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The Flawed Application of Abortion Law in Chile: Reflections and Areas for Improvement

Betzabé Araya Peschke
University of Castilla La Mancha, Ciudad Real, Spain

This research addresses the treatment of conscientious objection in Law No. 21,030, which regulates the voluntary interruption of pregnancy on three grounds in our country, focusing its critical analysis on the main problems that have been detected in the practical exercise of conscientious objection in Chile and other countries. The dangers derived from false conscientious objection, and the obstruction of abortion services will be analyzed, to finally propose and recommend some concrete measures that aim to reestablish the harmonious balance lost between true conscientious objection and the reproductive rights of women through access to the benefits provided for by the aforementioned law.

Keywords: conscientious objection, abortion, VTP Law, sexual and reproductive rights, Chile

Introduction

Conscientious objection, hereinafter CO is not currently expressly enshrined in Chile—as in most of Latin America—with our Constitution, despite failed attempts to incorporate it in recent constitutional discussions. It is relegated to Law No. 21,030, which regulates abortion in Chile and recognizes the CO that medical personnel may invoke in the voluntary termination of pregnancy, hereinafter VTP requested by a woman.

Medical practice regarding abortion has found new ways to evade traditional CO, giving rise to novel concepts that are worth analyzing to assess the need to return to its original version and thereby eliminate obstacles to the exercise of the constitutionally enshrined fundamental right to health and enable the full reproductive rights of women in our country.

Brief Review of Conscientious Objection and Its Treatment in Law No. 21,030

The starting point of our study will be to limit CO to that "behavior of disobedience displayed by a subject in the face of a precept that obliges them to act against their conscientious convictions, whether religious, moral, or ideological" (Araya, 2017, p. 9, my translation)

The characteristics that emerge from the concept provided are:

(1) Non-compliant conduct: In Chile, this will be the refusal of medical professionals, non-medical professionals, and paramedical technicians to participate in the operating room, according to their corresponding role in the VTP.

Betzabé Araya Peschke, Doctoral candidate, lawyer, Department of Law, University of Castilla La Mancha, Ciudad Real, Spain.

(2) Mandatory norm: In our country, it will be contained in Article 1 of the aforementioned Chilean Law No. 21,030, according to which, subject to the woman's will, the termination of pregnancy is authorized in the three cases stipulated by the law.

(3) Conviction: On this point, it is criticized that Law No. 21,030 does not require any grounds for the expression of intent to become an objector, enabling its indiscriminate claim by health professionals.

(4) Exceptional: Although it does not follow the concept provided, it emerges from the nature and essence of the CO; without it, the door is opened to unlimited regulatory noncompliance, degenerating its purpose. The exceptional nature of the CO will be twofold: in terms of its active subjects, only those directly and strictly involved in a conflict of conscience can hold it; and based on its grounds, since only a conviction reflecting a solid value construct can sustain it.

False Conscientious Objection and Obstruction of Services

In recent years, the expression "pseudo conscientious objection" or "P-CO" has been present in academia, this is a mutation of its original version, and for the purposes of this research we will call it false conscientious objection (F-CO). It will be defined as the conduct of a subject's refusal to comply with a precept that obliges them to act, motivated by reasons of contextual convenience, without the existence of beliefs, ideas, or principles that allow for the construction of a basic conviction.

In this variant, the conviction that is the center of conscientious objection and the foundation of its exceptional nature is absent. This, as stated, is reflected in the aforementioned Law No. 21,030, which "institutionalizes the possibility for health professionals and institutions to refrain from performing conscientious objection by completing a form that does not require any justification regarding the objector's moral or religious convictions" (Report Corporación Humanas, 2019, p. 2, my translation), this results in a high percentage of healthcare professionals who declared themselves objectors in our country in 2023 for the cause of rape, reaching 100% in some hospitals (Report Corporación Humanas, 2023, pp. 14-15).

The claimant's lack of conviction means that his discernment process is "affected by multiple influencing variables, and not just by personal values and beliefs. Consequently, we find professionals who resort to CO due to motivations other than a moral conflict, the sole reason that should motivate adherence to CO" (Alveal-Álamos, Pérez Sánchez, Obando Cid, Carte, & Jara Sepúlveda, 2022, p. 312, my translation).

The difference in economic incentives between providers who provide services in public facilities compared to private practices (Küng, Wilkins, de León, Huaraz, & Pearson, 2021, p. 5), is one of the foundations of the "P-OC". Indeed, studies along these lines show the presence of the economic factor, since "The provision of VTP does not generate additional income in the salary of those who resort to medical practice" (Alveal-Álamos et al., 2022, p. 323, my translation) which generates a tendency towards objection.

Other excuses "are arguments related to the probability that it was the entrance to indiscriminate abortion" (Montero, 2019, p. 116, my translation). In other words, according to foreign doctrine, in many cases the OC is based on concerns about community or peer acceptance or about financial or reputational penalties (Keogh et al., 2019, p. 8). This is the case because "the individual's perception of the beliefs of others and therefore of what is socially accepted, provides a frame of reference on which to act" (Alveal-Álamos et al., 2022, p. 314, my

translation), which necessarily causes a "fear of social and professional disapproval, derived from the stigma towards abortion" (Montero et al., 2021, pp. 225-226, my translation).

Likewise,

> in some territories, the heads of private clinics publicly and openly declare themselves conscientious objectors, secretly exerting undue pressure on clinical teams, who know that if they adopt a different approach in the public system, they will face expulsion from the private institutions where they are interested in continuing to work. In other words, they declare themselves objectors of convenience. (Robledo, 2019, p. 183, my translation)

Such convenience is that:

> in which exemption from a task is sought due to the social stigma of a given community, due to pressure from one's superiors, because one does not want to be the only professional in charge, or any other circumstance that determines discomfort, but which does not obey a moral or personal ethical conflict regarding health action. (Bórquez, 2017, my translation)

In this sense, F-OC would refer to "decisions that are based more on convenience or practical reasons than on a properly developed system of values" (Beca & Astete, 2015, p. 494, my translation).

Another type of false CO is to avoid the workload and additional responsibilities of performing this type of procedure, avoiding uninteresting, unpleasant, and discredited work, identified by obstetricians and gynecologists as dirty work that no one wants to do, as well as insufficient training in abortion techniques. The decision to declare themselves as objectors has even been recognized,

> because not doing so entails personal costs that they are not willing to assume (generally rejection), such as, for example, experiencing the stigmatization of abortion, investing part of their career in a procedure that implies low professional appeal and prestige, or the excessive workload. (Alveal-Álamos et al., 2022, p. 314, my translation)

Likewise, another of the vices investigated in this research related to CO, which is recorded both in Chile and at a comparative level, is what we have called obstruction of services, hereinafter OS. For the purposes of our study, this term refers to any act carried out by medical, administrative, or other personnel who, being conscientious objectors or lacking the right to be one, but holding a conviction regarding abortion, perform actions or omissions intended to impede, obstruct, or delay the process toward its realization.

Such obstruction consists primarily of the denial of information or its erroneous/inaccurate delivery to the applicant. This can be committed by door staff, reception staff, information officers, or others, and even members of the medical team themselves from the first moments a woman is in a hospital or clinic.

Regarding this, in England, it is reported that general practitioners do not always inform service users about conscientious objection, not even about the implications of the abortion itself, often receiving information that is incorrect or fraught with morality (Self, Maxwell, & Fleming, 2023, p. 2).

Studies on the subject indicate that irrational delays in referrals, with the sole intention of preventing the abortion from being carried out, are unethical and can lead to disciplinary consequences for the professionals who perform them. This is why English Colleges and Institutes related to the health field have established guidelines with recommendations regarding the times for referral and recommendations regarding waiting times (British Medical Association, 2020, p. 12).

In short,

> lack of public information about safe abortion, poorly defined or narrowly interpreted legal grounds for abortion, requirements for third-party authorizations to receive abortion, mandatory waiting periods, requirements for medically unnecessary tests or procedures, restrictions on public funding and private insurance coverage, and requirements for the provision of misleading or inaccurate information may all be intended to discourage women from having an abortion. (Johnson, Kismödi, Dragoman, & Temmerman, 2013, p. S61)

They are some of the examples that aim to discourage VTP.

Problems Arising From the Newly Identified Flaws

Whether it is a F-CO or an obstruction of services, the doctrine requires ensuring timely access to legal benefits for all people, regardless of the claimant's personal convictions. Otherwise, we would be facing blatant discrimination against some women, as opposed to others who are not denied assistance. Indeed, when the detected flaws occur, conscientious objection has a "disproportionately impacts marginalised individuals, those living in socio-economic deprivation, and those residing in rural areas" (Self et al., 2023, p. 10), since access in such circumstances and situations will be scarcer. In fact, in rural areas,

> women need to put up with considerably more effort and invest more time to find a gynaecologist who is willing to perform the abortion. The additional time necessary might even lead to women having difficulties to follow through on the termination within the licit time limits. (Krawutschke, Pastrana, & Schmitz, 2024, p. 5)

Ultimately, "abuse of conscientious objection can result in inequities in access, creating disproportionate risks for poor women, young women, ethnic minorities, and other particularly vulnerable groups of women who have fewer alternatives for obtaining services." (Johnson et al., 2013, p. S61). The above is consistent with what is stated in doctrine in that, as a "result of the lack of abortion providers, pregnant women are in some cases forced to travel to another region or abroad" (Autorino, Mattioli, & Mencarini, 2020, p. 1). The aforementioned holds true without considering the burden of additional travel expenses (Myskja & Magelssen, 2018, p. 8).

On this subject, some authors point:

> that travel costs affect local abortion rates: women who live further from an abortion provider are less likely to abort. Scarce abortion supply may be associated with other inconveniences beyond travel costs, such as overnight lodging, days off work, privacy concerns and difficulties in obtaining information and post-abortion care. (Autorino et al., 2020, p. 7)

In Mexico, it is reported that when denied abortion services, "many individuals choose to self-induce abortion by procuring pills, such as misoprostol, at pharmacies or via formal and informal internet vendors" (Küng et al., 2021, p. 8).

Likewise, another form of OS consists of:

> Showing the woman having an abortion the ultrasound, having her listen to the fetal heartbeat, considering the latter as a patient, issuing value judgments on the decision to abort or refusing to refer her by appealing to conscientious objection, implies accepting the possibility that a health professional can "export" his or her own moral/religious worldview into the patient's intimate sphere. And in addition to projecting a misuse—or abuse—of this tool, this objection is evident as an "immoral" action, since it would attempt to universalize a private norm—abortion is wrong—to make it extensive—and obligatory—for others. (Deza, 2025, p. 3, my translation)

Well, by comparatively analyzing the phenomenon of F-OC and OS, it is possible to affirm that the former only occurs with respect to those who are legally authorized to exercise it. Obstruction of services, on the other hand, is laxer due to the broad spectrum of personnel who can inhibit the VTP with their actions or omissions. This extends to both those with the right to exercise CO and administrative personnel who do not have this right, as they are not directly involved in the termination of pregnancy. Even more extreme, we may encounter a very peculiar situation where a person can be considered an obstructor and a conscientious objector simultaneously if, in addition to having the right to object, they carry out acts or omissions with the purpose of inhibiting, preventing, or delaying the termination of pregnancy.

Conclusion

This paper demonstrates that the phenomena of F-OC and OS are not unique to Chile but are shared by countries with similar regulatory frameworks. However, the scenario of flaws and malpractices detected in the application of CO in Chile's abortion law raises challenges at several levels, primarily due to the ambiguity and lack of clarity in its regulation.

At the end of our study, we can conclude that the lack of regulatory content regarding the OC is the fundamental reason why, in our country and also at a comparative level, the indiscriminate use of this institution in healthcare matters has progressively emerged, to the point of explicit abuse, giving rise to the emergence of its false version.

Likewise, the OS emerges due to the lack of training and widespread information about VTP, causing people who are not authorized to prevent the provision of the service from doing so.

With the certainty that the core element of the CO is the conviction that sustains it and that the habitual lack of knowledge of abortion and the CO are the germ of the OS, we estimate that from the normative plane, the efforts should be directed in achieving a change that is capable of establishing legal requirements that return to the CO its exceptional character, through the constitution of elements that enable the accreditation of the conviction of the claimant, and also clear and precise requirements intended for its adequate use only in the duly justified cases.

In this sense, regulations that require a more thorough justification of the claimant's conviction—even if simple—will rule out any other motivations unrelated to the subject's values and constitutive nature, inhibiting the emergence of F-OC.

Continuing on the regulatory level, it is essential that there be variations that ensure greater—and, where applicable, better—training, education, information, and instruction on the content of the VTP law and on OC in particular. This must undoubtedly go hand in hand with a state determination that enables an increase in the budget allocation for this purpose.

Thus, it is possible to affirm that the training and/or training courses we have referred to should not only be aimed at healthcare personnel directly involved in pregnancy termination, but also at administrative personnel who, without being directly involved in VTP, play a fundamental role in eliminating OS.

However, information and instruction should also reach the primary recipients of regulated services—women—and society as a whole, with the aim of educating the population about the right to health in its sexual and reproductive aspects.

Likewise, it is appropriate to begin outlining greater and more intensive training on issues related to VTP and CO in university classrooms and technical training centers with healthcare curricula, so that future professionals have in-depth knowledge and sufficient tools on these matters.[1]

In addition to the above, to mitigate the impact of the F-OC and the OS, timely oversight, continuous monitoring, and adequate supervision of the application of the OC in the VTP Law are essential, enabling early detection of misuse of the OC or the emergence of OS.

For our part, we believe that staffing is essential in clinics and hospitals, so efforts are necessary to ensure a sufficient number of staff and "non-objecting providers available at all shifts to provide abortion services" (Küng et al., 2021, p. 8), that ensure the delivery of benefits provided for in the VTP Law and prevents its obstruction.

Finally, the road ahead to improve the application and implementation of the VTP Law in Chile is long, and the experience of Ibero-America and more distant countries under our scrutiny is extremely valuable, as it helps us shed light on situations that should not be repeated, while broadening our view of the implementation of measures for greater regulatory effectiveness. Similarly, aspiring to the adequate exercise of sexual and reproductive rights, guaranteeing true harmony in the coexistence between women's reproductive autonomy and respect for the institution of CO, should be the intended objective to avoid a setback in the enshrinement of rights that have taken decades to fight for.

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[1] Justyna Czekajewska in her paper "Attitudes of Polish physicians, nurses and pharmacists towards the ethical and legal aspects of the conscience clause" highlights the importance of discussing issues of conscience conflicts more thoroughly during classes on medical ethics, bioethics, medical philosophy, and medical law.

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