

# Conscience clause and abortion

## Abstract

Recently, in Romania were published a series of articles in mass-media about hospitals in which pregnant women could not resort to abortion at their request, as there were no available doctors willing to perform them. The main reasons given by physicians included: the immorality of the act, religious reasons, but also the fact that they are not paid by the hospital to perform them. In Romania, abortion is allowed, at the request of the patient, until week 14, and respecting this right is very important for many who remember the tragedies generated by the interdiction to perform them in the communist era. Afterwards, it may be allowed, for therapeutic purposes, up to 24 weeks, and when needed for the well-being of the mother and child, beyond 24 weeks. The purpose of this article is to analyze the main legal norms upon which this clause is built upon in Romania. We will analyze three main areas: labor law, constitutional law, and the ethical norms of the Romanian College of Physicians.

**Keywords:** abortion, law, on-demand abortion, pregnancy, morality

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## Introduction

Recently, in Romania were published a series of articles in mass-media about hospitals in which pregnant women could not resort to abortion at their request, as there were no available doctors willing to perform them. The main reasons given by physicians included: the immorality of the act, religious reasons, but also the fact that they are not paid by the hospital to perform them<sup>(1,2)</sup>. This issue has divided the public opinion, with some being pro this approach (mainly religious groups), while others argued that this limits the mother's liberties to do whatever she wants with her body.

In Romania, abortion is allowed, at the request of the patient, until week 14, and respecting this right is very important for many who remember the tragedies generated by the interdiction to perform them in the communist era<sup>(3)</sup>. Afterwards, it may be allowed, for therapeutic purposes, up to 24 weeks, and when needed for the well-being of the mother and child, and after 24 weeks<sup>(3)</sup>. In a previous article, published in 2013, we have shown that most Romanian physicians consider that they should be able to refuse abortion, even if permitted by the law, more than 75% of all responders strongly agreeing with this statement<sup>(3)</sup>. The main reasons given by the responders for not agreeing with abortion were that it leads to the killing of another human being (more than 70%), and due to religious reasons (almost 22%)<sup>(3)</sup>, the main reasons given currently by physicians who are now refusing abortive procedures at the request of the pregnant woman. These two reasons are the main issues encompassed in the conscience clause, which we analyzed from an ethical point of view in a previous article<sup>(4)</sup>.

The purpose of this article is to analyze the main legal norms upon which this clause is built upon. We will analyze three main areas: labor law, constitutional law, and the ethical norms of the Romanian College of Physicians.

## Laws governing the conscience clause

According to the art. 6 of the Labor Law, "every employee who performs a work is benefiting from adequate work conditions, social protection, security and health at the workplace, as well as respect for his/her dignity and conscience, without any discrimination". The method through which this respect is implemented in practice is represented by the inclusion, in the contract of the employee, of a conscience clause<sup>(5)</sup>. Therefore, physicians could be allowed not to perform certain medical procedures (i.e. such as abortion), to which they object based on moral/ethical/religious grounds, if they add this clause in their contract. This is the most transparent way for physicians to elude performing medical interventions to which they object. However, in clinical practice, there are instances in which the conscience clause cannot be enforced. For example, if the future mother is put at an imminent risk by the continuation of the pregnancy, a physician cannot refuse to perform therapeutic abortion, as the immediate consequence is more severe than abortion – the loss of the life of the mother, a person with a fully developed moral status, and whose death would render the continuation of the pregnancy an impossibility. This state of emergency generates automatically the obligation of the physician to act (morally transposed in duties of diligence and beneficence).

In the Romanian Constitution, art 29 is stated that "the freedom of thought and opinions, as well as the freedom of religious beliefs, cannot be restricted in any way. No one can be compelled to adopt an opinion or adhere to a religious belief contrary to his/her beliefs (...) The freedom of conscience is guaranteed; it must manifest itself in a spirit of tolerance and mutual respect"<sup>(6,7)</sup>. The freedom to religious beliefs implies the freedom to act according to one's internal system of moral beliefs, of course unless by acting in a particular way would restrict the freedoms of other people. Art 34

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from the Romanian Constitution states that “the right to healthcare protection is guaranteed (...) the State is obliged to take measures in order to insure the hygiene and public health”<sup>(6,7)</sup>. Apparently, when discussing about abortion at the request of the mother, these two fundamental rights collide. However, this is not true, as Art 29 refers to the rights of a certain individual, while art 34, to an obligation of the State. A particular physician can act according to his/her beliefs, and refuse to perform on demand abortion, but others might not refuse, and therefore the State insures the access to this procedure, within the limits of the law. The only theoretical instance in which this would not happen in the one in which most/all physicians would refuse to perform the procedure, which is extremely unlikely, is was shown by the T9 Nazi program<sup>(8)</sup>.

The third norm that allows the conscience clause in healthcare is the Code of Ethics of the Romanian College of Physicians which, in art 34, states that: “The refusal of providing medical services can take place strictly within the law, or if the request of the person asks from the physician to perform acts that could alter his/her professional independence, could alter his image, moral values, or if the request does not respect the fundamental principles of exercising the profession of physician, with the purpose and the social role of the medical profession”<sup>(9)</sup>. Therefore, from a deontological point of view, a physician can refuse to perform an intervention that is against his moral values, such as an on-demand abortive procedure.

Another issue that should be discussed is whether a physician can refuse to perform a procedure that is

legal, and allowed in state-funded clinical institutions. One could argue that, if a clinical institution is publicly funded, it should perform all medical procedures for which it has the personnel and equipment, and which are allowed from a legal point of view. However, this approach would be against the principle of discrimination – a person cannot be asked to act against his moral values/religious beliefs just because he works in a public hospital (or a private one for that matter).

As we seen from above, the conscience clause can be invoked by physicians who do not want to perform medical procedures that would be against their moral principles. However, if this is the case, they should also take into account that they could generate harm to their patients or even prospective children by acting in this manner – pregnant women could seek non-medical resolves to the issue, which often occurred before 1989, they could be involved in high-risk, pregnancy related behaviors, such as using drugs or alcohol, the born child would be neglected, and so on. For detailed discussions about these issues, see<sup>(10-18)</sup>.

## Conclusions

In conclusion, invoking the conscience clause should not be taken lightly, and should not be used for anything else other than purely moral/religious reasons, and should only be implemented if this would not cause immediate, imminent and severe health-related risks for the pregnancy woman. ■

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