

EPF Analysis on the Vote on the Resolution 1763 (2010) and Recommendation¹ on “Women’s access to lawful medical care: the problem of unregulated use of conscientious objection”

Introduction

On the 7th October, the Parliamentary Assembly of the Council of Europe held the debate and the vote on the Resolution and the Recommendation¹ on “Women’s access to lawful medical care: the problem of unregulated use of conscientious objection”. The report was drafted by Hon. Christine McCafferty, MP (UK, Socialists), following the Motion for a Resolution submitted in 2008 by EPF Vice President, Hon. Carina Hagg, MP (Sweden, Socialists). The legal expertise to the report was provided by the SRHR advocate, The Center for Reproductive Rights (CRR) among other experts. This landmark report was the first document that called on the 47 Council of Europe Member states to²:

- *Develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services, including reproductive health services.*
- *Oblige the healthcare provider to provide information about all treatment options; refer the patient to another healthcare provider in the case of conscientious objection and ensure that he receives appropriate treatment*
- *In case of emergency to provide the desired treatment despite healthcare provider’s conscientious objection*

A Half-year Anti-choice Preparation to Defeat the Report

The report became the subject of an aggressive anti-choice campaign, which included a large number of letters urging Politicians to vote against the report, an anti-choice event at the Assembly involving few conservative MPs as well as flood of amendments submitted just before the deadline, late afternoon so as to prevent a thorough preparation by the Rapporteur for the debate next morning. The adoption of the Resolution was rather more depending on the **astute political manoeuvring**. With the timing of the vote, this time set on the “second worst spot” the Thursday afternoon and the elections in several progressive countries, including Sweden and the Netherlands - that prevented their full delegations from being present, postponing the vote till the January 2011 Assembly meeting could have lead to its adoption.

A Tactical Victory for Anti-Choice with no Consequence for SRHR

On 7th October, the Council of Europe Parliamentary Assembly voted on two documents: a **Resolution**, that “*embody a decision by the Assembly on a question of substance which it is empowered to put into effect, or an expression of view for which it alone is responsible*”³ and the **Recommendation** which constitutes “*a proposal by the Assembly addressed to the Committee of Ministers, the implementation of which is beyond the competence of the Assembly, but within that of governments.*”⁴

The **tactical victory** was lead by the Irish and Italian Members of Parliament and the excessively altered **Resolution** was finally adopted with 56 to 51 votes, 4 abstentions. The better news is however, that the far more important “**Recommendation**”, **was rejected**, with 51 votes for, 56 against and 3 abstentions. The adoption of the Resolution, but the rejection of the Recommendation addressed to the Committee of Ministers of the National Member States, mean that while the possible advance for SRHR has not been accomplished, the current legal status quo remains unchanged.

1 The Recommendation was not adopted

2 The full text of the Resolution, Recommendation and the Report before the vote is available: <http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12347.pdf>

3 Article 24.1.b. of the Rules of Procedures of the Parliamentary Assembly available: <http://assembly.coe.int/RulesofProcedure/2010/RulesOfProcedure.pdf>

4 Article 24.1.a of the Rules of Procedures of the Parliamentary Assembly

EPF Involvement

EPF is of the two SRHR organisation with Participatory Status at the Council of Europe and has been monitoring the progress of the report, the Opinion, the Resolution and the Recommendation since the introduction of the Motion for a Resolution in October 2008⁵ by its Vice President Hon. Carina Hagg, MP (Sweden, Socialists), with The Center for Reproductive Rights providing evidence to the Rapporteur and the Rapporteur for the Opinion at the Committee on Equal Opportunities for Women and Men, Hon. Ingrida Circene (Latvia, EPP). EPF has also contacted Members of Parliaments – who have been active within EPF and members APPGs and who are members of the Parliamentary Assembly of the Council of Europe.

Civil Society Involvement

Large number of groups and NGOs around Europe active on SRHR contacted their representatives to the Parliamentary Assembly in many countries and shared intelligence on the report and its necessity.

A number of renowned human rights organisations such as European Women’s Lobby, European Humanist Federation, Amnesty International, Human Rights Watch as well as ordinary citizens contacted Members of Parliament and urged them to support the report.

On 7 October, Catholics for Choice together with the Rapporteur, Ms. Christine McCafferty, MP, organised a hearing in the Assembly entitled: “In Good Conscience”: Conscience Clause and Reproductive Rights in Europe – Who Decides”.

Vote Analysis⁶

On 7th October, the Council of Europe Parliamentary Assembly voted on two documents: a **Resolution**, that “*embody a decision by the Assembly on a question of substance which it is empowered to put into effect, or an expression of view for which it alone is responsible*”⁷ and the **Recommendation** which constitutes “*a proposal by the Assembly addressed to the Committee of Ministers, the implementation of which is beyond the competence of the Assembly, but within that of governments.*”⁸

The excessively altered by the anti-choice opposition **Resolution** was adopted with **56/51** votes, 4 abstentions against the will of the Rapporteur to vote against it. Overall, 111 Parliamentarians were present at the vote⁹.

Although the Recommendation to the report was not adopted, this vote analysis will discuss and analyse the numbers of Parliamentarians present during their vote and their voting patterns for the purpose of understanding the tactics of the anti-choice grouping at the Council of Europe.

Placement on the agenda – day of the week is crucial

If compared with the earlier reports on SRHR issues one can clearly notice a reduction of the number of Parliamentarians closer to the end of the week due to their commitments in their constituencies. For example the report on Access to safe and legal abortion in Europe

⁵ Full text of the Motion for a Resolution available at:

<http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc08/edoc11757.htm>

⁶ Voting results can be viewed:

http://assembly.coe.int/ASP/Votes/BDVotesParticipants_EN.asp?VoteID=2212&DocID=13164&Sort=3

⁷ Article 24.1.b. of the Rules of Procedures of the Parliamentary Assembly available:

<http://assembly.coe.int/RulesofProcedure/2010/RulesOfProcedure.pdf>

⁸ Article 24.1.a of the Rules of Procedures of the Parliamentary Assembly

⁹ The Council of Europe Parliamentary Assembly consists of 318 representatives.

(Doc. 11537), voted on a Wednesday, 16 April 2008 won with **102/69**, whereas the report on Fifteen years since the International Conference on Population and Development Programme of Action (Doc. 11992) voted on a Friday, 29 January 2010 got through with **50/14** votes.

This shows that the opposition can currently ensure 69 (when the Assembly is full) to 56 (closer to the end of the week) Members to stay and vote against the document.

Conclusion 1:

Highest alert of the opposition topped up with partially missing delegations (due to elections) from some progressive countries such as Sweden and the Netherlands could have tactically been avoided by withdrawing the report this time and postponing it until the next session in January 2011.

Political Parties

The end result of the votes according to political parties was as follows:

- 40% (4 to 6 MPs) of the Alliance of Liberals and Democrats for Europe (ALDE) supported the Rapporteur (and voted against the amended Resolution)
 - *Members voting against were from Latvia, Georgia (2 MPs), Italy, Spain and Switzerland*
- 71% (5 to 1 MP and one abstention) of European Democrat Group (EDG) supported the Rapporteur (and voted against the amended Resolution)
- 24 % (14 to 44 MPs) of the European People's Party supported the Rapporteur (and voted against the amended Resolution)
- 0 % (2 MP) of non-attached members supported the Rapporteur (and voted against the amended Resolution)
- 80% (24 to 3 MP and 3 Abstentions) of the Socialist Group supported the Rapporteur (and voted against the amended Resolution).
 - *The three Socialist Parliamentarians that did not support the Rapporteur were from Malta, Albania and Ukraine.*
- 100 % (4 MPs) from the Unified European Left (UEL) supported the Rapporteur (and voted against the amended Resolution)

Conclusion 2:

The usual dynamic has changed this time, with EDG offering larger than a usual support, but with ALDE being split. More work needs to be done in raising awareness for the Members from Eastern European / South European countries, with no influence of Catholic Church (Georgia, Moldova, Romania, Ukraine) especially belonging to the Liberal and the Socialists Group, offering the usual support.

By countries:

National Delegations that **fully** or in majority supported the Rapporteur included: Belgium, Switzerland, Czech Republic, Norway, Sweden, Turkey, United Kingdom.

- Swedish Delegation was not fully attending the vote and included only 4 Members due to recent elections
- The UK Delegation was not fully attending the vote as UK Members are obliged to be in their constituencies of Fridays

National Delegations that were **divided**, but would usually be supportive included: Germany (2 Members 1 voting against EPP and 1 in favour - UEL) and France (5 followed the Rapporteur and 3 were against, with 1 abstention) and the Netherlands (1 EPP / 1 UEL)

National Delegations that voted **against** or in majority against the Rapporteur included: Albania, Austria, Georgia, Spain (mostly EPP/ALDE Members), Hungary, Italy, Malta and Poland (6 out of 9 voted against Rapporteur).

Conclusion 3:

Supportive Members, mainly Socialists and UEL from France, Germany, the Netherlands and Spain were this time not attending the debate. Supporting Delegations from Sweden and UK were not fully represented, due to circumstances out of their control, such as elections or constituency obligations. Supporters from Nordic countries were absent: Denmark, Finland and Iceland.

Political Dynamics: Internal and External Anti-Choice and their tactics

After two failures of the organised anti-choice opposition in the last two years to block or influence the vote on the Resolution on Access to safe and legal abortion in Europe and on the Recommendation Fifteen years since the International Conference on Population and Development Programme of Action the opposition has become extremely vigilant and organised.

Internal Opposition:

1) Delaying the report by requesting two committee hearings, instead of one:

Mr. Volonté, MP (Chair of EPP, Italy) strongly backed up by Vatican as well as Mr. Mullen, MP (EPP Member, Ireland) that lead the anti-choice camp at the Parliamentary Assembly ensured the delay of placing the report on the Agenda of the Assembly by requesting to hold two committee hearings on the subject, instead of one. The report, initially planned to be voted during June 2010 Assembly Session, has been placed on the agenda for October 2010.

This tactic is based on the fact that the Assembly has only 2 years to submit the report after the motion has been tabled.

2) Flood of amendments submitted just before the deadline:

Three groupings of Parliamentarians: 1) Ireland, Italy and San Marino; 2) Moldova, Romania and the Netherlands; 3) Poland, Bulgaria, France and Malta have engineered 91 amendments that were submitted just before the deadline, 6th October at 15.30. After processing by the Table Office, the Rapporteur received them at 19.00 and had one night to prepare responses.

This tactic aims to:

- Overwhelm the Rapporteur: as the Rapporteur might not have enough time to prepare answers to all amendments for the Assembly meeting taking place on the next day and might wish to withdraw the report.
- Slow down the Committee work and seek further delay: as the Committee meeting that takes place before the Assembly meeting will not have enough time to examine all the amendments. This is also likely to become the reason to withdraw the report from the agenda.

3) Placing the Report on the Assembly agenda on Thursday afternoon

During the discussion within the Bureau¹⁰ and the Presidential Committee¹¹ about the order of the agenda for this part-time session, the EPP Chair, Mr. Volonté has explicitly requested the report be placed on a Thursday afternoon.

This tactic is counting on the absence of many members, as on Thursdays most Members leave Strasbourg and more mobilisation is frequently impossible as Parliamentarians have commitments in their constituencies. Therefore a smaller number of anti-choice can make the required difference of a few votes. This tactic usually “forces” the Rapporteur to withdraw the report from the votes and again delays the final outcome¹².

External Opposition:

A large number of anti-choice organisations contacted Parliamentarians, urging them to vote against the Resolution and the Recommendation. Among those organisations, most notably were the European Centre for Law and Justice, an organisation of Christian lawyers based in Strasbourg as well as Care for Europe and the Federation of Catholic Family Association in Europe. They provided a list of arguments, based on false interpretation of facts, stated in the report to convince Members of Parliament.

False Interpretation of Facts

Most arguments of the opposition were based on the false interpretation that there is a universally recognised right to conscientiously object a medical procedure. Another argument was that the Resolution would take away the right of healthcare providers to conscientiously object a medical procedure, whereas the Resolution highlighted this need only in emergency situations.

This tactic is powerful as many Members follow the Group vote, due to lack of time to familiarise themselves with the issue.

On 6th October Care for Europe, the European Centre for Law and Justice and Federation of Catholic Family Association in Europe organised a hearing in the Assembly entitled: “The Conscientious Freedom of medical practitioners, involving a former Judge of the European Court of Human Rights and a former Chairman of Professional Conduct Committees, UK General Medical Council. About 4 Parliamentarians attended this meeting, which is a very low turnover.

There is no evidence that these external groups affected any votes against the report¹³. Rather, they emboldened anti-choice Parliamentarians leading the tactical change within the PACE.

¹⁰ The Bureau consists of the President, of twenty Vice-Presidents of the Assembly and the chairpersons (or their representatives) of the political groups and of the Assembly’s general committees

¹¹ The Presidential Committee consists of the President of the Assembly, the chairpersons of the political groups (or their representatives) and the Secretary General of the Assembly

¹² The same tactic was used for the Report on Fifteen years since the International Conference on Population and Development Programme of Action, where the Rapporteur withdrew the report twice from the agenda

¹³ See page 2 of this analysis: Placement on the agenda – day of the week is crucial

Conclusions:

- 1) The anti-choice opposition at the Parliamentary Assembly has become even more organised and explored all possible tactics to achieve their goals. More careful political manoeuvring is now necessary to succeed in advancing reproductive rights.
 - ✎ ICPD Supporters are still in majority
- 2) While the excessively altered by anti-choice Resolution was adopted, the more important, "Recommendation", a proposal by the Assembly addressed to the Committee of Ministers, the implementation of which fall within national governments, was rejected, with 51 votes for, 56 against and 3 abstentions. Therefore there will be no follow up to the report by any institution.
- 3) The anti-choice victory over the Resolution on Women's access to lawful medical care: the problem of unregulated use of conscientious objection can be called a "tactical victory". The opposition tactics that has largely contributed to the anti-choice victory was to move the vote of the report on a Thursday afternoon, where many Members are obliged to head back home to their constituencies.
 - ✎ The Resolution could have been restored, had the report been sent back to the Committee for "further review".
 - ✎ More work needs to be done with the Members that decide on Assembly Session Agenda in convincing them to place reports on SRHR on more favourable days.
- 4) The usual dynamic has changed this time, with right-wing EDG offering larger than a usual support, but with liberal-centre ALDE being split.
 - ✎ More work needs to be done in raising awareness for the Members from Eastern European / South European countries, with no influence of Catholic Church (Georgia, Moldova, Romania, Ukraine) especially belonging to the Liberal and the Socialists Group, offering the usual support.
 - ✎ One to one meeting and awareness raising proved to be successful. For example, EPF Partner – Center for Reproductive Rights could convince entire Czech Delegation to support the report after a series of individual meetings.

Overall Conclusion:

While the ICPD supporters are still in the majority at the Parliamentary Assembly of the Council of Europe, the adoption of the excessively altered Resolution has been rather a tactical victory of the anti-choice camp. The opposition is on highest alert and exploits a large number of various tactics to achieve their goals. Awareness raising activities in a number of East European and South European countries with no influence of Catholic Church could become a key to increasing the number of SRHR supporters at PACE.

ANNEX 1

Highlights of the debate

From the Rapporteur and Rapporteur of the Opinion

Mrs. McCafferty (United Kingdom, Labour): “The Parliamentary Assembly has emphasised the need to balance the right to conscientious objection with the responsibility of the profession and the right of each patient to receive lawful treatment, and it expresses its concern about the severe consequences that that practice has on women’s access to lawful health care services. National regulations should therefore recognise that the right to conscientious objection extends only to individuals, and not to public or state institutions.

The enactment of regulations that include those principles by member states will ensure that the interests and rights of both health care providers and individuals seeking legal health care are respected, protected and fulfilled.”

Mrs. Ingrida Circene (Latvia, EPP): “This report is not about abortions but about how to avoid them and prevent unwanted pregnancies. Many opponents stress the protection of religious freedom when, in reality, they are a small but vocal group of ultra-conservative, anti-choice activists who seek to roll back Europe’s progress on sexual and reproductive health and rights, as well as women’s rights.

The geographical situation should not result in discrimination in lawful medical care against women living in rural areas. If I am a taxpayer and a medical person has an agreement with the state, that state must ensure the same legal health care, even in rural areas.

It is also crucial to create a tolerant working environment for both objectors and non-objectors.”

Political Party Positions:

Mr. Wille (Belgium), on behalf of The Alliance of Liberals and Democrats for Europe: “The rapporteur’s initiative is entirely appropriate for the agenda because the situation is unregulated in many countries, so the utility of the report is beyond question. The new tendency to say that there is not only freedom of conscience for individuals but also for organisations is an increasing danger and an unacceptable development. That is why we must be cautious and tolerant in every way, and try to create rights for the many in society rather than the few.

Mr. Wilshire (United Kingdom) on behalf of European Democrat Group: The European Democrat Group is clear that it believes that there is no place for party politics in a matter such as this. We therefore have no collective view on the matter in any way. Individual members of my group have very strong views, and they will probably express them. Individual members will be free to follow their conscience, as I hope that every member of this Assembly will do this afternoon.

Mr. Kox (Netherlands) on behalf of Group of the Unified European Left: If someone raises a conscientious objection, there should always be the possibility of an alternative. If there are no alternatives, the women in question should win the conflict, not the professional, because he or she is a professional. We also ask those who are against things such as abortion that they also respect the position of others and, in the first place, the position of women. If we forget to respect the position of women and their universal right to access health care, we really do have a problem. There can be no polarisation. It is time for tolerance.

Mr. Volontè (Italy) on behalf of the Group of the European People's Party:

"Attempts to control conscience had been a grave danger to Europe. The report started from a position of prejudice against the 47 member states, all of which had some form of protection for conscientious objection, be it through national legislation or by being signatories to the European Convention on Human Rights or the Universal Declaration of Human Rights. The report was based on partial research. Experts had spoken to the Committee. One was an American anthropologist who had spoken to 300 people in Poland and concluded the law was not applied. One was a gynaecologist in Austria who said the law was not applied. The Assembly could not deny the provisions contained in the European Convention on Human Rights. To do so would be a denial of the history of the Council of Europe."

Individual interventions:

Ms Kaufer (Hungary, Socialists): "I carefully read the correspondence and listened to the arguments in committee meetings, but failed to understand the need for such a holy war. Mrs McCafferty's report and the recommendations are well balanced and well researched."

We all know what is behind this heavy opposition, but let us not forget that termination of pregnancy is not a jolly ride; it is not something that women decide on lightly. I cannot emphasise enough the situation of rural women and those who have low incomes. We as legislators have a duty to create circumstances of equal opportunities and equal access to basic rights for everyone, and this is what this important report calls for."

Mr Omtzigt (Netherlands, EPP): "It is the second part – "the problem of unregulated use of conscientious objection" – that worries me. If we put anything else in front of the second part of the title, everyone in this Chamber would be up in arms, saying, "We are not regulating conscientious objection." That is not the kind of language that we would want to use. The large majority of doctors think that abortion can be okay in certain circumstances, but they should still have the right to object in cases, for example, where someone wants to abort only because they want a boy or a girl and they are expecting a baby of the other gender."

I would like to know from Mrs McCafferty whether she thinks that, for example, a Catholic or Protestant hospital has the right to say, "No, we do not want to perform abortions." Is it her view that schools and hospitals should always do what the state says, in which case I would ask, what is the point of having the freedom to have such schools and hospitals? We do not ask any hospital to do open-heart surgery. Most hospitals do not perform such surgery. There are lots of procedures that they do not perform."

Mr. Farina (Italy, EPP): "The Parliamentary Assembly was normally concerned about diseases and growing problems in society, but here the Parliamentary Assembly, where parliamentarians were called to vote according to their consciences, was concerned about people freely saying no to laws that they considered to be harmful to the common good. The report said that in Italy, nearly 70% of gynaecologists were objectors. If the percentage of homosexuals in a society was too high to guarantee the demographic development of that society, should the free expression of sexuality be limited?"

Mr Kastens (Latvia, ALDE): "The report launches a broad attack against the individual's freedom of conscience by seeking to displace it when confronted with the rights of each patient. It is unacceptable to promote particular groups' rights at the expense of other groups, and there is a risk that any future resolution will lead to more controversial measures, such as assisted suicide, wherein a health care provider will be forced to assist in legal murder. "

Ms Vesaitė (Lithuania, Socialists): "I do not understand why this turmoil is going on. Neither Mr Volontè nor any other male parliamentarians should decide what women are to do with their bodies; it is up to women themselves. That is how I understand the realisation of women's rights. Who will suffer most if access to the termination of pregnancy is limited? Of course, it will not be the well-educated, rich women, who know the way out; it will be the poor girls in the back streets and rural women.

If members of national parliaments are so concerned about this issue, they should pay more attention to prevention, sexual education and the family planning needs of young people. I fully support this report and thank Mrs McCafferty. "

Mr. Hancock (United Kingdom, ALDE): "I have an awful suspicion that some people have not read the report. If they have, they have completely misunderstood it. The report tries to say that, when a woman needs help, the state and the health service have an obligation to provide it. That is an obligation to safeguard the life and well-being of a woman.

This debate has been completely and utterly prostituted away from what it set out to do.

Those who oppose this report say that it is not a fundamental right of women to have good and proper health care undertaken by properly trained professionals.

How can you conscientiously object to saving a woman's life, or to giving that woman the chance to get the best health care? If this place stands for anything, as I said in an earlier speech, it is about children and equal opportunities and ensuring that everyone under the law is entitled to proper care. That is what the report suggests. To say anything other than that is totally to distort the report. People simply have not understood, or did not want to understand, what the report was trying to achieve.