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NEWS REPORT

Country:	Norway
Title:	General medical practitioner not allowed freedom of religion when refusing to insert IUDs or refer to abortion
Date:	28 February 2017
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<u>Context</u>	
Issue at stake:	Freedom of religion in employment
Ground of discrimination:	Religion (freedom of conscience) vs Gender
Source:	National court decision: Judgment of 09. February 2017, Court of first instance: Aust-Telemark tingrett, case number TAUTE-2016-109909
Field:	Employment vs access to goods and services (health)
Applicable law:	Working Environment Act/ Gender Equality Law

Content

Case development: This case is the first case in Norway in which a medical professional has sued to protect her conscience rights.

The contract regarding medical services between a municipality and a general medical practitioner was ended on 3 December 2015 by the county, based on the doctor's refusal to insert intrauterine devices (IUDs). Before entering into the contract with the county in 2010, the doctor had informed about her Roman Catholic beliefs and that she would neither refer for abortions nor insert IUDs, which can act as abortifacients. This was accepted in 2010 based on the (previous) tradition of conscience protection for doctors. A contract regarding general medical practice was thus entered into by the doctor and the county. The doctor does not have conscience-based reservations to intrauterine devices that prevent fertilization from happening. The doctor has never received complaints from patients on her reservations.

The Norwegian system of general practitioners is based on a subsidised, tax-payer funded health care system. All patients are required to have a general practitioner assigned to them, and have the right to switch doctors up to twice a year. The system is regulated by specific regulations on medical practitioners. In 2014, based on the change in the ECtHR following its judgment of 15 January 2013 in the case *Eweida and Others v. the United Kingdom* (application No 48420/10), the regulations on general medical practitioners were changed, to prevent medical practitioners from refusing to carry out specific tasks based on reasons of conscience. In the *travaux préparatoires* to the changed regulations, the right of patients to receive public health services in an equal, non-discriminatory and adequate manner is seen as a key element of the purposes behind the rights of patients in the ECHR article 9(2). The duty of medical personnel to provide adequate and caring help to patients and the right for medical personnel to reserve against tasks on conscientious grounds was balanced against a possible weakening of the front-line-service in the health care and a weakening of women's

reproductive health. These regulatory changes were implemented on 1 January 2015.

Neither the Gender Equality directives, nor the Employment Equality Directive of the EU were a part of the legal arguments in the case. The Gender Equality directives are implemented in Norwegian law at the same level as the ECHR and the CEDAW. The Employment Equality directive is not implemented in Norwegian law, although both the legislature and the courts have stated that a protection in national law at the level of the EU is desired.

Decision of the Court: The doctor claimed that the termination of her contract was a breach of her freedom of conscience according to the European Convention on Human Rights Articles 9 and 14.

The court found that the termination of the contract does not violate the plaintiffs' freedom of conscience/ freedom of religion, and was not invalid because of a lack of justification. In his reasoning, the judge relied heavily on the ECtHR judgment of 15 January 2013 in the case *Eweida and Others*.

The judge found that the right to limit a persons' freedom of conscience is prescribed by law, and for the protection of the rights and freedoms of others in line with ECHR Article 9(2). The refusal to insert abortive devices is seen as discrimination against women according to Article 14. The judge focused on the margin of appreciation that the state has in balancing the freedom of conscience for medical practitioners with the prohibition of discrimination against women. He found that prioritizing the right of women to be able to use their general medical practitioner for all their health issues instead of being referred to a gynecologist must be given more weight than the protection of the medical practitioner's freedom of conscience. The court noted also that this is in accordance with "traditional Norwegian values" – but without specifying what these values are.

Key points of analysis: The court relies in this judgment on the preparatory works on the changes in the regulations on general medical practitioners in 2014. It assesses to little extent the rights of the doctor versus the rights of an actual female patient, as the county could not substantiate that there were any actual patients on the doctors' list that had requested the need for such a service.

Even though the plaintiff lost the case in full, the court ordered each party to the case to bear their own costs. This in contravention with the main Norwegian rule, that the losing party to the case bears the full costs of the counterpart. This because the judge found doubts regarding the assessment of the reservation made by the doctor upon entering into the general medical practitioner-contract with the county in 2010.

Internet link source: <https://lovdata.no/dokument/TRSIV/avgjorelse/taute-2016-109909?q=TAUTE-2016-109909> (In Norwegian) (The judgment will be pay-walled after one month).