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Conscientious objection as a barrier for implementing voluntary termination of pregnancy in Uruguay: Gynecologists' attitudes and behavior

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ABSTRACT

Objective: To analyze the attitudes and behavior of gynecologists in Uruguay with respect to the right to conscientious objection that is included in the law concerning voluntary termination of pregnancy. *Methods:* The relevant laws and decrees, academic articles, legal or administrative claims, and the positions published by the institutions representing physicians or by groups of gynecologists were analyzed. *Results:* In general, the institutions positioned themselves in favor of correct application of conscientious objection and the immense majority of gynecologists followed this conduct. Small groups mounted a strong opposition and in one department (province) all gynecologists declared themselves to be objectors. *Conclusion:* Most gynecologists, whether or not they are objectors, proved to have a "loyalty to duty," fulfilling their primary obligation to abide by the ethical duty to give treatment to the persons who need it. A small group used conscientious objection to impede the provision of care to the women who needed the service, some group members being genuine objectors and others pseudo-objectors.

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1. Introduction

In October 2012, the Voluntary Termination of Pregnancy (VTP) Law 18.987 was approved in Uruguay, allowing abortion on demand up to 12 weeks of pregnancy or up to 14 weeks in the case of rape. Most importantly, Article 11 of Law 18.987 acknowledges the right of gynecologists to conscientious objection. Prior to that time, it was not usual to claim conscientious objection in cases of termination of pregnancy for the causes that had been included as non-prosecutable in the previous law. Consequently, legal recognition of the right to conscientious objection unleashed a heated and hitherto unknown debate and provided an opportunity for some groups to raise obstacles to the implementation of the law.

To give a better understanding of the present situation, it is a useful exercise to review the historic evolution of the relevant law in Uruguay, which is different from that of other countries in the region. Uruguay has been historically a secular country. Almost a century ago, in 1917, the Catholic Church was formally separated from the State, as part of a secularization process that gave rise to a secular nation, with a secular public education system.

From 1938, abortion was governed by a restrictive legal framework in which the procedure was illegal and penalized. The legislative Act 9.763 defined abortion as a criminal offense that could be pardoned under certain circumstances: when the pregnancy was the outcome of a rape, for the family's honor, economic desperation, or risk to the woman's life (Act 9.763, 1938) [1].

Since the end of the last century and, above all, the beginning of this century, the high rate of mortality caused by illegal, unsafe abortion moved civil society and groups of gynecologists to react. They sought on one hand to liberalize the law, and to find alternative solutions without waiting for changes in the legislation on the other hand. This solution, which proved to be very effective, was the so-called "risk and harm reduction" strategy, which is described in detail in this Supplement [2].

So effective was this strategy in reducing abortion-induced maternal mortality that, on July 10, 2008, the Law Defending the Right to Sexual and Reproductive Health (SRH) was approved, upholding the risk and harm reduction strategy, based on confidentiality and counseling before and after an inpatient abortion. SRH teams were formed around the country [3].

This process culminated in October 2012 with enactment of the Voluntary Termination of Pregnancy (VTP) Law 18.987 in Uruguay. As noted earlier, this Article 11 of this law acknowledges the right of gynecologists and health personnel to conscientious objection [4].

On November 22, 2012, the decree regulating application of the VTP law was approved and a clinical guideline was recommended. This

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decree limits conscientious objection to the VTP itself (excluding what happens before and after abortion and excluding non-medical personnel) and also guarantees (in Article 12) the woman's personal autonomy and the health team's "non-influence" on her decision [5].

In a reaction to the law and decree described above, a number of political groups formed a committee and succeeded in obtaining the number of signatures required to undertake a nationwide consultation that could subsequently authorize a referendum that could eventually cause the law liberalizing abortion to be revoked. A referendum is called only if 25% or more of the population come to vote at the consultation to indicate that they are in favor of a referendum.

This national consultation to authorize a referendum to revoke the VTP law took place on June 23, 2013. Only 8.9% of the population turned up to vote, far below the 25% required to call a referendum. Faced with this result, the committee in question and the various political parties accepted this result as indicating a high level of public support for the law. Accordingly, the debate on the VTP law was considered closed, and the law became a permanent part of Uruguay's legislation.

Enactment of the VTP law was, however, not obstacle-free. The purpose of the present article is to analyze the different ways that Uruguayan gynecologists acted when faced with the possibility of claiming conscientious objection, and to what extent such objection could become an obstacle to practical implementation of access to lawful abortion in Uruguay.

2. Materials and methods

The relevant laws and decrees were reviewed, namely the Law Defending the Right to Sexual and Reproductive Health 2008 (Law 18.426), the law concerning the Voluntary Termination of Pregnancy (Law 18.987), and the Decree developing Regulations for Law 18.987 of November 22, 2012).

Similarly reviewed were the positions of institutions representing physicians and, in particular, the varied reactions of the gynecologists empowered to apply the law.

Among the institutions that stated their respective positions in public written declarations were the Uruguayan Society of Gynecology (SGU), following a position statement by the Latin American Federation of Societies of Gynecology and Obstetrics (FLASOG), the Academic Bioethics Unit and the Gynecology Clinic A at the University of the Republic's School of Medicine, the Uruguayan Medical Council, and the non-governmental organization (NGO) Iniciativas Sanitarias. The gynecologists' positions were evaluated from their academic papers, public statements, and legal and administrative actions, notably the claim before the Administrative Court and its outcome, the final decision of the Administrative Court.

3. Results

The SGU confined itself to endorsing the recommendations regarding conscientious objection given by the FLASOG Committee for Sexual and Reproductive Rights. Among other considerations, the FLASOG Committee recommends "Informing, building awareness and training health professionals and service users on the implications that conscientious objection has for people's rights" and "Including regulation of conscientious objection in health institutions' internal bylaws, while assuring provision of sexual and reproductive health services to the people who ask for them" [6]. The SGU did not define a position, however, with respect to misuse of this resource.

In response to this debate, the School of Medicine's Academic Bioethics Unit published an article clarifying lawful conscientious objection and what makes it different from deliberate defiance of the law through civil disobedience, closing with the statement that: "On the basis of what has been said, conscientious objection should be distinguished from civil disobedience, which is an attempt to undermine women's independently taken decisions through lobbying by groups that seek to exert a heteronomous [i.e. externally imposed] power on individual moral consciences" [7].

The School of Medicine's Gynecology Clinic A (Gine-A) is one of three training clinics for physicians and gynecologists in Uruguay. It defined and expressed its position by publishing academic articles and taking part in the public debate. This position defended women's independence and, at the same time, the right to conscientious objection, defining the limits and unmasking pseudo-objector positions. In addition, it contributed to guaranteeing practical deployment of the abortion decriminalization initiative in Uruguay by boosting the SRH teams [8].

Iniciativas Sanitarias Contra el Aborto en Condiciones de Riesgo (Health Initiatives against Abortion in Risk Conditions) is an NGO formed by professionals who created and implemented the risk and harm reduction model in Uruguay. Its most significant activity in this area was the organization of a High Level Panel "to continue progress in women's health on the basis of professional values and upholding users' rights and personal autonomy." The panel's members included prominent academic specialists in bioethics such as Professor Bernard Dickens of the University of Toronto, among others. Its goal was to discuss and clarify the true meaning of conscientious objection.

One of the panel's most important conclusions was that when the professional who is being asked to terminate a pregnancy is a conscientious objector, this professional has the obligation to refer the patient to an appropriate non-objecting practitioner, which resolves the problem of conflict of interest. Referral for consultation on options by itself does not implicate any involvement by the objecting professional in any process that may result. In addition, "In emergency situations, when the patient's life or her mental and physical health or the means of preserving this health is in danger, if the professional is an objector and cannot refer the patient to someone who is not an objector, such medical professional must give priority to the patient's life, health and wellbeing, carrying out the procedures that are necessary" [9].

The Medical Council has clarified the concept of conscientious objection and its limits in several statements. It clearly establishes that if "someone is considering not complying with a legal obligation, such person must accept the obligation to give a rational explanation to society for this omission that is sufficiently well-grounded to justify the corresponding absence of a punitive societal response" and it also affirms "the importance of differentiating a well-reasoned conscientious objection from the objection that invokes reasons unrelated with the definition given to it" [10].

The reaction of gynecologists to the right to claim conscientious objection was mixed. Initially, healthcare facilities did not request written declarations, in spite of the regulations having a form designed for this purpose, due in part to the negative reaction to the possibility of a declaration being obligatory. The actual procedure was reduced to conscientious objectors notifying their objection to the department heads in each center.

The gynecologists who had proposed and applied the risk and harm reduction strategy, who make up the majority of gynecologists, working mainly in Montevideo, accepted the possibility of colleagues claiming conscientious objection without this interfering with the care given to women requesting a VTP, but never to use this resource to avoid providing care.

A smaller percentage of gynecologists claimed conscientious objection. On June 16, 2013, at a press conference, the Uruguayan Ministry of Health (MPH) presented a preliminary overview of the application of VTP, at which it estimated that 30% of the gynecologists declared themselves to be conscientious objectors, although it is difficult to substantiate this data.

The largest group of gynecologists claiming conscientious objection worked in the country's hinterland (outside of Montevideo), which has 50% of the national population (about 3.5 million). This caused problems for certain inland departments (states) where conscientious objection was more or less generalized. For instance, in the department of Salto (400 km from Montevideo), all the gynecologists claimed

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