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**FINLAND**

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## Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name 'Alliance Defending Freedom'), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report focuses on the right to freedom of thought, conscience, and religion, including medical professionals' right to conscientious objection to participating in the provision of abortion, parental rights, and Finland's failings in promoting and defending these rights.

### (a) The Right to Thought, Conscience, and Religion

#### *Background*

3. The right to freedom of thought, conscience, and religion is protected under Section 11 of the Constitution of Finland, which states that:
  - (1) Everyone has the freedom of religion and conscience.
  - (2) Freedom of religion and conscience entails the right to profess and practice a religion, the right to express one's convictions and the right to be a member of or decline to be a member of a religious community. No one is under the obligation, against his or her conscience, to participate in the practice of a religion.
4. Despite the fact that freedom of conscience is protected constitutionally, it is being argued that the conscientious objection of medical professionals to abortion is not recognised.<sup>1</sup> However, abortion law in Finland is very liberal, posing challenges to medical staff.
5. Article 1 of the 1970 Abortion Act<sup>2</sup> allows abortion in the following cases:
  - 1) if continuation of the pregnancy or delivery of a child would endanger her life or health on account of a disease, physician defect or weakness in the woman;
  - 2) if delivery and care of a child would place a considerable strain on her in view of the living conditions of the woman and her family and other circumstances...
  - 4) if she was less than 17 or more than 40 years of age at the time of conception, or has already had four children;
  - 5) if there are grounds for presuming that the child will be mentally retarded or will have, or will later develop, a serious disease or a serious physician defect;
  - 6) if a disease, mental disturbance or other comparable cause, affecting one or both parents, seriously limits their capacity to care for the child.

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<sup>1</sup> Anna Heino, Mika Gissler, Dan Apter et al., Conscientious Objection and Induced Abortion in Europe, *The European Journal of Contraception and Reproductive Health Care*, 2013; 18: 231–233.

<sup>2</sup> Law No. 239 of 24 March 1970 on the interruption of pregnancy, as amended by Law No. 564 of 19 July 1978 and Law No. 572 of 12 July 1985.

6. If seeking an abortion within the first 12 weeks of gestation, a woman is required to provide social indications why the pregnancy would constitute a significant burden. However, it has been reported that in practice, anyone who requests abortion within the 12<sup>th</sup> week period would be allowed abortion.<sup>3</sup>
7. An abortion may be permitted after the 12<sup>th</sup> week of pregnancy on grounds of disease or physical defect of the women (e.g. gynaecological malignancies<sup>4</sup>) or of the child. Abortion is also allowed up to the 24<sup>th</sup> week of pregnancy if amniocentesis or an ultrasound examination confirms that the unborn child would suffer from serious impairment, for example trisomy 13.<sup>5</sup>
8. In 2012, the debate on conscientious objection was sparked after the Minister of the Interior, Päivi Räsänen (Christian Democrats), read a letter from a midwife at the Assembly of the Church of Finland. The letter described the abortion procedure of a child at the 23<sup>rd</sup> week. The letter was also read at the Finnish Parliament.<sup>6</sup> In 2014, a citizens' initiative called for the right to conscientious objection in health care<sup>7</sup>, however, without any follow up from the government. In 2015, the citizens' initiative under the name of 'Health care staff statutory right to refuse to conscientious cessation of life' (KAA 2/2015 vp) was proposed at the Parliament. In December 2015, the Parliament rejected the bill on the citizens' initiative.<sup>8</sup>
9. In April 2016, the Ombudsman for Equality issued a statement opposing the addendum bill on conscientious objection. The Ombudsman said that 'the rights of the patient are also of the utmost importance in this regard. Pregnancy termination is a matter related to the reproductive health and rights of women as well as their right to self-determination. In Finland, pregnancy termination is a statutorily guaranteed health care service.'<sup>9</sup>
10. Finland is one of a few countries in Europe not accommodating the right to conscientious objection of medical staff to abortion.
11. Furthermore, a 2015 study conducted in Finland on medical and nursing students and professionals indicated that between 3.5 to 14.1% of interviewees expressed their wish to have the option to conscientiously object.<sup>10</sup> However, over 57.9% of the interviewees were concerned about problems at work because of conscientious objection. The study further stated: 'The respondents most commonly included the medical doctor conducting surgical or medical abortion to be eligible to conscientious objection.'<sup>11</sup>

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<sup>3</sup> Petteri Nieminen, Saara Lappalainen, Pauliina Ristimäki et al, Opinions on Conscientious Objection to Induced Abortion among Finnish Medical and Nursing Students and Professionals, BMC Medical Ethics (2015) 16:17, 1.

<sup>4</sup> Ibid.

<sup>5</sup> Law No. 572 of 12 July 1985. See also Nieminen, above (n 3), 1.

<sup>6</sup> Savolainen J. Räsänen: Hoitohenkilöstölle oikeus kieltäytyä abortista. Sisäministeri Päivi Räsänen luki kirkolliskokouksessa kättilön kirjeen, joka hämmensi kuulijoita, (9 November 2012). In Finnish.

<sup>7</sup> Citizens' initiative calls for right to conscientious objection in health care, <http://www.helsinkitimes.fi/finland/finland-news/domestic/11797-citizens-initiative-calls-for-right-to-conscientious-objection-in-health-care.html>

<sup>8</sup> Eduskunta Riksdagen, available at:

[https://www.eduskunta.fi/FI/vaski/Kasittelytiedot/Valtiopaivaasia/Sivut/KAA\\_2+2015.aspx](https://www.eduskunta.fi/FI/vaski/Kasittelytiedot/Valtiopaivaasia/Sivut/KAA_2+2015.aspx)

<sup>9</sup> Ombudsman for Equality opposes the proposal on the right of health care personnel to unilaterally refuse to perform a pregnancy termination, available at: <https://www.tasa-arvo.fi/web/en/-/ombudsman-for-equality-opposes-the-proposal-on-the-right-of-health-care-personnel-to-unilaterally-refuse-to-perform-a-pregnancy-termination?cssType=text>.

<sup>10</sup> (n 3)1.

<sup>11</sup> Ibid.

12. Similarly, as in the case of medical staff, there is no right to conscientious objection to the military service. Exceptions are only available to Jehovah Witnesses.

### *Freedom of Thought, Conscience and Religion under International Law*

13. Article 18 of the Universal Declaration of Human Rights (UDHR) and Article 18(1) of the International Covenant on Civil and Political Rights (ICCPR) guarantee the right to freedom of thought, conscience to everyone.

14. The Human Rights Committee confirmed in its General Comment No.22:

The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief.<sup>12</sup>

15. Paragraph 1 of the UN General Assembly Resolution on the Elimination of All Forms of Religious Intolerance reaffirmed that 'freedom of thought, conscience, religion and belief is a human right derived from the inherent dignity of the human person and guaranteed to all without discrimination.'<sup>13</sup>

16. In General Comment No. 22, the Committee stated that:

The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.<sup>14</sup>

17. As noted by the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt (the Special Rapporteur):

Conscientious objection to military service... falls within the subcategories of "observance" or "practice" listed in article 18. Conscientious objectors would most likely not be satisfied with having the mere option to publicly "express" their opposition to the use of military force.... Generally speaking, while freedom of religion or belief has a strong communicative component, which it shares with freedom of opinion and expression, the protected dimensions of religious manifestations — worship, observance, practice and teaching — cannot be summed up under the heading of communicative freedom only because they also include other aspects of leading one's life in conformity with one's religion or belief.<sup>15</sup>

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<sup>12</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, available at: <http://www.refworld.org/docid/453883fb22.html>.

<sup>13</sup> Elimination of all forms of religious intolerance, A/RES/48/128, 20 December 1993, 1, available at: <http://www.un.org/documents/ga/res/48/a48r128.htm>.

<sup>14</sup> (n 12)

<sup>15</sup> Report of the Special Rapporteur on freedom of religion or belief, A/HRC/31/18, 23, available: [www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18\\_en.pdf](http://www.ohchr.org/Documents/Issues/Religion/A-HRC-31-18_en.pdf).

18. The Special Rapporteur confirmed that conscientious objection is incorporated in the right to freedom of thought, conscience, and religion. Despite the fact that he was referring to the example of military service, this rule would be similarly applicable to medical service as it involves the same objection to the taking of human life.
19. Major world religions oppose abortion.<sup>16</sup> However, the right to conscientious objection as an element of the right to freedom of thought, conscience, and religion is not recognised in Finland.
20. In order to fulfil its international obligations, Finland must recognize and respect the right to conscientious objection of medical staff to abortion.

## **(b) Right to Education**

### *Background*

21. Homeschooling is legal in Finland and is protected by the Constitution. Section 16(2) of the Constitution states:

The public authorities shall, as provided in more detail by an Act, guarantee for everyone equal opportunity to receive other educational services in accordance with their ability and special needs, as well as the opportunity to develop themselves without being prevented by economic hardship.

22. Under Section 26 of the Basic Education Act (628/1998),

1. A child of compulsory school age must attend basic education provided in accordance with this Act or otherwise obtain knowledge corresponding to the basic education syllabus. Those within prolonged compulsory schooling referred to in Section 25(2) above shall participate in pre-primary education during the first compulsory school year. (Amendment 477/2003) ...

3. If a child of compulsory school age does not participate in education provided under this Act, the local authority of the pupil's place of residence shall supervise his or her progress.

23. Nonetheless, there is some bias against home education. On 16 April 2013 the Supreme Administrative Court denied home-educated pupils free access to school materials.
24. In 2014, a single mother of three was taken to court after the supervision inspector and school principals launched child welfare investigations in relation to her home-schooled children. The school wanted to have more supervision over the children. The mother was threatened with the loss of her children if she did not cooperate. However, the court ruled in favour of the mother, reaffirming that schools have no power to impose supervision over families.<sup>17</sup>

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<sup>16</sup> Moira Stephens, Christopher F.C. Ian H. Jordens, et al., Religious perspectives on abortion and a secular response. *Journal of Religion and Health*. 2010;49:513–35.

<sup>17</sup> Suomen Kotiopettajat, Court Says Homeschooling Not Criminal, available at: <http://www.hslda.org/hs/international/finland/201502230.asp>.

## *International Law*

25. The right of parents to choose education for their children and to educate their children in accordance with their convictions is protected under international law. Article 26(3) of the Universal Declaration of Human Rights states, 'Parents have a prior right to choose the kind of education that shall be given to their children.'
26. Article 13(3) of the International Covenant on Economic, Social and Cultural Rights is equally explicit in guaranteeing the right to alternative forms of education. It reads:

The States Parties [...] undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
27. Article 18(4) of the ICCPR provides that States must 'undertake to have respect for the liberty of parents and [...] to ensure the religious and moral education of their children in conformity with their own convictions.'
28. Article 18(1) of the Convention on the Rights of the Child states: 'Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child.' Article 14(2) requires States to 'respect the rights and duties of the parents [...] to provide direction to the child in the exercise of his or her right [to freedom of religion] in a manner consistent with the evolving capacities of the child.'
29. Finland should review its provisions relating to homeschooling and should ensure that the constitutional protection of homeschooling is reflected in practice.

### **(c) Recommendations**

30. In view of the above, ADF International recommends the following:
  - Ensure that the right to freedom of thought, conscience, and religion is duly recognized and respected;
  - Consider introducing legal provisions regulating and protecting the right to conscientious objection;
  - Ensure that medical professionals have a right to object to participating in abortion and other procedures on the grounds of conscientious objection;
  - Ensure that parents' right to choose education for their children and educate their children in accordance with their conviction is duly respected.



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