts statutory regulations allowing abortion in some situations, it must not structure its legal framework in a way which would limit real possibilities to obtain an abortion. In particular, the State is under a positive obligation to create a procedural framework enabling a pregnant woman to effectively exercise her right of access to lawful abortion" (paragraph 99).

[38] ECHR, A., B. and C. v. Ireland, *precited*, paragraph 249.

[39] ECHR, R. R. v. Poland, *precited*, paragraph 206.

[40] ECHR, P. and S. v. Poland, *precited*, paragraph 107; in that case, the Court however found that this regulated practice was not applied, but instead the facts were „marred by procrastination and confusion. The applicants were given misleading and contradictory information. They did not receive appropriate and objective medical counselling which would have due regard to their own views and wishes. No set

4. The need for balance

4.1. Ways to balance the conflicting rights

Although we discern isolated conscientious objections from a wide-spread phenomenon, and this distinction can prove itself useful when settling a dispute, it may prove useless in terms of prevention. The legislator may know or not know the frequency and intensity of conscientious objections in the ranks of medical practitioners across the country but is unlikely to always anticipate any significant developments in this regard. A regulatory action is more desirable to intervene outside an already existing conflict, because when acting in a particular ideological context there will be a greater risk for the State's intervention to be perceived as a back up for one of the parties. Because the rules are normally supposed to be set before the game and not changed during its course, the observance of the State's obligation of neutrality and impartiality may impair its possibility to act in order to regulate the rights and obligations of already conflicting parties. Therefore, we find for the adoption of a principled regulatory framework before a conflict between fundamental rights arises, integrated in a philosophy of dynamic balance; the law must be able to react by self-adjusting to society's moral needs.

By Resolution 1763 (2010), the Parliamentary Assembly of the Council of Europe invited the Member States "to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services, and which: 4.1. guarantee the right to conscientious objection in relation to participation in the medical procedure in question; 4.2. ensure that patients are informed of any conscientious objection in a timely manner and referred to another health-care provider; 4.3. ensure that patients receive appropriate treatment, in particular in cases of emergency"[41].

These three requirements make up an original solution to the conflict of fundamental rights involved in the matter of voluntary abortion, meant also to prevent any discrimination. There is a particularly wide space for the conscientious objection, since no quantitative cap appears to be set to prevent it, not in terms of numbers of objecting medical practitioners, nor in terms of distance or costs involved. Paragraph 4.1 pleads for an absolute right to object for reasons of conscience, if read in conjunction with paragraph 1, stating that "[n]o 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"[42]. Balancing the physicians' freedom of conscience to patients' rights, when a voluntary, on request, abortion is in question, seems to remain just a matter of proper information and referral to a non-objecting practitioner.

This original solution stems from assuming a reasonable quantitative equation. If theoretically there was practically or almost no practitioner left to perform a voluntary abortion due to a quasi-unanimous conscientious objection, this would not be a result of a doctors' conspiracy aimed to violate the fundamental right to respect for private life or to discriminate against women whose conscience prescribes or at least allows voluntary abortion or against women who are poor or just uniformed; on the contrary, it would be the result of a twist of general moral opinion about the value of life which served as a legitimate purpose for the Irish constituent when adopting the recently abolished ban on voluntary abortions, that is to institute a restriction upon the right to respect for private life, as approved by the ECHR in the A., B. and C. v. Ireland case, as discussed above in paragraph 2.1.

A fortiori, when such an extreme peradventure is not actual, objecting medical practitioners must only promptly inform the patient about his or her conscientious objection and immediately refer her to another practitioner[43]. This firstly implies the duty to obtain information in this regard at an institutional level, a task which cannot be entirely put upon the objecting practitioners. Ultimately the State is responsible for gathering and disseminating relevant information to all medical facilities and indirectly to their employed practitioners, so that the latter, in case they decide to object, can promptly pass that relevant information to the rejected patients.

The ultimate triumph in matter of conscientious objection is, be it for concurrent reasons too, the recognition of a discretionary right to object without

procedure was available to them under which they could have their views heard and properly taken into consideration with a modicum of procedural fairness" (paragraph 108).

[41] Parliamentary Assembly of the Council of Europe, Resolution 1763 (2010) – The right to conscientious objection in lawful medical care, paragraph 4, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17909.

[42] *Ibidem.* This paragraph does not extend, as was stated and criticized (Elena-Ancuta Franţ, *Legislația românească privind avortul în context European* [Romanian legislation on abortion in European context], Analele Științifice ale Universității Alexandru Ioan Cuza din Iași, seria Științe Juridice, no. 1/2013, 62), the applicability of the conscientious objection to legal entities like the hospitals or institutions there referred to, but only deals with the consequences of raising such objection by the individual practitioners, upon the hospitals or institutions in which they activate.

[43] To this respect, article 33 of the Code of Medical Ethics of the Romanian College of Physicians, adopted by Decision no. 3/2016, published in Monitorul Oficial, partea I, no. 981 of 7 December 2016, titled „Refusal to provide medical services" reads: (1) Refusal to provide medical assistance may occur under the strict conditions of the law or if by the request of the individual in question the physician is asked to perform acts which derogate from the professional independence, affect his or her image or moral values or the request is not in conformity with the fundamental principles of exercising the profession of physician, with the purpose and the social role of the medical profession. (2) In any case, the physician will explain the individual in question the reasons for his or her refusal, will ensure that due to the refusal of providing medical services the life or health of the said individual are not endangered and, inasmuch as the refusal is based upon the breach of his or her moral convictions, will refer the individual in question to another colleague or to another medical facility".

any reference to conscience, as provided, for example, by the French Public Health Code[44]. This can also be an example of how the urge to take out the conscience issues outside the public sphere can turn against the recipients of public service, should many medical practitioners make use of that discretionary right.

Nevertheless, the viability of such a solution essentially depends upon the functionality of the equation we have envisaged above. If the objectors eventually form a majority and the still lawful medical service in question is no more properly functional, because the access to it has become practically impossible or significantly difficult, resulting in discrimination against women[45] who, for example, do not afford to travel abroad or to a remote area of the same country in order to benefit from it, and there is no normative change as a result to this moral approach within the medical community, a collision of the conflicting rights will result in a breach of the legal right to a voluntary abortion. If, despite a moral choice largely shared within the society, the law maintains no restraint upon the right to voluntary abortion, it will be the conscientious objection which shall disproportionately bear the cost. So conflicting rights will have to be balanced, either by the way of an evolving legislation or by the way of applying a static legislation; both ways are never detached from the social context, but instead have to provide solutions to the latter's disfunctions.

4.2. Coordinates of discrimination in the context of conscientious objection to voluntary abortion

Besides the State's positive obligation in terms of access to voluntary abortion as a medical right, the situation here discussed involves not only this patient right, but also her conscience, as well as the medical practitioner's conscience. For if the medical practitioner's conscience opposes the performance of a legal medical procedure, and the access to it becomes ineffective or significantly difficult for a patient whose conscience, if it doesn't prescribe it, at least it allows it, then there would be a conflict in terms of conscience between the patient and the medical practitioner; the ideological neutrality of the State, which is one of its basic obligations in a democratic society[46], compels it not to take sides in an ideological conflict like that concerning the rightfulness or wrongfulness of the legal abortion, since this matter inevitably involves choices of conscience. If the State backs up the majority of the objecting medical practitioners, so that the individuals who are entitled to a legal voluntary abortion cannot actually obtain it, the State would inherently adopt the ideological position of the former and reject that of the latter. This would amount to discrimination as much as not recognizing any right to conscientious objection.

Therefore, the State is about to discriminate against the medical practitioners if it denies the exercise of the right to object for reasons of conscience as well as against the patients if it allows the medical practitioners to object up to the point the lawful voluntary abortion becomes practically impossible or is rendered significantly difficult. This perspective envisages a need to balance the conflicting conscience rights of medical practitioners on one side and those of the patients on the other.

The Parliamentary Assembly of the Council of Europe highlighted "the need to affirm the right of conscientious objection together with the responsibility of the State to ensure that patients are able to access lawful medical care in a timely manner", showing concern for the fact "that the unregulated use of conscientious objection may disproportionately affect women, notably those with low incomes or living in rural areas"[47], thus resulting both gender and economic status as supplementary discriminatory criteria. This observation is generally related to healthcare services, therefore is also applicable to voluntary abortion.

A separate discrimination issue may involve the circle of individuals who are entitled to object to voluntary abortions, given the diversity of the medical professions and their direct or less direct implication in the performance of such procedures. Conscientious objections are genuinely associated with the physicians who perform voluntary abortions, but the situation of the other medical staff involved in the process is comparable. It has been shown that "[t]he scope of conscientious objection allowed by the law may differ accordingly among different practitioners"[48]. This limits the objectors' group to those who have a close and concrete (or direct) involvement in the abortion procedure, or otherwise said "a certain level of complicity"[49], letting aside those who do not have such an involvement, like the staff who only care for a woman who will or has had an abortion, who prepare the necessary medical instruments or who clean the

[44] Article L-2212-8 of the French Public Health Code reads: „A physician or a midwife is never obliged to perform a voluntary termination of pregnancy, but has to inform the interested person, without delay, of his or her refusal and to immediately communicate the names of practitioners or midwives susceptible to realize such intervention [...]. No midwife or nurse, no medical ancillary, of any kind, is not compelled to concur to an abortion. A private health institution may refuse voluntary termination of pregnancies being practiced in its facilities. However, this refusal may not be opposed by a private health institution authorized to ensure the hospital public service, unless other institutions are capable to respond to the local needs [...]". – https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072665.

[45] Heiner Bielefeldt, Nazila Ghannea and Michael Wiener, *op. cit.*, 298.

[46] ECHR, Great Chamber, judgment of 26 April 2016, İzzettin Doğan and others v. Turkey (application no. 62649/10), http://hudoc.echr.coe.int/eng?i=001-162697, paragraph 179; see also, Ionuţ-Gabriel Corduneanu, *Neutralitatea religioasă în jurisprudenţa Curţii Europene a Drepturilor Omului* [Religious neutrality in the case-law of the European Court of Human Rights] (Bucureşti: Universul Juridic, 2018), 142.

[47] *Precited*, paragraph 2.

[48] B. M. Dickens, R. J. Cook, *op. cit.*, 72.

[49] Heiner Bielefeldt, Nazila Ghannea and Michael Wiener, *op. cit.*, 295.

surgery room, as well as the medical students who have the obligation, despite their convictions, to learn all the relevant medical information, including that which concerns abortions[50].

It follows that a possible, yet erroneous distinction is to be avoided in what regards nurses and other medical auxiliary staff, following the application of two irrelevant criteria: their ancillary role as compared to the physicians' and their professional subordination to the latter[51], who enjoy a rather independent professional statute. The valid criterium is the nature of the activity in question, not the statute of the objector, so that an objecting nurse will still have to perform any activity which is not in close and concrete connection with the abortion itself; the only thing which he or she may object to is the actual participation to voluntary abortion, consisting of helping the physician to carry it out, from the moment it is initiated until it is completed. Therefore, the conscientious objection does not cover pre-operative or post-operative care.

In cases where the functionality of one or several healthcare institutions, as far as voluntary abortion is concerned, is affected by the great proportion of objecting medical practitioners, a favourable circumstance for discrimination is most likely to be experienced either way.

Raising a conscientious objection cannot be a disciplinary offence, so it can never result in a disciplinary sanction, the less in a disciplinary dismissal, since that would be an inadmissible breach of both freedom of conscience and right to work. A layoff, as a consequence of a post or function being abated, would be equally unjustified, since in principle, precisely for reasons of non-discrimination, posts or functions contained by an organization chart of a medical facility cannot be divided between objecting and non-objecting staff, unless carrying out voluntary abortions is a "genuine and determining occupational requirement"[52]; this is generally not the case, since the medical practice, even only in the field of obstetrics and gynaecology, is notoriously vast; it can only happen if the posts or functions are established precisely for practicing voluntary abortions, which circumvents the possibility of layoffs to specialized abortion clinics.

As regards the acts of employment, when the functionality of voluntary abortion practice is seriously affected by the high percentage of medical practitioners already working in a medical facility, according to the nature of each position, the employer may consider the fact of non-objecting as a "genuine and determining occupational requirement" and therefore may refuse to employ, in this specific context, the practitioners who declare they object or fail to make any statement in this regard. However, nothing impedes the practitioners who did not object to carrying out voluntary abortions at the time of their employment to sincerely become objectors afterwards. They cannot be discriminated against due to this choice of conscience, which cannot in itself be a reason for a layoff. If, however, the employer can prove that he was deceived, because for example the medical practitioner in question has a long history of objecting to voluntary abortions with previous employers, the employment contract can be annulled for undue influence. It will still not be the case for a disciplinary sanction, because the fraudulent conduct regards the act of employment itself and not its exercise.

5. Conclusions

In follows that the right to respect for private life encompasses the right to voluntary abortion, which is not absolute, but may be restrained for the protection of morals. A right to life of the foetus does not enter the legal equation, since it cannot be only restrained, but only suppressed.

The right to voluntary abortion, recognized either under broad or restrictive conditions, like those related to foetus impairment, pregnancy resulted from a rape or under-age pregnancy, involves a positive obligation for the State to ensure the functionality of the necessary healthcare services, so that women have an indiscriminate access to such lawful medical services. The State's failure in this regard results in a violation of the right to private life and may also cause violations of the rights to life or to physical and psychological integrity, or not to be submitted to an inhuman or degrading treatment, as well as discrimination based on conscience of belief, gender, social or economic status.

A highly sensitive moral approach regarding voluntary abortion is unavoidable, as well as an ideological stand, either in favour or against it. Hence, it is altogether legitimate that medical practitioners enjoy the right to object for reasons of conscience to carrying out voluntary abortions.

Despite the tendency to attain an absolute right to conscientious objection, this option is conditional upon the functionality of the healthcare system. This may be achieved naturally, if there are enough available non-objecting medical practitioners, or by restraining the right to object, which proves that the affirmation of an absolute right to object, to the limit of the least complicity, is not feasible.

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[50] Learning is to be differentiated from performing, under supervision, a voluntary termination of pregnancy, which even a medical student may object to, invoking an obstacle of conscience. See, B. M. Dickens, R. J. Cook, *op. cit.*, 76.

[51] *Idem*, 72.

[52] Article 4 paragraph 1 of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, published in the Official Journal L 303/2 December 2000, reads: „Notwithstanding Article 2 (1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate."

There is instead only room for balance and not for the full supremacy of any of the rights involved, which both originate in the principle of personal autonomy. The idea of balance implies that not just one of these rights is supposed to concede to the other, but they both need to be subjected to mutual concession, to the point they both remain in force to the greatest possible extent. In order to ensure the viability of such a system, the State should not forbear restraining both rights involved, because it is the affirmation of just one's false absolute nature which conducts directly to a violation of the other. This statement equally regards the freedom of conscience and the right to respect for the private life.

Nevertheless, restraining the freedom of conscience can never attain the same level of efficacy as restraining the right to voluntary abortion.

In the first case, the restraint may follow a progressive approach, discerning cases when choice prevails over necessity, so that a conscientious objection cannot be allowed up to the point it leads to any rational endangerment of a patient's life or physical or psychological integrity; then, even when abortion is carried out on request, a minimum involvement may be asked from the objecting practitioners, precisely by rendering information and promptly referring patients to non-objecting practitioners, as well as informing their employers about their principled decision to object; also, the employers may assume priority in hiring non-objectors instead of objectors, meaning that they may also decide to make such an inquiry when hiring, should there not be any non-objectors left among the already employed or they be in such short numbers that the functionality of the service in question is affected.

In the second case, there is need for consonance between the way voluntary abortion is morally understood within the society and the broadness of the conditions of its legality.

In the end, the constitutional standards allow the right to voluntary abortion to be restrained for the protection of morals, as a democratically determinable subjective reality, which can be approached gradually, but do not allow that objecting medical practitioners are coerced to carry them out or sanctioned following the exercise of their right to conscientiously object.

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