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5 October 2010

Social, Health and Family Affairs Committee

Addendum to Minutes¹

of the meeting held in Paris on Friday 4 June 2010 at the
Office of the Council of Europe, 55 Avenue Kleber, Paris 16^e

Concerning item 4 -

Women's access to lawful medical care: the problem of unregulated use of conscientious objection

Rapporteur Ms Christine McCafferty, United Kingdom, SOC

Ms McCafferty presented the draft report, draft resolution and draft recommendation, stressing that the practice of conscientious objection arose in the field of health care when healthcare providers refused to provide certain health services based on religious, moral or philosophical objections. While recognising the right of an individual to conscientiously object to performing a certain medical procedure, she believed that the increasing and largely unregulated occurrence of this practice, especially in the field of reproductive health care, disproportionately affected women. She emphasized the need to balance the right of conscientious objection of an individual and the right of each patient to access lawful medical care. She stressed that member states should guarantee the right to conscientious objection only to individual healthcare providers and not to institutions such as hospitals and clinics as a whole. Effective monitoring and complaint mechanisms were also critical to ensure the implementation and enforcement of regulations.

Ms Roccella, Undersecretary of State at the Ministry of Labour, Health and Social Policies (Italy), presented the existing Italian regulation on legal abortion, the aim of which was to ensure the social care of maternity and to regulate the voluntary termination of pregnancy. Under Italian law, abortion was not considered as an individual right. Instead it was an issue to be dealt with from a social angle with a view to protecting maternity as well as the health of the mother and which could be practiced only within the national health system. She highlighted that the number of legal and illegal abortions had constantly decreased in the last twenty years in Italy, one of the few countries to show this trend in Europe, in particular with regard to pregnant minors. In this regard, she noted that the report was incorrect with regard to the Italian situation on abortion. The Italian law also regulated the use of conscientious objection in relation to abortion; this was granted only to individuals and not to institutions, and could not be invoked if the mother's health or life were at risk. Italy's abortion law did not exempt health-care personnel from providing pre- and post-abortion care. Statistical data on the use of conscientious objection were annually compiled by the National Health Institute and presented to parliament. Where the number of objectors was too high, hospitals had ensured access to abortion via external contractors or special agreements with authorised medical clinics. She pointed out that the current legislation on abortion and conscientious objection was the fruit of a compromise between lay persons and Catholics, as was also the case with the objection regarding military service in 1972. A parliamentary enquiry had been carried out in 2006, aimed at better understanding the phenomenon of abortion. The enquiry had revealed that in 60% of the cases the waiting period to have an abortion was one week (in addition to the compulsory week of reflection). This lapse of time (between certification and intervention) was an indicator of the efficiency of the service, and showed that the relatively high number of conscientious objectors in Italy did not prevent access to abortion.

¹ Declassified by the Committee on 4 October 2010.

The expert's full statement (in Italian) is available via the Parliamentary Assembly Extranet website (restricted area for PACE members).

The Chairperson asked whether the available data also showed the number of physicians and health workers who stated publicly that they were objectors. She was also interested in knowing more about the procedures in place to ensure access to the voluntary interruption of pregnancy (VIP).

Ms McCafferty asked whether conscientious objection also applied to assisted procreation. She also asked which part of the report was incorrect, according to Ms Roccella. Her analysis in fact referred to recent data and findings of the Italian Ministry of Health itself, showing that nearly 70% of gynaecologists in Italy refused to perform abortions on moral grounds, despite a strong legal framework in this area. The report also found that between 2003 and 2007, the number of gynaecologists invoking conscientious objection in their refusal to perform an abortion rose from 58.7 to 69.2%. The percentage of anaesthesiologists who refused to help in an abortion rose from 45.7 to 50.4%.

Mr Stucchi said that the regions had to implement national regulations and that there could be a problem of implementation of the existing regulation.

Mr Hancock asked whether the number of cases of legal abortions in Italy was available, whether it was known how many Italian women went abroad to perform an abortion and whether the "morning-after" pill was available over the counter in Italy.

Mr Agius asked how many foreign women went to Italy to perform an abortion. He stressed that priority should be given to the mother's health when this was in danger.

Ms Roccella confirmed that conscientious objection was only regulated in relation to abortion and not to medically assisted reproduction. She stated that the number of objectors was high but the procedures were well established in the Italian legislation. The "morning-after" pill was available on prescription and there was no conscientious objection to providing it.

Mr Hancock insisted on the fact that, to his knowledge, doctors in London very often treated Italian women for voluntary interruptions of pregnancy (VIP).

Ms Roccella pointed out that she was not aware of any "abortion tourism" from Italy to other countries. According to available information only very few Italian women went abroad to perform an abortion, but more seemed to come to Italy where VIP were free of charge. However for the latter cases, no precise data was available for the time being. Responding to the Chair's initial question on procedures by which VIPs were ensured whenever a conscientious objection was presented by medical staff, she pointed out that institutions concerned generally have relevant contracts (for referring patients) with other accredited organisations.

Dr Johanna Mishtal, Medical Anthropologist and Assistant Professor of the Department of Anthropology, University of Central Florida (United States of America), made a presentation on her current research work on the use of conscientious objection in Poland since 2000, in which she specially focused on the issue of access to health care by referring to examples from Warsaw, Cracow and Gdansk. She summarised her findings regarding Poland by noting that relevant legislation on conscientious objection existed but that the law was ineffective and often violated, that there was no legal recourse available for women and that there was no state oversight mechanism whatsoever as far as the use of conscientious objection was concerned. She therefore concluded that the balance of rights in this field was currently not achieved in the country. She recalled that abortion was generally restricted through a 1993 law which allowed abortion only in cases where the life and health of women was in danger, after crimes or when fetal abnormalities were expected. Dr Mishtal insisted on the fact that there was a systemic use of conscientious objection, through which even lawful abortion was sometimes refused and the law on conscientious objection was misused for collective rather than individual use. She illustrated the lack of oversight mechanisms in Poland by referring to the 2005 regulation to sanction hospitals which had been introduced by Mr Balicki, then Minister of Health, but eliminated again by his successor, Ms Kopacz in 2008. By recalling that the European Commissioner for Human Rights in 2007 (Commissioner Alvaro Gil-Robles) had critically noted the systematic use of conscientious objection and the lack of appeal processes in Poland, Dr Mishtal underlined the strong need for an intervention of the international human rights system both from the point of view of women and health care providers who respectively needed a guarantee of access to lawful medical care and clear guidelines about their rights and obligations.

The expert's full Power Point presentation (in English) is available via the Parliamentary Assembly Extranet website (restricted area for PACE members).

Mr Volontè pointed out that it would have been interesting to discuss the issue with the Polish Minister of Health. He wondered if there were more precise figures on entire clinics presenting conscientious objections or official figures on the application of relevant laws, and if the selection of persons interviewed during Dr Mishtal's research had been representative.

Responding to these questions, **Dr Mishtal** recalled that her own research was qualitative, and based on interviews with 596 women, 26 medical doctors and 3 medical professionals of family planning centres, but that the Polish state was normally supposed to provide full quantitative documentation of the issue (which it did not). She further indicated that the main reaction to the 1993 abortion law had been the establishment of a true "underground" abortion network, which was largely known and very often preferred by women because clandestine interventions were generally quicker than official procedures.

The Chairperson recalled that the objective of the current exchange was not to blame individual countries but to illustrate the impact of the lack of relevant legislation through one national example.

Ms McCafferty reminded members of a report which she had prepared in 2003/2004 where international research had been undertaken with regard to the promotion of sexual and reproductive health and rights, and where it had been found that certain doctors did not undertake VIP in their respective hospitals but would be ready to provide them on a private basis, even proposing them through newspaper advertisements.

Dr Mishtal also confirmed the publication of newspaper advertisements for clandestine abortions in Poland.

Mr Barbi wondered if it was true that certain women's associations mobilise against hospitals refusing VIP, although individually the hospital's staff members do provide such services.

Dr Mishtal confirmed that there were such cases where doctors do not object individually but feel threatened in hospital settings, and that certain associations were mobilising for this cause, but that many states had not yet responded to such advocacy efforts.

When invited by **the Chairperson** to present comments on the preliminary draft resolution, **Mr Volontè** pointed out that, when it comes to such delicate and complex topics, it seemed useful to hear further experts, for example, in this case, from the bioethical field.

The Chairperson indicated that a great amount of time had already been dedicated to the topic during two committee meetings, and that she did not see the necessity of further hearings as the report covered all important aspects of the issue. She suggested to keep to the current programme and adopt the report at the next meeting during the June part-session of the Assembly.

List of presence/Liste de présence

*The names of the members and alternates present at the meeting appear in bold
Les noms des membres et de leurs suppléants présents à la réunion sont indiqués en gras*

Ms Liliane MAURY PASQUIER, Chairperson	Switzerland / <i>Suisse</i>	Ms Doris STUMP
Ms Pernille FRAHM, Vice-Chairperson	Denmark / <i>Danemark</i>	Ms Pia CHRISTMAS-MØLLER
Mr Bernard MARQUET, Vice-chairperson	Monaco	Ms Catherine FAUTRIER
Mr Pieter OMTZIGT, Vice-chairperson	Netherlands / <i>Pays-Bas</i>	Ms Ine AASTED-MADSEN - Van STIPHOUT
Ms Lajla PERNASKA	Albania	ZZ ;
Ms Maria Pilar RIBA FONT	Andorra / <i>Andorre</i>	Mr Joan CARTES IVERN
Mr Armen MELIKYAN	Armenia / <i>Arménie</i>	Mr Artsruni AGHAJANYAN
Mr Karl DONABAUER	Austria / <i>Autriche</i>	Mr Franz Eduard KÜHNEL
Ms Christine MUTTONEN	Austria / <i>Autriche</i>	Ms Sonja ABLINGER
Mr Ali HUSEYNOV	Azerbaijan / <i>Azerbaïdjan</i>	Mr Akram ABDULLAYEV
Mr Fazail İBRAHIMLI	Azerbaijan / <i>Azerbaïdjan</i>	ZZ...
Mr Luc GOUTRY	Belgium / <i>Belgique</i>	Mr Dirk Van der MAELEN
Mr Patrick MORIAU	Belgium / <i>Belgique</i>	Mr Philippe MONFILS
Mr Ilija FILIPOVIĆ	Bosnia and Herzegovina / <i>Bosnie-Herzégovine</i>	Ms Mirjana MALIĆ
Mr Desislav CHUKOLOV	Bulgaria / <i>Bulgarie</i>	ZZ...
Ms Dzhema GROZDANOVA	Bulgaria / <i>Bulgarie</i>	Mr Yanaki STOILOV
Ms Karmela CAPARIN	Croatia / <i>Croatie</i>	Mr Mirando MRSIĆ
Mr Fidias SARIKAS	Cyprus / <i>Chypre</i>	Ms Athina KYRIAKIDOU
Ms Daniela FILIPOVÁ	Czech Republic / <i>République tchèque</i>	Mr Pavel LEBEDA
Ms Michaela ŠOJDROVÁ	Czech Republic / <i>République tchèque</i>	Ms Kateřina KONEČNÁ
Mr Indrek SAAR	Estonia / <i>Estonie</i>	Mr Silver MEIKAR
Ms Sirpa ASKO-SELJAVAARA	Finland / <i>Finlande</i>	Ms Tuulikki UKKOLA
Mr Roland BLUM	France	Mr Laurent BÉTEILLE
Ms Claude GREFF	France	Ms Muriel MARLAND-MILITELLO
Mr Denis JACQUAT	France	Ms Françoise HOSTALIER
Ms Marietta KARAMANLI	France	Mr Jean-Paul LECOQ
Ms Magdalena ANIKASHVILI	Georgia / <i>Géorgie</i>	Mr Rati SAMKURASHVILI
Ms Viola von CRAMON-TAUBADEL	Germany / <i>Allemagne</i>	Mr Manuel SARRAZIN
Mr Andrej HUNKO	Germany / <i>Allemagne</i>	Mr Thomas NORD
Ms Marlene RUPPRECHT	Germany / <i>Allemagne</i>	Ms Doris BARNETT
Mr Johann WADEPHUL	Germany / <i>Allemagne</i>	Ms Gitta CONNEMANN
Mr Konstantinos AIVALIOTIS	Greece / <i>Grèce</i>	Ms Charoula KEFALIDOU
Mr Michail KATRINIS	Greece / <i>Grèce</i>	Ms Sophia GIANNAKA
Mr Imre CZINEGE	Hungary / <i>Hongrie</i>	Mr József GEDEI
Mr András KELEMEN	Hungary / <i>Hongrie</i>	Mr Attila GRUBER
Mr Birkir Jón JÓNSSON	Iceland / <i>Islande</i>	ZZ...
Mr Peter KELLY	Ireland / <i>Irlande</i>	Mr Ronan MULLEN
Mr Mario BARBI	Italy / <i>Italie</i>	Mr Paolo GIARETTA
Mr Maurizio SAIA	Italy / <i>Italie</i>	Mr Giacomo STUCCHI
Mr Oreste TOFANI	Italy / <i>Italie</i>	Mr Giuseppe CIARRAPICO

Mr Luca VOLONTE'

Mr Andris BĒRZINŠ
 Ms Doris FROMMELT
 Ms Arūnė STIRBLYTĖ
 Mr Marc SPAUTZ

Mr Francis AGIUS

ZZ...
 Mr Neven GOSOVIĆ
 Mr Paul LEMPENS
 Ms Karin ANDERSEN
 Ms Bożenna BUKIEWICZ
 Mr Włodzimierz KARPIŃSKI
 Ms Anna SOBECKA
 Ms Maria de Belém ROSEIRA
 ZZ...

Mr Cezar Florin PREDĂ
 Mr Cristian DAVID
 Mr Mihai TUDOSE

Mr Igor CHERNYSHENKO

Mr Oleg LEBEDEV

Mr Vladimir ZHIDKIKH

ZZ...

Mr Marco GATTI
 Mr Miloš ALIGRUDIĆ
 Ms Vjerica RADETA
 Mr Ján KOVARČÍK
 Mr Ljubo GERMIĆ

Ms Meritxell BATET LAMAÑA

Ms Rosa Delia BLANCO TERÁN

Mr Agustín CONDE BAJÉN

Ms Carina OHLSSON
 Ms Marietta de POURBAIX-LUNDIN

Mr Felix MÜRI

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Mr Mustafa ÜNAL
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Ms Olha HERASYM'YUK
 Mr Victor YANUKOVYCH

Mr Paul FLYNN**Mr Michael HANCOCK**

Baroness Jill KNIGHT OF
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Russian Federation /

Fédération de Russie

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Fédération de Russie

San Marino / *Saint-Marin*

Serbia / *Serbie*

Serbia / *Serbie*

Slovak Republic

Slovenia / *Slovénie*

Spain / *Espagne*

Spain / *Espagne*

Spain / *Espagne*

Sweden / *Suède*

Sweden / *Suède*

Switzerland

« The former Yugoslav
 Republic of Macedonia »

Turkey / *Turquie*

Turkey / *Turquie*

Turkey / *Turquie*

Ukraine

Ukraine

Ukraine

United Kingdom /

Royaume-Uni

United Kingdom /

Royaume-Uni

United Kingdom /

Royaume-Uni

United Kingdom /

Royaume-Uni

Mr Vannino CHITI

Ms Ingrida CIRCENE

Mr Leander SCHÄDLER

Ms Birutė VĖSAITĖ

Mr Jean HUSS

Ms Marie-Louise COLEIRO PRECA

ZZ...

Mr Obrad GOJKOVIĆ

Mr Luuk BLOM

Ms Ingjerd SCHOU

Mr Stanislaw RAKOCZY

Mr Maciej ORZECZOWSKI

Mr Ryszard BENDER

Mr José Manuel PUREZA

ZZ...

Mr Iosif Veniamin BLAGA

Ms Ana Adriana SĂFTOIU

Mr Florin IORDACHE

Mr Valery PARFENOV

Mr Alexander Minovitch PODLESOV

Ms Tatiana VOLOZHINSKAYA

Ms Svetlana GORYACHEVA

Ms Assunta MELONI

Ms Nataša VUČKOVIĆ

Mr Velimir ILIĆ

Mr Július BROCKA

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Mr Jordi XUCLA I COSTA

Ms Emelina FERNÁNDEZ SORIANO

Ms Blanca FERNÁNDEZ-CAPEL BAÑOS

Mr Morgan JOHANSSON

Ms Tina ACKETOFT

M. Arthur LOEPFE

Ms Flora KADRIU

Mr Yüksel ÖZDEN

Ms Birgen KELEŞ

Mr Ali Rıza ALABOYUN

Mr Yevgeniy SUSLOV

Ms Oksana BILOZIR

Mr Ivan POPESCU

Lord Donald ANDERSON

Baroness Anita GALE

Mr Tim BOSWELL

Ms Betty WILLIAMS

Special guests / Invités spéciaux

Dr Fiona GODLEE, Editor in Chief of the British Medical Journal (BMJ) / *Editrice en Chef du British Medical Journal (BMJ)*

Ms Eugenia ROCCELLA, Undersecretary of State, Ministry of Labour, Health and Social Policies (Italy) / *Sous-secrétaire d'Etat au ministère du travail, de la santé et des politiques sociales (Italie)*

Ms Joanna MISHTAL, Ph.D., Assistant Professor, Department of Anthropology, University of Central Florida (United States of America) / *Professeur adjoint, Département d'Anthropologie, Université de Floride centrale (Etats-Unis d'Amérique)*

Secretariat of the Assembly / Secrétariat de l'Assemblée

Mr / M. NEVILLE, Head of the Migration, Social Cohesion and Equal Opportunities Department / *Chef du service des migrations, de la cohésion sociale et de l'égalité des chances*

Mr / M. FERRER, Communication Division of the Parliamentary Assembly / *Division de la Communication de l'Assemblée parlementaire*

Social, Health and Family Affairs Committee / Commission des questions sociales, de la santé et de la famille

Ms / Mme KLEINSORGE, Head of the Secretariat / *Chef du Secrétariat*

Ms / Mme LAMBRECHT-FEIGL, Secretary to the Committee / *Secrétaire de la Commission*

Ms / Mme ARZILLI, Deputy Secretary to the Committee / *Secrétaire adjointe de la Commission*

Ms / Mme STEMP, Assistant / *Assistante*