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THE RIGHT OF MEDICAL PROFESSIONALS TO EXERCISE CONSCIENTIOUS OBJECTION TO ABORTION: THE CASE OF THE REPUBLIC OF CROATIA

Abstract

The Croatian Act on Health Measures for Exercising the Right to Free Decision-Making on Childbirth, in force since 1978, allows termination of pregnancy at the request of the pregnant woman until the end of the tenth week from conception. This regulation, adopted while the Republic of Croatia was part of the former Socialist Federal Republic of Yugoslavia, was found by the Constitutional Court of Croatia, in its ruling of 21 February 2017, to require alignment with the Croatian legal and institutional framework established after independence.

For these reasons, the Constitutional Court gave the Croatian Parliament a two-year deadline to adopt a new abortion law, which was not complied with. In its ruling, the Constitutional Court emphasised that the legislator has broad authority in regulating abortion, including with regard to the issue that will be the focus of this paper: the regulation of physicians' conscientious objection to performing abortions.

This paper will examine whether it is desirable for conscientious objection by medical professionals to be included in the new Croatian Abortion Act and, if so, how this institution should be regulated in order to avoid the problems that may arise for patients when a large number of physicians invoke it. The paper is based on the assumption that theoretical studies of conscientious objection in medicine can inform Croatian legislative efforts. The paper is structured as follows. First, it will conceptually elaborate on the notion of conscientious objection, which is intended to protect the "deeply held beliefs" and moral integrity of physicians. Secondly, the paper will seek to determine the limits of exercising this right, particularly when it conflicts with women's reproductive rights. A critical overview of the arguments for and against conscientious objection in this medical procedure will be provided.

Keywords: *moral integrity, abortion, conscientious objection.*

I. INTRODUCTION

Contemporary societies are characterized by the existence of "deep disagreements"[1], which has brought conscientious objection in medicine to the center of extensive debates. Societies have become more pluralistic with regard to cultural identities, opinions, and ethical and religious beliefs.[2] In the academic literature on conscientious objection, a widely noted division exists, particularly clearly formulated by Marc Wicclair, between proponents of the "Incompatibility thesis", who oppose the possibility of invoking conscientious objection in medicine, and those who advocate "Conscience absolutism", the view that a physician's

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[1] Pilkington B, The Medical Act: Conscientious Practice in a World of Dissention and Disagreement (2025) p xiii.

[2] Marcó Bach FJ, 'Some problems of conscientious objection' (2022) 33 *Medicina y Ética* p 807.

conscience takes precedence over professional obligations.[3] Between these two extremes are those who seek to offer a compromise solution.

Opponents of conscientious objection often base their arguments on physicians' professional obligations, which, in their view, take precedence over any values physicians might invoke to avoid acting in accordance with those obligations.[4] Within the latter group, some scholars also refer to the special nature of the medical profession,[5] its primary orientation toward altruism and the protection of patients' interests.

Failure by physicians to comply with their professional obligations undoubtedly poses a risk to patients and may result in harm to their health or even their lives.[6] The negative consequences of conscientious objection for patients, that is, the harm they may suffer, may consist in the failure to provide timely access to healthcare services, increased costs of medical care, the withholding of important information related to a medical procedure, and the physician's expression of moral judgment regarding the patient's choices.[7] A physician's refusal to perform a requested procedure may therefore have significant consequences for a patient's dignity.[8] The consequences may also be felt by fellow physicians as an increased workload, often accompanied by a reduced diversity of tasks they can perform due to overburdening.[9]

On the other hand, proponents of the right to conscientious objection argue that physicians' consciences must be protected to the greatest extent possible.[10] Those who advocate conscientious objection usually rely on the value of moral integrity.[11] Conscience is closely tied to a person's identity, and it cannot be turned on and off at will.[12]

Those who disapprove of conscientious objection overlook the central role that freedom of conscience plays in contemporary liberal democracies.[13] This issue is often examined in terms of minority rights, that is, as deriving from the value of pluralism in liberal democracies.[14] The fundamental reason for the legal tolerance of conscientious objectors lies in the constitutive role of tolerance of diversity.[15]

Advocacy of conscientious objection, in addition to protecting the moral integrity of healthcare professionals, can also be justified by the protection of minority rights based on the moral principles of liberal democracies; by the fact that we may be mistaken in our moral judgments, for which the history of medicine provides numerous examples; and by the particular moral and political significance of taking human life.[16]

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[3] McConnell D, 'Conscientious Objection in Health Care: Pinning down the Reasonability View' (2021) 46 J Med Philos 37, p 38. See Mark R Wicclair, *Conscientious Objection in Health Care: An Ethical Analysis* (Cambridge University Press 2011).

[4] For example, Giubilini A, Schuklenk U, Minerva F and Savulescu J, *Rethinking Conscientious Objection in Health Care* (2025); Giubilini A, 'Conscience' in Zalta EN and Nodelman U (eds), *The Stanford Encyclopedia of Philosophy* (Winter 2024 Edition) https://plato.stanford.edu/archives/win2024/entries/conscience/, accessed 14 January 2026.

[5] Myskja BK and Magelssen M, 'Conscientious objection to intentional killing: an argument for toleration' (2018) 19 *BMC Med Ethics* p 1.

[6] Wicclair (n 3); Giubilini (n 4).

[7] Myskja and Magelssen (n 5) p 1.

[8] Clarke S, 'A consequentialist case for permitting conscientious objection in healthcare' (2025) *J Med Ethics* p 3.

[9] Myskja and Magelssen (n 5) p 1.

[10] Giubilini, (n 4).

[11] Myskja and Magelssen (n 5) p. 1.

[12] Pilkington, (n 6) p 1.

[13] Myskja and Magelssen (n 5) p 2.

[14] ibid.

[15] ibid.

[16] ibid.

A third group of authors examining the application of conscientious objection could be described as adopting a compromise approach, seeking to reconcile legal obligations with individuals' personal moral convictions.[17] However, while recognizing the importance of conscience for the individual, they consider it necessary to define and determine the limits of the use of conscientious objection in order to protect patients. For example, this group includes authors who require that reasons for invoking conscientious objection be provided and subject to scrutiny by either the public or certain experts (the reasonableness of one's objection).[18] The purpose of such proposals is to prevent fraud with regard to the sincerity of a person's beliefs.[19] However, it is highly questionable whether an appropriate test can be developed to determine whether a conscientious objection is genuine.[20]

This paper adopts the position that it is necessary to find an appropriate way to protect physicians' consciences without harming patients or colleagues invoking conscientious objection. The focus will be on the most common criticisms directed at conscientious objection in medicine.[21] Alongside the arguments against conscientious objection, the existing responses to these criticisms offered by authors who support the use of conscientious objection will also be critically examined.

This paper examines how theoretical studies of conscientious objection in medicine can inform legislative efforts in Croatia regarding the adoption of a new abortion law. The Act on Health Measures for Exercising the Right to Free Decision-Making on Childbirth (hereinafter Abortion Act), in force since 1978, allows termination of pregnancy at the request of the pregnant woman until the end of the tenth week from conception. [22] This regulation, adopted while the Republic of Croatia was part of the former Socialist Federal Republic of Yugoslavia,[23] was found by the Constitutional Court, in its decision of 21 February 2017, not to be in accordance with the new Croatian legal and institutional framework that developed after independence. [24]

Consequently, the Constitutional Court granted the Croatian Parliament a two-year deadline to enact a new abortion law; however, this deadline was not met. In its ruling, the Constitutional Court highlighted the legislature's broad authority to regulate abortion, including the specific issue addressed in this paper: the regulation of physicians' conscientious objection to performing abortions.

This paper assesses whether the inclusion of conscientious objection by medical professionals is desirable in the new Croatian Abortion Act. If so, it further analyzes how this provision should be regulated to prevent challenges for patients when a significant number of

[17] Marcó Bach (n 2) p 805.

[18] Card, RF 'Conscientious Objection and Emergency Contraception' (2007) 7(6) The American Journal of Bioethics 8–14 according to Giubilini, (n 4); Myskja and Magelssen (n 5) p. 1.

[19] Marcó Bach (n 2) p 805.

[20] Giubilini, (n 4).

[21] See Schuklenk U and Smalling R, 'Why Medical Professionals Have No Moral Claim to Conscientious Objection Accommodation in Liberal Democracies' (2017) 43(4) J Med Ethics 234; Kaczor C, 'A Defense of Conscientious Objection in Health Care: A Reply to Recent Objections' (2018) 92 Proceedings of the American Catholic Philosophical Association 41.

[22] The Act on Health Measures for Exercising the Right to Free Decision-Making on Childbirth, Official Gazette - 18/78, 31/86, 47/89, 88/09.

[23] See Tucak I, Berdica J and Seleš L, 'Future of the Abortion in Croatia' in Ivan Pavić, Nikša Alfirević and Suzana Vuletić (eds), *Bioethics and Social Ethics in The Modern World: The Environmental and Social Sustainability Context(s)* (Palgrave Macmillan 2025) 71–96 https://doi.org/10.1007/978-3-031-86418-6_8.; Tucak I, Berdica J and Pelčić G, 'Medical profession between conscience and (professional) obligations' (2025) Formosan Journal of Medical Humanities 26(1-2) 32–41.

[24] Ruling of the Constitutional Court of the Republic of Croatia U-I-60/1991 et al, 21 February 2017, Separate Opinion [original in Croatian] https://narodne-novine.nn.hr/clanci/sluzbeni/2017_03_25_564.html. See also Blagojević, A and Tucak, I, 'Rethinking the right to abortion' (2020) 15 Balkan Social Science Review 135-157.

physicians invoke conscientious objection. The paper is based on the assumption that theoretical studies of conscientious objection in medicine can inform Croatian legislative efforts. The structure of the paper is as follows. The second section provides a conceptual analysis of conscientious objection, which aims to protect the "deeply held beliefs" and moral integrity of physicians. The third section examines the boundaries of exercising this right, particularly when it conflicts with women's reproductive rights, focusing on the legal grounds for conscientious objection. The fourth section reviews practical problems arising from physicians' conscientious objection. The paper then presents a critical overview of arguments both supporting and opposing conscientious objection in the context of abortion procedures. We begin with arguments against conscientious objection (section 5), followed by an examination of the possibility of maintaining conscientious objection without infringing on women's right to abortion (section 6). Before the concluding remarks, the paper provides an overview of the lesser-known instrument, the conscientious provision, which protects those physicians who have a moral obligation to provide a medical service that is legally prohibited. The main thesis of this paper is that conscientious objection in Croatia should be recognised, provided that it is accompanied by clear legal safeguards ensuring that women seeking this medical service have safe and timely access to abortion. Methodologically, the paper combines conceptual analysis, critical analysis of the scholarly literature, and an overview of Croatian legal provisions, including constitutional and statutory norms, as well as ethical codes relating to freedom of conscience, conscientious objection, and abortion. Based on a human rights approach, the paper evaluates possible legislative models for regulating conscientious objection in the future Croatian Abortion Act.

II. DEFINITION

There are different meanings, as well as psychological and ethical evaluations, of the concept of conscience.[25] However, what they all have in common is:

> "On any of these accounts, conscience is defined by its inward looking and subjective character, in the following sense: conscience is always knowledge of ourselves, or awareness of moral principles we have committed to, or assessment of ourselves, or motivation to act that comes from within us (as opposed to external impositions)"[26]

Conscience, in the above sense, represents the foundation of moral integrity, moral personhood and personal identity.[27] According to Giubilini, such an approach to conscience is usually associated with the "political function" of advocating freedom of thought and action through conscientious objection with regard to obligations prescribed by professional or legal rules.[28]

Conscience thus constitutes "higher demands" to which a person feels subordinate.[29] As emphasized by Yossi Nehushtan and John Danaher,

> "(…)a person's conscience consists of their deepest moral beliefs which provide for them uniquely strong or weighty reasons for doing X or refraining from doing X".[30]

[25] Giubilini, (n 4).
[26] ibid.
[27] ibid.; Nehushtan Y and Danaher J, 'The foundations of conscientious objection: against freedom and autonomy' (2018) 9(3) Jurisprudence p 543.
[28] Giubilini (n 4).
[29] Nehusthan and Danaher (n 27) p 543.
[30] ibid. pp 542 – 543.

Acting contrary to one's "deepest moral beliefs" leads to a loss of moral integrity, which may be devastating for the individual, causing guilt, regret, shame, or a loss of self-respect.[31] When we speak of the institution of conscientious objection, from a terminological perspective, the use of the term "objection" in this context should not be surprising, given the aforementioned debate about how the issue of conscience in medicine is often presented as adversarial.[32]

> "(…) the aim of adjudicating disagreements between allowing persons to practice according to their own beliefs and the costs of such allowances."[33]

According to Yossi Nehushtan and John Danaher, conscientious objection can be defined "as a private act (or omission) which is based on conscientious reasons and whose only purpose is to distance the objector from acting according to a legal demand."[34]

Francisco Javier Marcó Bach identifies the essential characteristics of conscientious objection:[35]

- It is of fundamental importance for the integrity of the objector
- It represents a personal, private and apolitical act by which the individual seeks to protect themselves from professional and/or legal obligations. Unlike conscientious objection, civil disobedience is a public and political act through which an individual seeks to bring about political change.[36]
- The reason for its existence lies in legal or professional obligations that conflict with the individual's moral convictions.[37]
- Conscientious objection may be limited by "just boundaries" on the grounds that its application can seriously affect the rights of third parties, or result in harm to the common good or public order.[38]

Yossi Nehushtan and John Danaher critically analyze[39] the dominant perspective that conscientious objection is grounded in the concept of individual "moral integrity."[40] For example, Schuklenk and Smalling consider the invocation of conscientious objection to be a matter of free choice, something "ultimately arbitrary."[41] However, as Nehushtan and Danaher point out, the reasons why conscientious objectors act in a certain way are not the result of their choice but lie beyond their control.[42] Nehushtan and Danaher base their analysis on studies by psychologists, neuroscientists, and experimental philosophers that suggest individuals do not possess freedom of choice

> "(…) that our preferences, tastes, character, moral values and ultimately acts are dictated by our genes, brain activity, childhood experiences or traumas, socialisation, environment and unconscious cognitive and emotional factors (…)".[43]

According to these authors, the consequences of accepting the argument about the absence of choice are as follows. First, if conscientious objection is tolerated, it is not because of respect for the individual's choice, but because the individual does not have freedom of

[31] Pilkington (n 1) p 15.
[32] ibid.
[33] ibid. p xiv.
[34] Nehusthan and Danaher (n 27) p 543.
[35] Marcó Bach (n 2) p 810.
[36] ibid. p 811.
[37] ibid. p 812.
[38] ibid. p 813.
[39] Nehusthan and Danaher (n 27) p 544.
[40] ibid.
[41] Schuklenk and Smalling (n 21), p 238.
[42] Nehusthan and Danaher (n 27) p 546.
[43] ibid. p 552.

choice in their actions. Second, the authors emphasize that the lack of choice always provides a reason for tolerating conscientious objection, but it does not necessarily constitute a decisive reason. The first implication of the argument about the lack of choice is analytical[44] and implies that the best explanation for tolerating individuals who invoke conscientious objection does not lie in the recognition of autonomous choice. The second implication is normative. It indicates that the lack of autonomous choice provides a reason to tolerate conscientious objection, and that this reason stems from the particular harm to moral integrity when a person does not act in accordance with their conscience.[45]

III. LEGAL GROUNDS FOR CONSCIENTIOUS OBJECTION

The legal foundations for conscientious objection are found in international human rights instruments,[46] and may also be found in national constitutions in provisions that include the rights to freedom of thought, conscience and religion, or in legislation.[47] These rights are reinforced by the prohibition of discrimination on the grounds of religious affiliation.[48] Conscientious objection is explicitly recognized in international instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights only in relation to compulsory military service.[49] The same applies to the European Convention on Human Rights of the Council of Europe.[50]

It is important to emphasize that the right to conscientious objection is not an absolute right. Its limitations, which must be prescribed by law, may arise in circumstances where, in a democratic society, this is necessary to protect public order and safety, public health and morals, and the rights and freedoms of others.[51]

An important contribution to the understanding of conscientious objection within the framework of the Council of Europe has been made by the European Court of Human Rights. With regard to conscientious objection in the context of abortion, the following cases from the Court's jurisprudence are particularly relevant: *Tysiąc v Poland* (2007) 45 EHRR 42, R.*R. v Poland* (2011) 53 EHRR 31, and *P. and S. v Poland* (2012) No. 57375/08.

In these cases, the Court acknowledged the importance of moral principles for the individual and their potential conflict with legal obligations.[52] The ECtHR has accepted that states may provide for the right of medical professionals to conscientious objection. However, when the legislator recognizes the right of physicians to invoke conscientious objection, it also has a corresponding positive obligation to establish a legal framework in which this right of healthcare professionals will not affect women's legally permitted right to abortion. The right to conscientious objection must be structured to avoid harming patients' interests, and it should

[44] ibid. p 557.
[45] ibid. p 565.
[46] Article 18 of the United Nations Universal Declaration of Human Rights safeguards the freedom of thought, conscience, and religion. Article 2(1) further stipulates that religion must not be a basis for discrimination. Similarly, Article 18(1) of the United Nations International Covenant on Civil and Political Rights aligns with Article 18 of the Universal Declaration. Additionally, Article 8(3) recognizes the right to conscientious objection to military service, and Article 26 affirms the principle of non-discrimination on religious grounds. Marcó Bach (n 2) pp 816 – 817.
[47] ibid. 816.
[48] ibid.
[49] ibid.
[50] ibid. 819. Article 9 safeguards the rights to freedom of thought, conscience, and religion, including the right to conscientious objection to military service, as further addressed in Article 4.
[51] European Convention on Human Rights, Article 9 (2).
[52] P. and S. v Poland (2012) App No 57375/08, para 70. See also Tucak I and Blagojević A, 'Abortion in Europe' (2020) 4 EU and Comparative Law Issues and Challenges Series (ECLIC) p. 1156.

include appropriate procedural obligations requiring a physician who invokes conscientious objection to refer patients to colleagues who can provide appropriate medical care.[53]

In *Grimmark v Sweden* (2020) No. 63726/17 and *Steen v Sweden* (2020) No. 62309/17, the Court declared inadmissible the applications of two Swedish midwives who had been denied employment because they were unwilling to participate in abortions due to their religious beliefs. Accordingly, the Court did not rule on the merits of the question of whether healthcare professionals have a right to conscientious objection to abortion.[54]

In the Croatian constitutional legal order, physicians' conscientious objection to abortion finds its basis in the Croatian Constitution, as well as in a number of different laws and ethical codes. It is important to note that the right of physicians to conscientious objection in relation to abortion is not contained in the Croatian Abortion Act. Instead, it first appeared explicitly twenty-five years after the adoption of the Abortion Act, in the Croatian Medical Practice Act of 2003.

The Croatian Constitution, in Article 40, protects freedom of conscience and religion, as well as the free exercise and expression thereof. The Constitution explicitly mentions conscientious objection only in the context of military service (Article 47).

The Medical Practice Act (Article 20)[55] grants physicians the right to conscientious objection on the basis of their "ethical, religious or moral views, or beliefs", which includes the right to refuse "the implementation of diagnostic procedures, treatment and rehabilitation of a patient."

Conscientious objection is therefore not based solely on religious reasons. Some authors question whether religious freedom can be protected under the same "legal paradigm" as moral freedom, given that religion and morality have different influences on legal systems.[56] Religious freedom and moral freedom are different ontological realities and therefore require different legal regulation. Religion is separable from political communities; morality is not: political communities are, by definition, moral communities.[57]

The Medical Practice Act explicitly states that a physician's right to conscientious objection is not unlimited. It must not be contrary to professional rules and must not cause permanent consequences for the patient's health or life. A physician is required to inform their superior or employer of their conscientious objection. In addition, a physician who invokes conscientious objection must inform the patient in a timely manner of their refusal to perform the requested procedure.[58] Conscientious objection is regulated in almost the same manner in the Code of Medical Ethics and Deontology.[59]

[53] ibid., par. 93 and par.107. See also Tucak and Blagojević (n. 52) p. 1156.

[54] See Tucak, I, and Berdica, J, 'Rethinking Conscientious Objection to Mandatory Vaccination' (2024) *Review of European and Comparative Law* 57(2) pp. 286 and 290.

[55] The Medical Profession Act: Official Gazette 121/03, 117/08. Ombudswoman of the Republic of Croatia, Analiza: Prigovor savjesti – pravni izvori i standardi https: https://www.ombudsman.hr/hr/analiza-priziv-savjesti-pravni-izvori-i-standardi/ accessed 16 January 2026.

[56] Domingo R, 'A right to religious and moral freedom?' (2014) 12(1) *International Journal of Constitutional Law* 226.

[57] ibid.

[58] Ombudswoman of the Republic of Croatia (n 55).

[59] Code of Medical Ethics and Deontology, Official Gazette 55/08, 139/15 – Article 2(15); Law on Nursing, Official Gazette 121/03, 117/08, 57/11, 123/24 – Article 3(4); Law on Dental Medicine, Official Gazette 121/03, 117/08, 120/09, 46/21 – Article 26; Law on Medically Assisted Reproduction, Official Gazette 86/12 – Article 44; Ethical Code of Nurses – Article 3(4).

IV. PROBLEMS IN THE APPLICATION OF PHYSICIANS' CONSCIENTIOUS OBJECTION IN THE PERFORMANCE OF ABORTIONS IN PRACTICE

In Croatia, there is no uniform procedure for submitting conscientious objections by medical professionals, nor is there a systematically maintained database of physicians who refuse to provide abortion services on the grounds of conscientious objection. As a result, there is no precise information on the number of physicians who have invoked conscientious objection. Different hospitals follow different practices regarding the submission of conscientious objections, with some requiring it in written form and others accepting it orally.[60]

These circumstances mean that the Croatian Ministry of Health and the Croatian Institute for Public Health do not maintain records on how physicians' conscientious objection affects women's access to abortion, the additional costs incurred by patients, the quality of public health, discrimination, or other legal and medical uncertainties faced by women seeking this service.[61] Critics also view as problematic in practice the tolerance of so-called "institutionalized conscience-based refusal", given that there are hospitals in which all physicians refuse to provide abortion services on the basis of conscientious objection.[62]

One of the most systematic studies in this regard was conducted by the Office of the Gender Equality Ombudsperson in 2014, that is, more than ten years ago.[63] It showed that in six out of 30 healthcare institutions legally authorized to provide abortion services, all physicians had invoked conscientious objection. At the time the study was conducted, only 45 per cent of Croatian gynaecologists had not invoked conscientious objection.[64]

In Croatia, the right to invoke conscientious objection is not limited to physicians (most often gynecologists, followed by anesthesiologists and general practitioners), but also extends to nurses and pharmacists. Some studies indicate that even paramedical staff make use of this right.[65] Such conscientious objections in relation to abortion are closely related to conscientious objections concerning the use of contraception. Cases have been recorded in which pharmacies refuse to dispense contraceptives, and some general practitioners refuse to provide counselling on contraception, invoking conscientious objection.[66]

Studies on the use of conscientious objection in practice often report that some Croatian physicians invoke conscientious objection during working hours in public healthcare institutions while performing the same procedures in private practices for payment.[67] Despite such claims, researchers themselves note that the Croatian Medical Chamber has not yet received any official complaints of this kind.[68]

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[60] See Cesar S, Conscience-Based Refusal in Healthcare (CESI – Centre for Education, Counselling and Research) https://cesi.hr/uploads/document/attachment/213/conscienceobjection-eng.pdf accessed 15 January 2026;
European Parliament Policy Department for Citizens' Rights and Constitutional Affairs, Sexual and Reproductive Health Rights and the Implication of Conscientious Objection (Study PE 604.969, European Parliament October 2018) https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604969/IPOL_STU(2018)604969_EN.pdf accessed 15 January 2026, p 101.

[61] Cesar (n. 60) pp 10 – 13.

[62] Cesar (n. 60); European Parliament Policy Department for Citizens' Rights and Constitutional Affairs (n. 60) p 101.

[63] Cesar (n. 60) p 10.

[64] ibid.

[65] ibid. p 13.

[66] Ombudsperson for Gender Equality, Report on Gender Equality 2024 https://www.prs.hr/application/uploads/Izvjes%CC%8Cc%CC%81e_2024_CJELOVITO_FINAL.pdf accessed 16 January 2026.

[67] European Parliament Policy Department for Citizens' Rights and Constitutional Affairs (n. 60) p 103.

[68] ibid.

According to the Croatian Ombudswoman, the standards relating to the use of conscientious objection in the context of abortion need to be improved. The manner in which physicians invoke conscientious objection should be clearly prescribed, as well as the way in which they are required to inform their patients and employers. It should also be more precisely regulated to whom patients may turn in such cases. The Ombudswoman has also proposed the establishment of a registry of physicians who have invoked conscientious objection to abortion, the public disclosure of a list of healthcare institutions authorized to perform abortions, and the introduction of misdemeanor liability for those institutions in which this service is unavailable due to organizational shortcomings.[69]

V. ARGUMENTS AGAINST CONSCIENTIOUS OBJECTION

1. "Incompatibility Thesis"

The term originates from Mark Wicclair and is used to denote the approach of authors who do not see the possibility of recognizing conscientious objection due to its incompatibility with the professional duties of medical professionals.[70]Authors such as Udo Schuklenk, Ricardo Smalling and Julian Savulescu may be included in this group. The main objection raised by authors who support this thesis concerns the risk that conscientious objection may restrict patients' access to certain medical services.[71]

It is essential to examine the definition of professions, their objectives, and the entities responsible for determining these objectives. Professions can be described as a set of (relatively) complex tasks that individuals perform for the benefit of others. The required skills, and typically altruism, are what distinguish professions from mere occupations or hobbies.[72]
Bryan Pilkington describes professions as follows: first, their members demonstrate "specialized knowledge of a practical kind"; second, members of the profession must be committed to preserving and advancing the specialized knowledge they possess;[73] the third condition that must be met is that members of the profession must be committed to achieving excellence;[74] the fourth condition, which is common to most professions, is altruism.[75]
According to Savulescu, the essential determinants of healthcare are the following: law; just distribution of finite resources; patients' informed desires; not doctors' values.[76] However, it is important to emphasize that medical practice is a cultural phenomenon.[77] Professions are not natural facts but social constructs.[78]

"The goals of a profession" in philosophical debates can hardly be regarded as uniform. Disagreements persist over the fundamental goals of medicine, which often vary across social contexts.[79] We can agree that medical goals such as healing and well-being are an "ambiguous and evolving concept."[80] Professional goals in medicine, Ofengenden notes, "are plural,

[69] Ombudswoman of the Republic of Croatia, (n 55).
[70] Rodger D and Blackshaw BP, 'Quotas: Enabling Conscientious Objection to Coexist with Abortion Access' (2021) 29 Health Care Analysis 154, 156. See also Tucak, Berdica and Pelčić (n. 23).
[71] ibid.
[72] Pilkington (n 1) p 22.
[73] ibid. p 22.
[74] ibid. p 23.
[75] ibid. p 24.
[76] Savulescu J, 'Conscientious objection in medicine' (2006) 332 BMJ 237, p 295.
[77] Schuklenk and Smalling (n 21), p 239.
[78] Pilkington (n 1) p 26.
[79] Ofengenden T, 'Are Conscientious Refusal and Conscientious Provision Mutually Exclusive? A Critique of Kelusa and Giubilini's Argument' (2025) Bioethics https://doi.org/10.1111/bioe.70055. p 6.
[80] ibid. p 5.

contested, and often internally conflicted".[81] The question also arises as to who is authorized to determine medical goals: the state, institutions, individual healthcare professionals, or patients.[82]

According to those who advocate the view we subsume under the incompatibility thesis, physicians voluntarily decide, as "autonomous adults," to practice medicine as a profession and therefore cannot have a moral right to refuse to provide medical services that are "typically" expected of them.[83]

Conscientious objections lead to "unpredictable and unfair service delivery," while uniformity in service provision is "one of the hallmarks of what constitutes a profession".[84] Members of a profession should at least be aware that it is society that determines the rules of professional practice, and that these rules are therefore subject to change.[85] Those who do not wish to comply with this should simply leave the profession. Allowing conscientious objection permits the abuse of the profession's monopoly, together with all the associated privileges that members of that profession enjoy.[86]

2. Endangering patients' right to access abortion

Conscientious objection in healthcare cannot be understood exclusively as a matter of individual rights or beliefs; it always has a social dimension because it unquestionably affects others, namely their health.[87] At this point, we are primarily concerned with objections that relate to the patient's timely and adequate access to healthcare.[88]

It is a serious and genuine argument against conscientious objection.[89] According to proponents of the incompatibility thesis, Udo Schuklenk and Ricardo Smalling, respect for private conscience "will result in avoidable suboptimal access to healthcare."[90] A good example is countries such as Croatia, where the percentage of physicians who invoke conscientious objection in relation to abortion is exceptionally high.[91]

These accusations also find confirmation in the resolutions of the parliamentary bodies of the Council of Europe and the European Union, as well as in the recommendations of the World Health Organization.[92] At the national level, these are criticisms from the scientific community and non-governmental organizations, as well as from state institutions such as the Croatian Ombudswoman for Gender Equality.

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[81] ibid. p 1.
[82] ibid. p 5.
[83] Schuklenk and Smalling (n 21), p 239.
[84] ibid. p 238.
[85] ibid.
[86] ibid. p 240.
[87] Pilkington (n 1) pp 10 – 11.
[88] Kaczor C (n 21) p 42; Pilkington (n 1) p 10.
[89] Rodger and Blackshaw (n. 70) p 155.
[90] Schuklenk and Smalling (n 21), p 237.
[91] Rodger and Blackshaw (n 70), p 155.
[92] The European Parliament has affirmed the protection of abortion rights through its Resolution of 24 June 2021 on sexual and reproductive health and rights in the European Union, specifically within the context of women's health, as well as its Resolution of 11 April 2024 advocating for the inclusion of the right to abortion in the EU Charter of Fundamental Rights (2024/2655(RSP)).
The World Health Organization (WHO) has addressed this issue by recommending that governments ensure uninterrupted access to comprehensive abortion care for women and prevent barriers to abortion services resulting from conscientious objection (Abortion Care Guideline, 2nd edition, Geneva: WHO, 2024, Recommendation 22: Conscientious objection, pp 61–63).

The right to conscientious objection in Croatia, as in most other liberal democracies,[93] is a legal right. However, those who intend to change the laws and exclude the application of this institute maintain that there is no moral right to conscientious objection in the case of abortion.[94] Schuklenk and Smalling, as Kaczor points out, present consequentialist arguments.[95] They argue that permitting conscientious objection leads to chaos by opening the possibility of invoking it on the basis of numerous arbitrary claims.[96]

Kaczor rejects this argument, emphasizing that conscientious objection is used only in certain procedures,[97] procedures that have emerged only in the last few decades, either due to advances in medicine or because of changes in societal attitudes. In addition to abortion, these include euthanasia, assisted suicide, gender transition, contraception, and in vitro fertilization. In the United States, conscientious objection with regard to abortion has been available since the 1970s, and despite continual predictions, chaos has not occurred, according to Kaczor.[98] Kaczor notes that today abortion in the United States is "one of the most common surgical procedures," and that since the decision of the Supreme Court in the case of *Roe v. Wade*, physicians have performed more than 50 million abortions despite the existence of a statutory right of physicians to conscientious objection.[99] Kaczor presents additional arguments explaining why he believes that banning conscientious objection would not lead to better medical services. Physicians and other healthcare professionals who hold conscientious objections would be forced to leave their practice, which would, at least temporarily, reduce the number of gynecologists. In addition, Catholic hospitals that do not wish to provide this service would have to close their gynecology departments. Kaczor argues that such a ban would prevent excellent students who have conscientious objections from becoming gynecologists, which would in turn affect the quality of healthcare services.[100]

Because of conscientious objection, particularly in smaller, isolated rural communities, medical care may be inadequate.[101] Allowing conscientious objection enables individuals to remain in the healthcare profession without being forced to undertake lengthy and demanding retraining for another medical profession.[102] It enables individuals to specialize in the branch of medicine they wish to pursue.[103]

3. The Physician–Patient Relationship

This relationship has been the subject of extensive ethical reflection. Throughout history, it has been marked by an imbalance of power between physicians and patients.[104] Since physicians possess expert knowledge of medical procedures, it was long assumed that they should independently decide on the treatment most appropriate for the patient (the principle of paternalism).[105] Their values were thus expressed in the decision-making process. In the second half of the twentieth century, the emphasis shifted toward protecting patient autonomy through

[93] Kaczor (n 21) p 42.
[94] ibid., Kaczor critically comments on the arguments presented in the article by Schuklenk and Smalling (n. 21).
[95] ibid. 44.
[96] ibid.
[97] ibid.
[98] ibid. 42.
[99] ibid. 44.
[100] ibid. 45.
[101] Clarke (n. 8) p 3.
[102] ibid.
[103] ibid.
[104] Schuklenk and Smalling (n 21), p 235.
[105] Savulescu (n 76) pp 294-295.

informed consent regarding the medical procedure to which an individual would be subjected.[106]

For physicians, the Hippocratic Oath is of particular importance as a professional rule; in its original form, it contains an altruistic obligation to patients: "I will keep them from harm and injustice."[107] This leads to the interpretation that physicians are not only required to refrain from harming patients but also to protect them from injustice, and that patients should be regarded as persons, specifically as vulnerable persons.[108]

However, like patients, medical professionals also have vulnerabilities, though these manifest in different ways.[109] Many authors proceed from the assumption that conscientious objection is grounded in the "objector's autonomy", that is, in the individual's ability to freely choose their beliefs.[110] According to Yossi Nehushtan and John Danaher, as we have seen, "the actions of the typical conscientious objector are reflective of an inability to choose".[111] An individual cannot freely choose their "deepest beliefs," nor whether to act or refrain from acting in accordance with them.[112]

4. Secular States and Conscientious Objection

Most physicians who invoke conscientious objection do so for religious reasons.[113] Religiosity in general represents a "significant predictor" of a negative attitude toward abortion.[114] In this context, it is worth noting a recent Croatian study conducted in 2024 among students at the University Department of Health Studies in Split.[115] Data collected through an anonymous survey questionnaire showed that the majority of students hold a negative attitude toward abortion at the request of a pregnant woman, particularly in the later stages of pregnancy when it is not caused by medical reasons that they consider justified, such as a threat to the mother's life or severe fetal malformations.

The law is a "blunt instrument" in the sense that the state cannot always recognize the unique, identity-based attachments of its citizens. It can protect broader categories of interests shared by many people, and religion falls within one of them. Where it represents an important marker of identity for many people, it is appropriate to protect it.[116]

An increasing number of scholars believe that "religious freedom" is a bad idea.[117] This raises the question of what reasons might exist for recognizing or tolerating religious conscientious objectors in contemporary secular states.[118] Schuklenk and Smalling are not satisfied with the argument that recognizing religious beliefs eliminates the "psychological cost" for individuals who are forced to act contrary to their conscience or their moral

[106] ibid.
[107] Pilkington (n 1) p 27.
[108] ibid. pp 27 – 28.
[109] ibid. p 16.
[110] Nehusthan and Danaher (n 27) p 541.
[111] ibid.
[112] ibid.
[113] Schuklenk and Smalling (n 21), p 234; Kaczor (n 21) p 48.
[114] Alajbeg M and Ćurković A, 'Pitanje izbora i savjesti: Stavovi budućih zdravstvenih djelatnika o moralnoj prihvatljivosti induciranog pobačaja' (2025) 5(1) *Croatian Journal of Health Sciences* p 7.
[115] ibid.
[116] Koppelman A, 'How could religious liberty be a human right?' (2018) 16 (3) *International Journal of Constitutional Law* p 985.
[117] ibid.
[118] Schuklenk and Smalling (n 21) p 235.

integrity.[119] They also find unacceptable the justification that this serves to protect pluralism and other related values of Western democracies.[120]

5. The Impossibility of Verifying the Authenticity of the Objector's Beliefs

A significant argument against conscientious objection concerns the inherent difficulty in verifying the authenticity of the objector's beliefs. Contemporary liberal states that allow conscientious objection do not examine whether objectors hold "defensible" beliefs.[121] They are satisfied with the objector's claim that their beliefs are deeply held.[122] The Supreme Court of the United States has taken the position that personal beliefs cannot be evaluated and that the reasons for conscientious objection need not be subject to public justification.[123]
An appeal to conscientious objection may be motivated by self-interest on the part of the individual or by a desire to avoid the stigmatization associated with performing abortions.[124] This latter claim may easily arise in countries where a large number of healthcare professionals do not provide this service because of conscientious objection; in such a situation, a physician who decides to perform abortions, in addition to stigma, will also face "inequitable workloads."[125]

On the other hand, proponents of the right to conscientious objection, such as Kaczor, do not see why someone would invoke conscientious objection to a lucrative medical practice such as abortion, which is one of the most common gynecological procedures, or conscientious objection to prescribing contraception.[126] Kaczor, contrary to the view presented above, argues that in contemporary Western countries those who oppose abortion are exposed to both professional and personal ostracism, condemnation from their colleagues, as well as from the wider public.[127] Thus, in certain cases, invoking conscientious objection runs counter to the interests of the objector.[128]

VI.COMPROMISE SOLUTION

At present, in Croatia, as in most states, objectors are not required to justify their reasons or beliefs when invoking conscientious objection.[129] If a legal obligation were introduced requiring healthcare professionals to provide a certain medical service contrary to their conscience, it would call into question something extremely important to every individual: their moral integrity.[130] However, various limitations have been introduced to reduce potential harm, requiring objectors to refer patients to another physician who performs the requested procedure.[131]

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[119] ibid.
[120] ibid.
[121] ibid. pp 235 – 236.
[122] ibid.
[123] Employment Division, Department of Human Resources of Oregon v Smith [1990] 494 US 872, according to Schuklenk and Smalling (n 21), p 236; Schuklenk U and Zolf B, 'Professionalism and the Ethics of Conscientious Objection Accommodation in Medicine' in David Boonin (ed), The Palgrave Handbook of Philosophy and Public Policy (Palgrave Macmillan 2018) 609–621, p 613.
[124] Rodger and Blackshaw (n 70) p 156
[125] Schuklenk and Smalling (n 21) p 238.
[126] Kaczor (n 21) p 51.
[127] ibid.
[128] Nehusthan and Danaher (n 27) p 543.
[129] McConnell (n 3) p 38.
[130] Rodger and Blackshaw (n 70) p 160
[131] McConnell (n 3) p 38.

We have seen that Savulescu and Schüklenk advocate the "incompatibility thesis," which is inspired by consequentialism[132] and holds that healthcare professionals should not have a right to conscientious objection when carrying out their professional duties.[133] Steve Clarke holds the view that, from a consequentialist perspective, it is better to establish "a system of region-based registers of available healthcare professionals who lack COs to procedures for which COs are permitted".[134]

Patients and healthcare professionals in a particular region would have access to the area-specific register and could consult it before requesting or providing a healthcare service for which conscientious objection is permitted. In most cases, this would avoid the need to refer patients to another healthcare professional, which, for some objectors, constitutes participation in a healthcare service that conflicts with their moral integrity.[135]

While deontologists are concerned with legitimacy, consequentialists are concerned with how "to arrive at the overall best possible consequences."[136] For the latter, "normative properties depend only on consequences."[137] Clark starts from an assumption typical of proponents of utilitarianism, which he describes as the "simplest and best-known form of consequentialism."[138] The only consequence that matters is "individual experiences of utility and disutility."[139]

Although Savulescu and Schüklenk are consequentialists, Clarke emphasises, they refer to "one deontological consideration" – the professional duty, or "the proper conception of healthcare professionalism."[140] Clarke thus argues that his proposed "a regularly updated region-based register of healthcare professionals without COs to particular procedures," which effectively minimizes the need for referrals, is, in terms of its effects, a more adequate solution to the problems caused by conscientious objection.[141]

In this context, it is worth noting the compromise proposal by Daniel Rodger and Bruce P. Blackshaw. These authors propose, as a response to the way conscientious objection hinders timely access to abortion, the introduction of quotas that would limit the number of medical trainees with conscientious objections in providing abortion services in obstetrics, gynecology, and general practice.[142] However, we must not forget that human thinking changes over time. People acquire new religious beliefs and may not even be aware that something is contrary to their conscience until they are confronted with it in reality.[143]

VII. CONSCIENTIOUS PROVISION

Currently, in liberal democracies, there exists a "legal asymmetry" between conscientious refusal and the lesser-known institution of conscientious provision.[144] While the laws of most states protect healthcare professionals who, through conscientious objection, refuse to provide certain medical services, they do not protect those who have a moral obligation to provide a medical service that is legally prohibited. In the United States, this issue intensified in 2022

[132] Clarke (n 8) p 1.
[133] ibid.
[134] ibid.
[135] ibid.
[136] ibid.
[137] ibid.
[138] ibid.
[139] ibid.
[140] ibid. p 2.
[141] ibid. p 6.
[142] Rodger and Blackshaw (n 70) p 155
[143] Clarke (n 8) p 3.
[144] Ofengenden (n 79), p 1.

after women's right to abortion, after nearly fifty years, lost constitutional protection in the case of *Dobbs v Jackson Women's Health Organization,* 597 US 215 (2022).[145] However, following the *Dobbs* decision, physicians who wish to perform abortions under conditions that are prohibited in some states are not adequately protected.[146]

Ofengenden argues that conscientious refusal and conscientious provision do not arise simultaneously in identical cases, but rather in different legal contexts.[147] Their unequal status and legitimacy compromise "ethical consistency, professional integrity, and respect for moral diversity."[148] Here we can speak of "negative and positive conscience claims."[149] Recognizing conscientious objection and conscientious provision equally, this author emphasizes, is essential for protecting patient autonomy, ensuring high-quality and timely healthcare, and upholding the principle of justice.[150]

Historically, in the United States, conscientious objection became legally protected under both federal and state laws following the landmark *Roe v. Wade* decision in 1973.[151] Conscientious objectors are protected through these laws from "criminal prosecution, civil liability, professional discipline, employment discrimination, and denial of public or private funding."[152]And this is despite the fact that invoking conscientious objection can harm patients—violating rules of informed consent, engaging in discrimination, or leading to "negligence, malpractice, or wrongful death".[153]

In the case of a constitutional provision, this protection does not exist, so abortion bans force physicians who wish to follow their professional duty to protect health and patient autonomy, while also adhering to their conscience, into violating legal rules.[154] However, we must mention the abortion shield laws enacted in more than 20 states and Washington, D.C., which protect physicians, nurses, and midwives regarding the sending of abortion pills to states where it is prohibited.[155] According to Ofengenden,

> „(…) conscientious provision is often more ethically defensible because it serves the patient's needs and well-being, whereas conscientious refusal primarily protects the moral integrity of the provider, potentially at the expense of the patient."[156]

VIII. CONCLUSION

In contemporary societies characterized by significant divisions and diverse ethical positions, proponents of conscientious objection regard it as a means of fostering tolerance. They argue that physicians should not be compelled to act against their deeply held moral convictions, which, contrary to common perception, are considered matters of moral duty rather than autonomous choice.

Conversely, many critics deny that conscientious objection constitutes a human right, instead viewing it as a mechanism that enables fraud, fosters discrimination, undermines the efficiency of medical care, and generates legal uncertainty. The present analysis examined the most common criticisms of conscientious objection in the literature, including the argument

[145] ibid.
[146] ibid. pp 1-2.
[147] ibid. p 1.
[148] ibid.
[149] ibid.
[150] ibid.
[151] ibid. 2.
[152] ibid.
[153] ibid.
[154] ibid.
[155] ibid.
[156] ibid. p 3.

that it is incompatible with physicians' professional obligations. The latter critique also encompasses the definition of the medical profession and the objectives of healthcare services.

Additional concerns include the imbalance of power between physicians and patients and the potential harm to patients resulting from the application of conscientious objection. The paper gives special attention to conscientious objection based on physicians' religious beliefs in contemporary secular societies. Scholars have persuasively highlighted the risk of abuse, primarily due to the absence of reliable methods for verifying the authenticity of beliefs cited by objectors.

Despite these extensively documented consequences, physicians' conscientious objection remains recognized in most Western democratic states. The detrimental effects of its practical application are now widely acknowledged, especially concerning women's rights to access legally guaranteed and timely abortion services. Consequently, if conscientious objection is to be legally permitted, it is essential to specify in detail the conditions under which it may be exercised. Such regulation is necessary to safeguard patient autonomy and dignity and to prevent abuses that lead to legal uncertainty and discrimination.

Practically, establishing a record or registry of physicians who have invoked conscientious objection to performing abortions would serve as an effective and legitimate limitation of this right. The primary advantage, as highlighted by contemporary proponents of this approach, is that physicians would not be required to participate indirectly in abortion procedures by personally referring patients to other providers. Careful regulation of the circumstances under which physicians may invoke conscientious objection would also address concerns regarding adherence to the principles of justice and consistency.

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