

The Spanish National Bioethics Committee (CBE)

El Comité de Bioética de España (CBE)

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Abstract

This paper presents, in the first part, the history of the CBE from its origin in 2007 until 2023. The second part analyzes in more detail the documents produced by the Committee in relation to abortion, euthanasia, and conscientious objection. The sources of information have been the annual reports and the reports and opinions produced by the Committee. Both the historical aspects and the analysis of the documents mentioned may be useful for those interested either in the development of national bioethics committees or in the topics to which the documents under consideration are devoted.

Keywords: national bioethics committee, abortion, euthanasia, conscientious objection.

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1. Introduction

This paper presents, in a first part, the history of the Spanish Bioethics Committee (CBE) from its origin in 2007 to the year 2023. It describes the beginnings (2007-2012), the second mandate (2013-2018), the third mandate (2018-2022) and the beginnings of the fourth mandate (2022-). In a second stage, the documents produced by the same in relation to abortion (2009 and 2014), euthanasia (2013 and 2020) and conscientious objection (2011 and 2021) are analyzed in more detail. The sources of information were the annual activity reports of the CBE and the documents produced by it.¹ Mention is also made of some publications that have referred to some special moments of its development and to the most controversial documents.

2. Beginnings (2007-2012)

The Spanish Bioethics Committee has its origin in Law 14/2007 of July 3, 2007, on Biomedical Research (BOE no. 159, July 4, 2007, pages 28826 to 28848). The five articles of Title VII are devoted to its creation, description, and regulation. Article 77 establishes it and places it under the Ministry of Health and Consumer Affairs. Article 78 assigns its functions.² Article 79 describes its composition and the

¹ At the time this work was completed, neither the Annual Report for 2023 nor any document for 2024 had been published.

² a) To issue reports, proposals, and recommendations to the public authorities at the state and autonomous community level on matters with relevant ethical implications. b) To issue reports, proposals and recommendations on matters related to the ethical and social implications of Biomedicine and Health Sciences that the committee considers relevant. c) To establish the general principles for the elaboration of codes of good practice in scientific research, which will be developed by the research ethics committees (this function will be withdrawn through the eighth final provision of Law 14/2011, of June 1, on science, technology, and innovation. It will become the function of the Committee on Ethics in Science and Research). d) To represent

criteria for appointing its members. Art. 80 refers to the duration of the term of office and the exercise of the position. Art. 81 describes its functioning (1). The creation of this Committee was very late compared to what had been happening in Europe and in Spain.³

By order SCO/3928/2007, of December 20 (BOE January 3, 2008) the first twelve members were appointed.⁴ Royal Decree 432/2008 of April 12, 2008, created the Ministry of Science and Innovation to which the Committee is attached.⁵ The constitutive meeting of the Committee took place on October 22, 2008. Previously, the Ministry of Science and Innovation had appointed Victoria Camps Cervera as president (3). The change from being dependent on the Ministry of Health and Consumer Affairs to being dependent on the new Ministry of Science and Innovation caused some confusion⁶ that lasted until the functions of the CBE were

Spain in supranational and international forums and organizations involved in Bioethics. e) To prepare an annual report of activities. f) Any others that may be entrusted to it by the regulations for the development of this Law.

³ “While in Europe, in the 1990s, the first national ethics committees were already being set up to contribute to the reflection of issues related to life and health sciences, and on which governments had - and have - to legislate, Spain did not create its Committee until 2007: twenty-four years later than France, and eleven years later than Belgium” (2, p.2). It had also been created earlier: Switzerland (1985), Sweden (1986), Denmark (1988), Luxembourg and Malta (1989), Italy and Norway (1990), Portugal, Finland, and Slovakia (1991) Holland and Lithuania (1995), Greece, Latvia and Estonia (1998), Romania (2000), Cyprus, Germany and Austria (2001), Poland, Czech Republic and Ireland (2002), Russia and Belarus (2006). In Spain, the Bioethics Committee of Catalonia (1991), the Bioethics Council of Galicia (2001) and the Bioethics Commission of Castilla y León (2002) already existed.

⁴ Victoria Camps Cervera (president), Carlos Alonso Bedate, Javier Aris-Díaz, Carmen Ayuso García, Jordi Camí Morell, María Casado González, Yolanda Gómez Sánchez, César Loris Pablo, José Antonio Martín Pallín, César Nombela Cano, Marcelo Palacios Alonso, Carlos María Romeo Casabona and Pablo Simón Lord.

⁵ “Shortly after the appointment of the members, the first legislature of José Luis R. Zapatero came to an end, and the next was born with a new Ministry, the Ministry of Science and Innovation, on which the Bioethics Committee immediately depended, having become a sort of appendix of biomedical research” (2).

⁶ Meeting of October 22, 2008, meeting of March 2, 2009, and “Report on the Spanish Bioethics Committee and the Committee on Ethics in Science and Research” (3), as

defined in relation to those of the Research Ethics Committee, created by art. 10 of Law 14/2011, of June 1⁷ (Cf. note 1). The confusion ended with the definitive assignment of the CBE to the Ministry of Health, as provided for in Law 14/2007. One of the first tasks of the CBE was to establish its internal rules of organization and operation, which were approved on December 15, 2008.⁸ The main issue dealt with by the CBE in 2009 was the drafting, on its own initiative, of a document on the reform of the abortion law that the government was preparing.⁹ The debate began in June and concluded with the approval of the document on October 7 (3). This document, which we will deal with later, reflects the intellectual juggling that justifies this type of law, as highlighted and excellently criticized by César Nombela in his dissenting opinion, appended to the report. Also, this year, the Committee approved recommendations on a project of the National Center for Cardiovascular Research.¹⁰

From the outset, the Committee has been concerned to establish a network of relations with ethics committees of autonomous communities, clinical ethics committees and international organizations.¹¹

well as the approval of the document "Recommendations of the Spanish Bioethics Committee in relation to the promotion and implementation of Good Scientific Practices in Spain" at the meeting of April 12, 2010 (4).

⁷ "In Law 14/2011, of June 1, on Science, Technology and Innovation, the Spanish Bioethics Committee is also referred to in Title I of the same, when establishing the division of functions of the Spanish Research Ethics Committee and the Spanish Bioethics Committee" (5).

⁸ The current one is available at: <https://comitedeioetica.isciii.es/organizacion-y-competencias/> (17-02-2024).

⁹ Opinion of the Spanish Bioethics Committee regarding the draft organic law on sexual and reproductive health and voluntary termination of pregnancy, October 7, 2009 (6).

¹⁰ Recommendations of the Spanish Bioethics Committee on the 'CNIC2 Study' project presented by the National Center for Cardiovascular Research (3, p. 14).

¹¹ "During its second year of existence, the Spanish Bioethics Committee has made a special effort to make itself known both internally and internationally and to establish more real contact with the national and European institutions constituted around bioethical concerns" (4, p. 3).

The list of events in which the Committee has participated can be consulted in the corresponding Annual Report.

In 2010, the presidency of Victoria Camps was renewed for another two-year term and a second document, already mentioned, was published (see note 5). Three other documents were also approved.¹² The 2010 Annual Report notes the following topics on which the Committee was working: 1) Conscientious objection in general in healthcare matters. 2) Codes of good clinical and research practice. 3) Biometrics and data protection. 4) Patient benefits derived from clinical research. Patentability and patient rights. 5) Placebos, 6) Research in surgical practice and informed consent. 7) Chimeras and biological hybrids in research. 8) Umbilical cord banks. 9) Neonatal genetic screening (7).

In 2011, two new documents were approved (5), one on conscientious objection in healthcare¹³ and the other on synthetic biology.¹⁴

¹² “At the request of the Secretary of State for Research of the Ministry of Science and Innovation, two reports were unanimously approved in relation to the Draft Royal Decree establishing rules for the exchange and internal, intra-community and extra-community circulation of biological material of human origin, and the Royal Decree establishing the basic requirements for the authorization and operation of biobanks.” (13-09-2010) (7) and the Report of the Royal Decree regulating the composition, organization and operation of the Commission and Guarantees for the donation and use of human cells and tissues and the Regime for the registration of Research Projects (7).

¹³ Opinion of the Spanish Bioethics Committee on conscientious objection in healthcare, October 13, 2011 (8). “The document analyzes the legal doctrine regarding the right to conscientious objection in the healthcare field, as well as the ethical-philosophical foundations that justify the convenience of regulating objection in a state that guarantees the right to freedom of conscience and, at the same time, the right of users of the public system to be properly cared for. It establishes in which cases the objection responds to the exercise of religious and ideological freedom and establishes the recommendations that should be considered by a future regulation.” (5).

¹⁴ Synthetic Biology. Joint Report of the Spanish Bioethics Committee and the Conselho Nacional de Ética para as Ciências da Vida of Portugal, October 24, 2011 (9). “The document provides a synthesis of the scope and scientific challenges being posed by synthetic biology in its various applications in the treatment of diseases and in the field of biosafety. Emphasis is placed on the responsibility of the scientist and on the rigor and prudence that must accompany the reporting of scientific inno-

The first of these was mainly motivated by the recently reformed abortion law.¹⁵ Its ambiguities were highlighted by César Nombela in his dissenting opinion. This dissenting opinion was favorably commented on by Agustín Losada Pescador (10). At the end of the year there was an important change in politics with the beginning of the X Legislature in which the PP (Mariano Rajoy) replaced the PSOE (José Luis Rodríguez Zapatero) in the government of the nation.

In 2012 a new document was approved.¹⁶ At the end of the year, the renewal of almost all the members of the Committee took place by Order SSI/2890/2012, of December 19. Nine members were replaced. The following were reappointed: Carlos Alonso Bedate, Carlos Romeo Casabona and César Nombela¹⁷ (12). This renewal meant an important change in the profile of the Committee, now made up, if you will, of more conservative members. This renewal was not very well received by the then president of the Commission, Victoria Camps: “There is the legislator’s will to create a body exces-

ventions to avoid misunderstandings and counterproductive alarms. Finally, the ethical and legal limits of the patent on the laboratory creation of multi-cellular living organisms are considered” (5).

¹⁵ “The Committee decided to address the issue of conscientious objection in the health field taking into account that the Organic Law 2/2010 on sexual and reproductive health and voluntary interruption of pregnancy expressly recognizes the need to give legal status to conscientious objection to abortion [...] The Opinion analyzes extensively the legal and ethical bases in favor of the recognition of conscientious objection, and establishes, in its final recommendations, the points that a future regulation should take into account” (5).

¹⁶ Umbilical Cord and Placenta Blood and Tissue Banks. Joint report of the Bioethics Committee of Spain and the Conselho Nacional de Ética para as Ciências da Vida of Portugal, October 31, 2012 (11). “The document refers to the current situation of Umbilical Cord and Placenta blood and tissue storage and donation [...] the issue is also raised in terms of access to health and human rights. Various recommendations are made aimed at promoting donation and regulating the tissue collection and storage system” (12).

¹⁷ The new composition would be as follows: Nicolás Jouve de la Barreda, Vicente Bellver Capella, Federico Montalvo Jääskeläinen (vice-president), Manuel de los Reyes López, Pablo Ignacio Fernández Muñiz, Carlos Romeo Casabona, Fidel Cadená Serrano, Natalia López Moratalla, Carlos Alonso Bedate, María Teresa López López (president), José Miguel Serrano Ruiz-Calderón and César Nombela Cano.

sively dependent on the legislature of the day [...] It is enough to compare the twelve members of the first Committee with those of the current one to immediately discover where the difference lies [...] although a certain disciplinary plurality is preserved, ideological diversity has disappeared. The common characteristic of all the members of the new Committee is their confessional affiliation and their recalcitrant and unrepentant conservatism regarding the most controversial issues of bioethics” (2, p. 15).

Thus closes this first period of life of the CBE in which this institution, in the words of Victoria Camps, had to practically invent its work: “despite our insistence on offering ourselves as the consultative body that we were, no governmental or parliamentary authority ever asked us for our opinion on any of the problems that were under public discussion [...] If we gave our opinion, it was on our own initiative, a way of acting that is neither normal nor logical, since it conveys the impression that there is no need to have a Committee to consult anything” (2, p. 4).¹⁸

3. Second term (2013-2018)

The year 2013 marked the beginning of the renewed committee. In that year, two new documents were approved. The first was requested by the Ministry of Health, Social Affairs and Equality. It was to analyze the text of the Draft Royal Decree regulating clinical trials with drugs, the Ethics Committees for Research with drugs and the Register of clinical studies.¹⁹ In the second case, it is a small state-

¹⁸ In fact, it was consulted on some occasions (Cf. notes 10 and 12).

¹⁹ Report of the Spanish Bioethics Committee on the Draft Royal Decree on Clinical Trials, July 23, 2013 (13). “The report addresses the guarantees for trial subjects and, singularly, the new insurance regime for clinical trials; the new organizational aspects included in the draft, especially with regard to the Drug Research Ethics Committees (CEIm); and some formal aspects raised by the draft in general” (14).

ment urging the promotion of specific training for professionals in palliative care.²⁰

Two new documents were approved in 2014.²¹ The first of these originated at the express request of the Ministry of Health, Social Services and Equality (April 4). The aim was to analyze the Draft Bill of the Organic Law for the Protection of the Life of the Conceived Child and the Rights of Pregnant Women, aimed at reforming Organic Law 2/2010, of March 3, on Sexual and Reproductive Health and the Voluntary Interruption of Pregnancy, in force at that time. This report reflects the complexity of Spanish jurisprudence on the subject. A history that began in 1985 and which revolves around a basic error, the reduction of human life to a legal right, comparable to others of a different nature. María Casado, member of the Committee during the first term (2008-2012) highlighted the changes of opinion of the Committee on this matter: “In the few years of exercise since its constitution, on October 22, 2008, the Committee has issued—in 2009 and in 2014—two opinions in favor and justifying the two different laws presented by the government of the day [...] As it is public, their contents are radically opposed” (19). Later on,

²⁰ Statement on end-of-life care, July 23, 2013 (15). “The document refers to the recognition of end-of-life care as one of the fundamental challenges of contemporary Medicine and the consideration that it is a requirement of justice in social provision [...] The Spanish Bioethics Committee considers it necessary to advance in Specific Training in Palliative Care, in order to guarantee the rights of patients and relatives in this sensitive area of Medicine” (14).

²¹ Report of the Spanish Bioethics Committee on the Preliminary Draft of the Organic Law for the Protection of the Life of the Conceived and the Rights of Pregnant Women, May 13, 2014 (16). “The report addresses the content and opportunity of the Draft Bill from bioethical, legal, and scientific considerations and refrains from making general considerations on abortion. The report also incorporates an assessment of the articles of the Preliminary Draft.” (17). Report of the Spanish Bioethics Committee on the Draft Decree regulating the authorization for the constitution, operation, organization and registration of Biobanks in the Region of Murcia, September 2, 2014 (18). “The document develops the different ethical-legal issues raised by the Draft Decree regulating the authorization for the constitution, operation, organization and registration of Biobanks in the Region of Murcia, following the request of the Regional Ministry of Health and Social Policy of the Region of Murcia” (17).

we will realize that, at bottom, they are not as different as they are pointed out.

In 2015, the Report of the Spanish Bioethics Committee on prenatal genetic counseling was approved, January 13, 2015.²² The report merited the Committee receiving an award.²³

In 2016, two new documents were approved,²⁴ and the Committee adhered to a declaration of the autonomic Bioethics Committees.²⁵

Three reports were approved in 2017.²⁶ The first of these stems from a consultation by the Ministry of Health, Social Services and

²² Prenatal genetic counseling, January 13, 2015 (20). "The report highlights the informative and non-directive value that prenatal genetic counseling should have. Considering the complexity of the situation faced by both a specialist and the patients concerned, it states that counseling is aimed at the protection of human beings in contexts of vulnerability and possible unprotectedness to safeguard the dignity of the person" (21).

²³ "The Spanish Bioethics Committee has received the 2015 Best Ideas Award in the field of legal, ethical and deontological initiative, awarded by *Diario Médico*, for the approval of the Report on prenatal genetic counseling" (21).

²⁴ Ethical-legal issues of vaccine refusal and proposals for a necessary debate, January 19, 2016 (22). "The report responds to the concern among EBC members that certain social groups, not yet very numerous, question the usefulness of vaccines, promoting vaccine refusal. The report states that such a position is hardly understandable given that it is indisputable that vaccines are the most successful public health instrument in the fight against infectious diseases that until a few decades ago seriously and mortally affected the health of mankind" (23). Ethical and Legal Considerations on the Use of Mechanical and Pharmacological Restraints in Social and Health Care Settings, June 7, 2016 (24). "The document makes a review of the regulatory aspects related to the use of restraints, proposes some considerations on the need for their use, as well as the safety issues and risks of the patients contained, includes a chapter on ethical considerations and finally a list of 16 recommendations" (23).

²⁵ Declaration on ethics of responsibility in the sustainability of the National Health System, November 16, 2016 (25). "Said Declaration arises from an initiative of the Bioethics Committee of Aragon to which the Bioethics Committee of Spain and the other autonomic Bioethics Committees were invited to participate. The Declaration aims to contribute to public reflection on the sustainability of the National Health System based on the ethical values that should drive the responsibility of all the agents involved in its development" (23).

²⁶ Public funding of the drug pre-exposure prophylaxis (PrEP) in HIV prevention, March 7, 2017 (26). On the ethical and legal aspects of surrogacy, May 19, 2017 (27). On

Equality on HIV prevention. “In it, we were asked firstly, whether, from an ethical perspective, pre-exposure prophylaxis (PrEP) should be publicly funded and, secondly, whether it is ethical to prescribe it to people who either might not commit to completing their taking it by adopting other measures [...] or might (not) commit to taking it regularly” (29). The second, prepared on its own initiative, “sets out the principles and reasons that the CBE considers fundamental in supporting a coherent position on the practice of surrogacy, addressing the dilemma of whether current Spanish legislation should be reformed to allow surrogacy under certain conditions or, rather, should remain as it is and adopt measures to reinforce its effectiveness” (29). The third is the result of a request from the Ministry of Health, Social Services and Equality and “includes aspects on the treatment of vulnerability, active and passive suffrage, involuntary internment, legal capacity and forced sterilization” (29).

In 2018, no document was published, and the renewal of several members took place. By ministerial order SSI/598/2018, of May 9, the following leave the Committee: the president, María Teresa López López (2013-2018), as well as Carlos Alonso Bedate (2008-2018), César Nombela Cano (2008-2018) and Carlos Romeo Casabona (2008-2018). They are replaced by: Leonor Ruiz Sicilia, Encarnación Guillén Navarro, Rogelio Altisent Trota (vice president) and Álvaro de la Gándara del Castillo. The following are reappointed: Vicente Bellver and Manuel de los Reyes. The other six members are renewed: Nicolás Jouve de la Barreda, Federico Montalvo Jääskeläinen (president), Pablo Ignacio Fernández Muñiz, Fidel Cadena Serrano, Natalia López Moratalla and José Miguel Serrano Ruiz-Calderón (30).

4. Third Mandate (2018-2022)

Two documents were approved in 2019. The first is a brief statement prompted by the alleged birth in China of two girls whose

the need to adapt Spanish legislation to the Convention on the Rights of Persons with Disabilities, December 20, 2017 (28).

genome had been modified to achieve immunity to HIV.²⁷ Iñigo de Miguel Beriain devoted a paper to a critical analysis of this statement (32). The second document responds to the request made by the Ministry of Health and Consumer Affairs to evaluate a proposal for an additional protocol to the Oviedo Convention that was being discussed at the Council of Europe.²⁸ In August, Pablo Ignacio Fernández Muñoz (2012-2019) resigned due to incompatibility with a new public position (34). From that moment on, the committee would function with only 11 members for the entire term of office. This year saw the end of the PP governments and the beginning of the XIV Legislature with a PSOE government.

The year 2020 was the most abundant in the history of the Committee in the publication of documents. Seven were approved,²⁹

²⁷ Statement of the Spanish Bioethics Committee on genomic editing in humans, January 16, 2019 (31).

²⁸ Report of the Spanish Bioethics Committee assessing the draft Additional Protocol to the Oviedo Convention on Human Rights and Biomedicine on the protection of human rights and dignity of persons with mental disorders with respect to involuntary admission and treatment, May 7, 2019 (33).

²⁹ Report of the Spanish Bioethics Committee on the right of children born from assisted human reproduction techniques to know their biological origins, January 15, 2020 (35). Declaration of the Spanish Bioethics Committee on the parliamentary processing of the legal reform of euthanasia and assisted suicide, March 4, 2020 (36). Report of the Spanish Bioethics Committee on the bioethical aspects of the prioritization of health resources in the context of the coronavirus crisis, March 25, 2020 (37). Statement of the Spanish Bioethics Committee on the right and duty to facilitate spiritual accompaniment and assistance to patients with COVID-19 at the end of their lives and in situations of special vulnerability, April 15, 2020 (38). Report of the Spanish Bioethics Committee on the ethical-legal requirements in research with health data and biological samples in the framework of the COVID-19 pandemic, April 28, 2020 (39). Statement of the Spanish Bioethics Committee, adhering to the request for an independent and comprehensive evaluation of social and health care systems, August 11, 2020 (40). Report of the Spanish Bioethics Committee on the end of life and care in the dying process, in the context of the debate on the regulation of euthanasia: proposals for reflection and deliberation, October 6, 2020 (41). Statement of the Spanish Bioethics Committee on the vaccination strategy against COVID-19 and, in particular, on the prioritization of vaccination, December 14, 2020 (42).

mostly related to the COVID-19 emergency³⁰ and the parliamentary proceedings on the euthanasia law promoted by the party in government. Federico de Montalvo Jääskeläinen (chairman) and Vicente Bellver Capella commented on some of these documents related to the COVID-19 pandemic (44-45). Giraldo et al, comment on the origin and contents of the March 25 and December 14 Reports (46).

Five documents were approved in 2021 (52).³¹

The year 2022 is important because there is a complete renewal of the members of the Committee. Only Leonor Ruiz Sicilia will remain and will serve as president from the fourth term onwards. In that year two documents were approved,³² which are the last ones produced in the third term. Since 2019 there had been a peaceful coexistence between the government and committee. After the Reports concerning euthanasia in 2020 and 2021, critical of the legislative measures of the Socialist government in this field, the crisis was bound to erupt. “It is not difficult to suppose that it was these last two reports, euthanasia and conscientious objection, which in addi-

³⁰ “To this must be added the problems related to the COVID-19 pandemic, which [...] prompted the committee [...] to issue a series of successive reports, among whose conclusions we said that the crisis is first and foremost one of public health, not economic, educational or social, and that the priority was to strengthen the health system and its professionals. We were concerned about triage criteria and protocols and the prioritization of health care for patients with coronavirus and concluded that establishing short-term life expectancy is acceptable [...] but without neglecting anyone” (43).

³¹ Report of the Spanish Bioethics Committee on the Draft Charter of Digital Rights, January 27, 2021 (47). Report of the Spanish Bioethics Committee on the ethical aspects of patient safety and, specifically, of the implementation of an effective system for reporting safety incidents and adverse events, April 28, 2021 (48). Report of the Spanish Bioethics Committee on the ethical-legal grounds for allowing persons under sixty years of age who have been vaccinated with the first dose of Vaxzevria to be vaccinated with the second dose of the same vaccine, May 21, 2021 (49). Gonzalo Herranz: master of medical ethics, May 27, 2021 (50). Report of the Spanish Bioethics Committee on conscientious objection in relation to the provision of aid in dying of the organic law regulating euthanasia, July 15, 2021 (51).

³² Report on the care of the elderly in the framework of the socio-health system, May 25, 2022 (53) and Report on bioethical aspects of telemedicine in the context of the clinical relationship, June 13, 2022 (54).

tion to being unsolicited and going in the opposite direction to the organic law that was approved at the beginning of 2021, that determined the dismissal of all the members of the Committee, except for one person, Leonor Ruiz Sicilia” (43). The government waited for the regulatory deadlines to be met for the renewal of the committee and, when the time came, completely turned its ideological orientation on its head by relieving its members³³ with Order SND/729/2022, of July 26 (55).³⁴ “Nothing to object to the expected dismissal of those of us who had exhausted the two terms of office. My greatest feeling for the cessations of Encarnación Guillén, Rogelio Altisent and Álvaro de la Gándara, all magnificent and who should have had the opportunity of a second four-year term, which the Law allows, since their appointment, together with that of Leonor Ruiz Sicilia took place at the end of 2018” (43).

The media immediately echoed these changes (56-57) in addition to Nicolás Jouve (43) also expressed his point of view Federico de Montalvo (57).

It is interesting to note the parallelism with the 2012 renewal, the linking of these modifications in the composition of the CBE with the changes of tendency in the government of the nation. This also occurs elsewhere.³⁵ Lopez Baroni comments on these parallels,

³³ Terminated members: Federico Montalvo Jääskeläinen (2012-2022), Rogelio Altisent Trota (2018-2022), Vicente Bellver Capella (2012-2022), Fidel Cadena Serrano (2012-2022), Álvaro de la Gándara del Castillo (2018-2022), Encarnación Guillén Navarro (2018-2022), Nicolás Jouve de la Barreda (2012-2022), Natalia López Moratalla (2012-2022), Manuel de los Reyes López (2012-2022) and José Miguel Serrano Ruiz-Calderón (2012-2022).

³⁴ New composition: Leonor Ruiz Sicilia (president), Juan Carlos Siurana Aparisi (vice president), María Desirée Alemán Segura, Carme Borrell i Thio, Atia Cortés Martínez, Iñigo de Miguel Berain, Lydia Feito Grande, Cecilia Gómez-Salvago Sánchez, Aurelio Luna Maldonado, Alberto Palomar Olmeda, Isolina Riaño Galán and José Antonio Seoane Rodríguez.

³⁵ In the United States of America, the National Bioethics Advisory Commission (NBAC, 1995-2001) was formed under President Bill Clinton (Democrat). This body was replaced by the President’s Council on Bioethics (2001-2009) under President George Bush (Republican). This in turn was replaced by “The Presidential Commission for the Study of Bioethical Issues” (2009-2016) under President Barack

points out that it is difficult to avoid this type of problem and proposes, as a solution, some form the constitutionalization of these types of committees, so that conditions are created that allow them to operate truly super partes. Placed at this high level, “The Bioethics Committee analyzes all possible aspects of a given problem, anticipating the political power, and guiding judicial action without compromising it [...] It will warn us of the state of the question [...], of the inadequacies of our legal and political mechanisms, etc. No one will demand unanimity, not even a majority. The information provided from multiple vantage points will suffice” (58).

5. Fourth mandate (2022-)

After the renewal, there was no special activity for the rest of the year 2022. In the last quarter, amendments were made to the Rules of Organization and internal functioning of the Committee (55). Two documents were approved in 2023.³⁶

As we have seen, the emergence of new and varied topics in the bioethics arena has motivated many of the documents published by the Committee over the years. This proliferation of topics has meant that traditional, unresolved issues have been pushed into the background. The problems related to the beginning and end of human life are, in the end, the central issues of bioethics, issues that cannot be forgotten, taken as definitively resolved. Rather than getting lost in a detailed analysis of the various works of the Committee, I believe it is more appropriate to dwell on those that deal with abortion and euthanasia. We will also do so on those that deal with the issue

Obama (Democrat). Donald Trump (2017-2021, Republican) did not renew this body nor has Joe Biden (2021, Democrat).

³⁶ Report of the Spanish Bioethics Committee on the ethical and legal implications of including additional information on “meaningful sex” and “desired name” in the protected population database of the National Health System, June 5, 2023 (59) and Report of the Spanish Bioethics Committee on aspects of the secondary use of data and the European data protection area, November 7, 2023 (60).

of conscientious objection of healthcare personnel, a topic that cuts across the two previously mentioned.

6. The 2009 and 2014 documents on abortion legislation

The 2009 document entitled: “Opinion of the Spanish Bioethics Committee on the Draft Organic Law on Sexual and Reproductive Health and the Voluntary Interruption of Pregnancy” (17-10-2009) originates from the initiative of the Committee itself.³⁷ It is structured as follows: 1. Introduction. 2. Analysis of the current situation. 3. The biological status of the embryo and its implications. 4. The conflict between the obligation to protect prenatal life and the autonomy of the woman. 4.1. 4.1. Indications versus time limit: legislative options. 4.2. Assessment of the time limit system. 5. Secularized societies and universal norms. 6. Sex education and support for pregnant women. 7.7. Reproductive autonomy of the minor. 8. Conscientious objection. 9. Conclusions. Annex I.- Individual opinion. From the beginning, the passage from a system of indications to a system of time limits proposed in the new regulation proposal is considered.³⁸ In view of the indisputable data that embryology shows us, he considers that they are susceptible to different evaluations.³⁹ He then goes on to describe four relevant moments (fertiliza-

³⁷ “The Spanish Bioethics Committee [...] has agreed to submit to the institutions and public opinion the following arguments and considerations with the aim of contributing to the reflection inherent in the debate on the legislative modification of abortion, contained in the Draft Organic Law on Sexual and Reproductive Health and the Voluntary Interruption of Pregnancy” (6, p. 3).

³⁸ “The change from a regulation that decriminalizes abortion in certain cases to one that regulates the conditions under which it is legally acceptable to perform it within a certain period of time certainly constitutes a qualitative leap that converts what was a merely decriminalized conduct into an expression of the woman’s freedom of decision in the face of her own personal conflict” (6, pp. 5-6).

³⁹ “From science it is possible to make objective formulations about the biological reality of human life and its development. But, although from scientific data we do not automatically derive moral consequences, in order to ethically evaluate the actions

tion, nesting, end of organogenesis and extrauterine viability) and the opinions that value one or the other as a point of reference for limiting abortion. He points out the current situation of Spanish law regarding the status of the embryo,⁴⁰ a profound contradiction that the law should not tolerate and that places the problem in the frame of reference of conflicts of legal goods (human life of variable value and freedom of the woman).⁴¹ The sophism consists in the reduction of human life to a juridical good, when it is, in fact, something pre-juridical that gives meaning to all law. The admission of this contradiction is evident in the document, despite the ambiguity of the expressions.⁴² This fundamental error is followed by reflections on the preference for a system of indications or a system of time limits. The argument of ideological plurality, which is more valuable than reality, is used and the fundamental error is reaffirmed.⁴³ The statements derived from this fundamental error seem

that may or may not be carried out on the human embryo and fetus, we must take them into account, together with other arguments" (6, p. 7) 'Not everyone describes the facts in the same way [...] nor is it unanimous to derive from them the same norms of conduct' (6, p. 18). The value of objectivity in science is questioned. Something unheard of.

⁴⁰ "The current Spanish norms on the voluntary interruption of pregnancy, assisted fertilization or research with frozen embryos do not grant an absolute value to the embryo and the fetus, nor do they allow a total availability of the embryo or deny it all value, equating it to a simple 'object' or 'thing'" (6, p. 10).

⁴¹ "The conflict must be resolved, therefore, through the procedure of weighing, in accordance with the principle of proportionality, that is, that the decision adopted is suitable, necessary and proportionate in the strict sense in relation to the legitimate aim pursued" (6, p. 12).

⁴² "However, it cannot be ignored that the uniqueness of the right to life lies in the impossibility of weighing 'life', since it exists or not, but does not admit partial protection. This circumstance is what leads abortion decriminalization systems to imply in any case the renunciation of criminal penalties for the termination of pregnancy in certain cases, whether the criterion is that of the indications or that of the time limit" (6, pp. 12-13).

⁴³ "It follows from such a plurality of opinions that only those norms whose negation clearly and unequivocally contradicts one or more fundamental rights can bind all. Such norms are usually few and very abstract, for it is the interpretation of them that causes discrepancies, as occurs, in the case at hand, with the meaning and scope

to be dogmas of faith.⁴⁴ The document continues with considerations on sex education, support for pregnant women, reproductive autonomy of minors and conscientious objection. It ends with ten conclusions.

This document had the dissenting vote of César Nombela who pointed out the fundamental contradiction at the root of the discussions on the subject,⁴⁵ in addition to unpacking other errors and inconsistencies.⁴⁶

The 2014 document, entitled: “Report of the Spanish Bioethics Committee on the Preliminary Draft Organic Law for the Protection of the Life of the Conceived and the Rights of Pregnant Women” is organized as follows: 1, Legal background and current legislation. 2, Considerations from biology and medicine. 3. Justification of the reform. 4. Requirements for the protection of human life in gestation. 5. The legislator’s main option for the system of indications. 6. Insufficient actions in matters of positive protection of maternity in the preliminary draft. 7. Evaluation of the articles of the preliminary draft. 8. Recommendations. Annexes: Individual opinions (three). In the first part, the legal background to the issue of

that the right to life should have when it comes into conflict with other equally basic rights” (6, pp. 18-19).

⁴⁴ “The option for the extension of the voluntary interruption of pregnancy is the one that suits a secular and neutral State in the face of the discrepancies derived from the different beliefs of the citizens. The State cannot impose the prevalence of the value of life, by prohibiting abortion, if it thereby deprives the woman who is faced with the need to terminate a pregnancy” (6, p. 19).

⁴⁵ “The disagreement of this member with the opinion of the Committee is based on the radical contradiction it incurs in recognizing that from conception there is a new human life, distinct from that of the pregnant mother, but at the same time admitting that this life can be voluntarily terminated during the first fourteen weeks of its development” (6, p. 33). “In the opinion of this member of the Committee, it is not appropriate to renounce a fundamental principle, such as the protection of embryonic or fetal human life, in order to pragmatically resolve an alleged conflict. Rather, other measures should be postulated, such as social support for the pregnant woman” (6, p. 36).

⁴⁶ “From Science one can legitimately ask why the right to live should be limited to having exceeded fourteen weeks of fetal development, why not eight or sixteen?” (6, p. 35).

abortion in Spain is presented. The second part includes what the 2009 document already said about the biological aspects and assesses the legislative change that is to be made (from a system of time limits to a system of indications, the opposite of what existed at that time).⁴⁷ It also appreciates the disappearance of the indication for fetal malformations.⁴⁸ In the third, fourth and fifth parts, the report expresses its opinion on the timeliness of the legislative change.⁴⁹ The reflections are based on various statements taken from the jurisprudence already established on the subject through various Constitutional Court rulings. In the sixth part, the Report stops to consider, and vindicate, the promises of positive protection of maternity, something typical of this type of law that serves to facilitate the acceptance of abortion but which, in practice, is then forgotten. The seventh part contains a detailed analysis of the various articles of the draft bill. The Report concludes with eleven recommendations, all along the lines of improving the text, to make the protection of the unborn and of motherhood more effective.

⁴⁷ "This Committee values positively the change in the model established in the Preliminary Draft as compared to the current model, considering that allowing abortion during the first fourteen weeks of gestation, without alleging a justifying cause, implies an absolute lack of protection of the human being. This lack of protection, moreover, would occur during an extensive stage of development, which includes the entire embryonic period and a substantial part of the fetal period" (16, p. 6).

⁴⁸ "From an ethical point of view, this Committee values positively the abolition of discrimination, understanding that the protection of all human life is a legal obligation not only after, but also before birth" (16, p. 7).

⁴⁹ "We consider, therefore, that to guarantee the good of human life - as described in a reiterated jurisprudence of the Constitutional Court - a legislative change is opportune. Indeed, the provisions taken in the current Law seem insufficient for the adequate protection of the legal goods at stake in the voluntary termination of pregnancy (16, p. 11). "In this regard it can be considered that the legislation in force, and also that prior to the 2010 reform, did not adequately comply with the State's obligation to ensure the life of the unborn child, insofar as an adequate policy had not been developed to achieve the stated objective of all the legal reforms which was the decrease in the number of abortions" (16, p. 12). "The new model established by the Preliminary Draft replaces the current model of mixed nature, time limits and indications - in which the woman's right to terminate a pregnancy without giving a reason is implicitly recognized - with a model of indications" (16, p. 14).

The report includes three dissenting opinions. The first of these, signed by Federico de Montalvo, Carlos Alonso, and Manuel de los Reyes, agrees with the text of the Report and goes into greater depth, adding new nuances with considerations on the change from a mixed model to a model of indications, on the social reality of abortion and the formula for dealing with it, on the fundamental role of obligatory prior counseling and on conscientious objection. The second, by Pablo Ignacio Fernández, disagrees with the Report on several points. The third, signed by Carlos María Romeo, shows discrepancies on several methodological and content aspects on the following points: the justification of the legislative initiative, the change in the decriminalization procedure: the pure system of indications, the exclusion of the embryopathy indication, the extension to other indications, minority of age, conscientious objection, and the recommendations of the Report (disconnected from the rest of the text).

In short, both documents move within the erroneous frame of reference of the conflict of rights. Depending on the prevailing trends among members, the documents take on different colors. In 2009, women's rights are exalted. In 2014, the protection due to the unborn child is exalted. The status quo, crystallized in the accumulated jurisprudence, is used in the arguments, in one direction or another, but it does not allow to adequately illuminate the problem because of the sophisms and contradictions it contains.⁵⁰

7. The 2013 and 2020 documents about palliative care and euthanasia.

The first reference to palliative care by the Committee is found in the brief statement of 23 July 2013. In 2020, as the future euthanasia law was being considered, the Committee regrets not having been consulted. It does so through the brief statement of March 4. It

⁵⁰ An analysis of the main document, STC 53/195 of April 11, 1995, in (61).

announced the preparation of an own-initiative report on the subject. This report was published on October 6 and caused quite a stir among those in favor of euthanasia (62). The report has the following structure: 1. Introduction: reasons and aims of the Report. 2. The current legal framework of compassionate homicide and aid to suicide in the Spanish legal system. 3. Clarification of concepts: terminological, scientific, and legal. 4. The protection of human life has a substantial ethical and legal value. 5. Euthanasia, self-determination, dignity, and utility. 6. Euthanasia and medical professionalism. 7. Euthanasia and vulnerability in special situations: disability, mental illness, and childhood. 8. Euthanasia and Palliative Care. 9. Extreme and refractory existential and/or spiritual suffering. 10. Euthanasia in an aging society. 11. An experience to observe: putting an early end to the criminal prosecution for euthanasia. 12. Conclusions.

In the first part, reference is made to the contempt suffered by the Committee and to the serious issues on which legislation is being sought,⁵¹ the appropriate coordinates for the debate on the subject⁵² are established and the central problem is pointed out.⁵³ The second part is dedicated to describing how the legal system, at the time, dealt

⁵¹ "It would be strange if, from a strictly ethical-legal perspective, a legal norm could be approved in the coming months that seeks not only to decriminalize euthanasia and/or aid to suicide but, beyond that, to recognize a true right to die that, in addition, would have the status of a benefit charged to the public health system, and that this Committee would not pronounce itself on this matter. That is why this report has been drafted and adopted" (41, p. 4).

⁵² "The Committee also urges everyone to demonstrate an effective intention to differentiate between what are respectable moral conceptions, but which cannot be imposed by law on all persons, and what are the requirements of justice that should inform the life of society. Questions concerning homicide are always referred in preference to the latter [...] attention to concrete cases must avoid the emotional overflow that hinders the exercise of reason [...] compassion cannot be the only criterion to be considered, since basing our ethical system and, a fortiori, our legal system on it is dangerous and legally insecure" (41, pp. 5-6).

⁵³ "The problem lies, then, in confusing what is licit in certain contexts with what is required. And also in transforming a hypothetical exception or attenuation to the moral and legal duty not to kill into a right and even, beyond that, into a benefit charged to the public system, depending on the singular characteristics of a specific case" (41, pp. 7-8).

with compassionate homicide and suicide assistance. It is pointed out that the current regulation through article 143.4 of the Penal Code is sufficient,⁵⁴ since this article does not prohibit euthanasia or aiding suicide as singular acts, what it prohibits is their institutionalization, which would undermine the trust of citizens in society (41, pp. 9-10). The third part of the Report clarifies the meaning of the following terms: euthanasia, medical aid to suicide, adequacy (but not limitation) of the therapeutic effort, therapeutic obstinacy, advanced incurable disease, situation of agony, refractory symptom, palliative sedation, refusal of treatment and omission of the duty to assist (41, pp. 11-14). The fourth part of the Report is a reflection on the meaning of the right to life in the Spanish legal system. The considerations are very accurate and would have been useful also in the 2014 Report about abortion, since here the pre-judicial nature of human life is being explained and how its existence originates and conditions the right,⁵⁵ something that was lacking in that one. The inviolability of the right to life is pointed out, which implies its unavailability, also on the part of the holder of this right.⁵⁶ The use of dignity as an argument to defend the right to decide to suppress

⁵⁴ "The regulation of euthanasia and medical aid to suicide is substantially contained in Article 143. 4 of the Penal Code which provides that 'Whoever causes or actively cooperates with necessary and direct acts to the death of another, by the express, serious and unequivocal request of the latter, in the event that the victim suffers a serious illness that would necessarily lead to his death, or that produces serious permanent and difficult to bear suffering, shall be punished with a penalty one or two degrees lower than those indicated in numbers 2 and 3 of this article' (41, p. 9).

⁵⁵ "Thus, from an axiological point of view, life does not constitute in our constitutional order a mere right, but a value or principle. It is a value that precedes the Constitution itself, whose recognition does not depend on the Constitution, and which, consequently, subjects it to the value of life. Life constitutes not only a right, but a presupposition for the exercise of other rights and, therefore, appears in first place in the catalog of rights and freedoms enshrined in the Constitution" (41, p. 15).

⁵⁶ "By virtue of inalienability, the holder of the right cannot make it impossible for him to exercise it. Human rights, insofar as they are inalienable, are ascribed to the person regardless of his consent, or against his consent [...] The arguments usually advanced are like those used to reject the total renunciation of freedom, that is, consensual slavery [...] The right to life is inalienable insofar as the right to die cannot be demanded" (41, p. 16).

one's own life is dismantled,⁵⁷ pointing out two fundamental reasons: the one already indicated in the previous note and the reminder "that dignity is not only self-determination or freedom [...] it has an ontological meaning and is an intrinsic quality of the human being: humanity itself is dignity, and therefore cannot depend on the physical or psychological circumstances of the individual" (41, pp. 17-20). The report continues with a broad reflection on the consequences of legislative change in various areas, based on what has happened in nations that have implemented this type of law. The fifth part of the report highlights the contradictions that arise when attempting to combine euthanasia, self-determination, dignity, and utility.⁵⁸ The concept of relational autonomy is developed with its implications on the subject.⁵⁹ The sixth part of the Report is devoted to the analysis of the implications that the approval of such a law would have for the medical profession. The reflections revolve around the following principle: "the professional task of physicians and healthcare personnel is directed towards the cure and care of patients and does not contemplate acts that directly cause death. Any involvement in practices aimed at causing death (assisted suicide or euthanasia) would

⁵⁷ "If the basis for the decriminalization of euthanasia and/or aid to suicide is human dignity, understood as self-determination in the configuration of one's own life project, such recognition cannot be restricted to certain cases or contexts, such as those of terminality or chronicity. To do so would be a contradiction in its own terms, a veritable oxymoron" (41, pp. 17-18).

⁵⁸ "Since the principles of self-determination and utility tend to be incompatible with each other, they do not serve to sustain a stable regulation of euthanasia, in which the two conditions are integrated to address only those cases in which both requirements are met, but they do serve to transform the traditional conception of death in most societies and cultures. From being an event that affects every human being, it becomes a decision, apparently adopted by the subject but in reality, carried out by the State, acting both at the normative and administrative levels" (41, p. 27). (41, p. 27). "Dignity stands as a humanistic principle of anti-utilitarian orientation that opposes the frequent pretension of legitimizing moral actions by their advantageous consequences for the majority or for the many (consequentialist ethics)" (41, p. 30).

⁵⁹ "The presupposition of relational autonomy conceives the person linked to his family, to a group, taking into account the interrelation between them, not admitting that people who make decisions do so as isolated beings in the world [...] The birth of the desire to die arises when the individual has died socially" (41, p. 32).

imply a profound change (or even a distortion) of the figure of the physician and his or her role in healthcare facilities, as well as of the healthcare facilities themselves” (41, p. 38). The seventh part of the Report is dedicated to reflecting on the implications of the legalization of euthanasia in situations of special vulnerability such as disability, mental illness, childhood, poverty, old age... Against euthanasia practices it is pointed out that: “An ethics of fragility demands respect for the other, whether fragile or not, avoiding aggression, but also omissions, i.e. negligence; rather, what must be encouraged is respect and diligence” (41, p. 40). It is pointed out how utilitarian ethics has caused the opposite in the COVID-19 pandemic and the precedent that this implies for the future in a context of legal euthanasia.⁶⁰ “Serious thought must be given to whether, in this ‘society of weariness’, euthanasia and aiding suicide are nothing more than expressions of the weariness of caring” (41, p. 44). The critique of utilitarianism is strong and clear.⁶¹ The eighth part of the report is devoted to the evaluation of palliative care as an alternative to euthanasia.⁶²

The ninth part of the Report is devoted to a long consideration of the issue of extreme and refractory existential suffering, invoked

⁶⁰ “The recent circumstances of the COVID-19 pandemic give us an indication of how utilitarian pressure can be expressed in times of crisis of means. To some extent our society has been unable to protect the most valuable life of those who have given their efforts throughout their lives and have bequeathed to us the society we are now developing [...] It is not venturesome to think that euthanasia will be projected to a majority extent on persons in such circumstances and that the alternative of euthanasia adds a pressure precisely on those persons” (41, pp. 41-42).

⁶¹ “Utilitarianism falls into the fallacy of the absence of moral separability of persons, assuming that the moral value of persons is interchangeable: the health that some gain compensates for that which others lose as long as the result is a positive sum [...] The interpersonal compensation of human lives among themselves, in order to maximize some presumed collective benefits, is incompatible with the primacy of human dignity” (41, p. 45).

⁶² “Let us not forget that the moral worth of a society is also - and above all - measured by how it treats its sick and most needy and helpless people, how it protects and cares for them, and how it deals with the dying and death of human beings” (41, p. 52).

as one of the cases in which euthanasia or assisted suicide could be applied. The reflection is divided into the following paragraphs: 1. A new and tragic scenario obliges us to foster confidence and hope. 2. The experience of pain and suffering in people is always a challenge. 3. Detecting and attending to psycho-emotional and spiritual needs is a key and fundamental ethical duty. 4. The ethical task of caring for and accompanying at the end of life is very valuable, and 5. Palliative sedation and extreme and refractory existential and/or spiritual suffering.

In the tenth part, the Report deals with euthanasia in the context of an aging society.⁶³ The eleventh part of this long Report is devoted to examining the legislative experiences of early decriminalization of specific cases, maintaining the general prohibition of euthanasia and assisted suicide, as an alternative to the decriminalization, in general, of these practices.⁶⁴ The conclusions (part 12 of the Report) are summarized in this statement: “The integral and compassionate protection of life leads us to propose the protocolization, in the context of good medical practice, of the use of palliative sedation in specific cases of refractory existential suffering. This, together with the effective universalization of palliative care and the improvement of social and healthcare support measures and resources, with special reference to support for mental illness and disability, should constitute, ethically and socially, the path to be taken immediately, and not that of proclaiming a right to end one’s own life through a public service” (41, p. 74). It is a very rich document, certainly long, but

⁶³ “In the context of aging societies in which the elderly do not have a recognized and respected social value, it is worrying where the decriminalization of euthanasia may lead, not just to its transformation into a true subjective right [...] in certain contexts, the social value will preside over the choice to suddenly end the life of those who are no longer useful to society” (41, p. 69).

⁶⁴ “It may certainly be paradoxical that the general rule of protection of life as an expression of the main value on which our coexistence is based can be complemented by an exception that allows, even if the conduct is evaluated a posteriori, that ending a person’s life has no criminal consequences. But, perhaps, in our current societies’ paradoxes are the only way towards agreement and one of the few spaces in which the legal norm finds easier accommodation” (41, p.72).

well-articulated and complete. A more detailed analysis of its contents would be worthwhile, but this would require space that is not available in this article.

8. The 2011 and 2021 reports on conscientious objection

Conscientious objection on the part of healthcare personnel in relation to laws that seek to oblige them to perform practices that go against their ethics and their own conscience is a cross-cutting issue in the contexts analyzed above. The typical debate revolves around its legitimacy and the vindication of a right. I believe that, without downplaying the importance of these debates, there are two elements to consider. First, the claim of conscientious objection is a distraction from the underlying problems. Secondly, the admission of conscientious objection in the legal system is like the candy we give to the child to make him take the bitter medicine. Faced with the rejection of these practices in the medical sector, an attempt is made to soften the situation by resorting to the possibility of conscientious objection. This paves the way for the acceptance of legislation favoring the practices in question. What history teaches us is that this, at first, indisputable right, once the laws are established, begins to be discussed and curtailed in various ways. The candy served to pass the bitter medicine, but it is no longer necessary and begins to be withdrawn. The Committee's documents move in the traditional context: vindication of a right, without perceiving the fundamental aspects that we have pointed out. Obviously, this does not detract from the validity of their arguments.

The first of these documents (2011) (Cf. note 12), is divided into four parts: 1. Conscientious objection in the health field. 2. The convenience of regulating conscientious objection: priority of freedom. Duties as well as rights. The objection, individual right. Freedom implies responsibility. Coherence of the objection. 3. The assumptions that do not fit into conscientious objection and 4. Recommendations for the development of the regulation of conscientious objec-

tion in the health field. Three private votes are added. The first part defines the concept of conscientious objection, the elements it includes, as well as its legal framework. The second part raises the need to regulate conscientious objection in areas other than abortion in which it is already regulated. “Not doing so means leaving open the catalog of objection possibilities without predetermining when and in what way it is legitimate, with the legal uncertainty that all this entails” (51, p. 9). The points of reflection that should be considered for its regulation are pointed out. The third part describes the situations in which conscientious objection could be invoked and those in which it would have no place. The Report concludes with the Committee’s recommendations with a view to future regulation: the exercise of conscientious objection is individual, centers will not be able to use conscientious objection institutionally, the subject of the objection must be the one involved in the provision. , the objection must be specific and refer to concrete actions, the health centers must have the data related to the objectors, the supervening objection and the reversibility of the conscientious objection will be accepted, the coherence of the actions of the objector in relation to his ideology and beliefs must be able to be verified in the entirety of their health activity, the recognition of conscientious objection is compatible with the legislator establishing a substitute benefit for the objector, both compliance with the law and their objection must be carried out with full responsibility and in all cases the provision of services recognized by law must be guaranteed. The first of the individual votes shows their opposition to the possibility of conscientious objection institutionally and in teaching. Written by Yolanda Gómez Sánchez, it received the support of four other members of the Committee. The second of the dissenting opinions, prepared by María Casado, refers to the fact that the Report does not consider the recognition due to professionals who submit to compliance with the law in the provision of the services that it prescribes. The third of the dissenting votes criticizes that the document lacks “a clear and unequivocal statement that recognizes this right as an essential part of freedom of conscience, the exercise of which should

not be undermined by lower-ranking legal norms or administrative provisions.” (8, p. 22). The author of this vote, César Nombela, is in favor of conscientious objection in institutions and in teaching, properly understood. Overall, there are slightly divergent positions in detail, with everyone agreeing on the fundamentals.

The second document (2021) (Cf. note 30, final) on the conscientious objection of health personnel in relation to the euthanasia law attracted strong criticism from the sectors that favor this practice, as can be seen in the publication of the then former Minister of Health of the PSOE, María Luisa Carcedo (63). This is a document resulting from the Committee’s initiative as a reaction to the approval of the Organic Law Regulating Euthanasia (Organic Law 3/2021) whose project gave rise to the 2020 Report, analyzed previously. Its structure is as follows: 1. Introduction: a required friendly look at conscientious objection 1.1 Conscientious objection and ideological biases. 1.2 Conscientious objection: exception and reason for constitutional democracy. 1.3 Conscientious objection and the professional freedom of the doctor. 2. Brief historical introduction to conscientious objection. 3. Issues of ethical foundation of individual conscientious objection. 4. Conscientious objection and the process of exercising the right to receive help in dying in Organic Law 3/2021. 5. Subjects entitled to the right to conscientious objection in the euthanasia context. 6. Conscientious objection, the registration of objectors and the guarantee of the provision of “aid in dying”. 7. Institutional conscientious objection: do legal entities lack conscience? 8. Hospitality as the axis and core of ethical work. A commitment to quality and excellence in religious care institutions. 9. Special considerations regarding end-of-life care for people and their environment, in religious institutions. A private vote is added.

The first part of the report establishes the general context of conscientious objection. Firstly, it highlights the spread of the phenomenon and the weight of ideological elements in its acceptance or rejection, depending on the context in which it occurs. Secondly, the paradox of conscientious objection in law is presented. On the one hand, it contradicts the obligatory nature of compliance with the law

and, on the other, it reflects the respect of democracy for the fundamental rights of minorities.⁶⁵ The third part of the report introduces the issue of conscientious objection in the field of healthcare.⁶⁶

The second part of the report highlights the presence of conscientious objection throughout history. The cases of Antigone in antiquity, Thomas More in the 16th century, Gandhi, and David Thoreau⁶⁷ in modern times are paradigmatic examples.

The third part of the report analyzes the foundations of conscientious objection. It starts with the concept of moral conscience, describes the differences between conscientious objection, civil disobedience, and scientific objection, and highlights the individual character of conscientious objection and the legal issues it raises.

The fourth part considers the place of conscientious objection in Organic Law 3/2021. To this end, we start with the timetable that the law establishes for the exercise of the right to receive assistance in dying. It discusses how conscientious objection is considered in the ten phases of the process.

The fifth part of the report is devoted to determining which subjects may be entitled to the right of conscientious objection in

⁶⁵ "Thus, in a constitutional democracy such as ours, there is no general right to conscientious objection, which would be the very negation of the law, but there is the right of the objector to have his objection, by virtue of the principle of freedom on which our constitutional order is based, at least taken into consideration. Objection cannot be tolerated in every case, but this does not mean that it is not an expression of constitutional democracy, precisely the opposite, insofar as it protects the individual and his conscience within the framework of the majority principle" (51, p. 6).

⁶⁶ "In the field of medicine, conscientious objection has a qualified value that derives from the connection that the activity carried out in this professional field has with such transcendental values as life or the physical or psychological integrity of individuals. If the physician's freedom must be subject to the patient's autonomy insofar as this is a guarantee of his or her life and integrity, as proclaimed by Law 41/2002, in similar terms we can maintain that the physician's objection holds a privileged position as it affects such essential constitutional values" (51, p. 8).

⁶⁷ "David Thoreau, (who) was imprisoned for refusing to pay taxes to the state of Massachusetts on the grounds that its legal system was complicit in slavery and that the United States had embarked on an immoral war against Mexico" (51, p. 8).

the context of the law.⁶⁸ The starting point is the distinction between a medical act and a health care act. It resorts to the definition of medical act provided by the Code of Medical Ethics in the 2016 edition,⁶⁹ to differentiate it from the sanitary act.⁷⁰ It is argued and established that the provision of aid in dying cannot be a medical act. As it is a healthcare act, the right of conscientious objection extends to all healthcare personnel involved in the provision.⁷¹ The sixth part of the report analyzes the difficulties that may be presented by the way conscientious objection is considered in Law 3/2021. It deals with the problem of supervening conscientious objection, which is not considered in the law. The appropriateness of the establishment of a registry of objectors is criticized for various reasons.⁷²

⁶⁸ “Art. 16.1 of Organic Law 3/2021 expressly alludes to: ‘Health professionals directly involved in the provision of aid in dying.’ This text requires us to specify two concepts: a) what we should understand by ‘health professionals’ in this context; and b) what we should understand by ‘directly involved’ in the provision of aid in dying” (51, p. 18).

⁶⁹ “The current Code of Medical Ethics, in Article 7.1, contains an important novelty that was not included in previous Codes, and that is precisely the definition of medical act: ‘A medical act is understood to be any lawful activity carried out by a legitimately qualified medical professional, whether in its assistance, teaching, research, expert or other aspects, aimed at curing an illness, alleviating a condition or promoting overall health. It includes diagnostic, therapeutic, or pain-relieving acts, as well as the preservation and promotion of health, by direct and indirect means” (51, p. 18). A similar definition is found in Art. 6.1 of the Code renewed in 2022.

⁷⁰ “The concept of sanitary act includes the more specific concept of medical act but is much broader. So, health acts can have both health professionals and non-health professionals as subjects and their purpose may or may not be linked to the health of a patient. For example, there are acts such as reception, information, requests, documentation, hygiene and transfer, disinfection, etc., which, when performed in a clinical or hospital context, may qualify as medical acts, but are not medical acts” (51, p. 19).

⁷¹ Responsible physician, consultant physician, physician member of the Assurance and Evaluation Commission, physicians and other professionals forming part of the care team, members of the center’s management, the person in charge of the center’s pharmacy service.

⁷² “None of the above reasons alone leads to rule out the option of the register of objectors. All in all, however, it makes sense to harbor reasonable doubts about the suitability of this instrument to reconcile the ideological freedom of professionals and the provision of ‘aid in dying” (51, p. 25).

It proposes the creation of special teams of health care professionals to provide aid in dying in all cases, so that recourse to conscientious objection and the registry of objectors would not be necessary.

The seventh part of the report is dedicated to the analysis of the possibility of institutional conscientious objection, a possibility denied by Law 3/2021. The subject was already dealt with, very briefly, in the 2011 report. Starting from the use of the word conscience in the field of law and in common parlance, the conclusion is reached that it is also possible to speak of institutional conscientious objection.⁷³ Reference is made to article 16 of the Constitution, which implicitly recognizes it.⁷⁴ It analyzes the doctrine of the Constitutional Court and elements of comparative law that support its recognition. This part concludes with an explicit reference to religious institutions.

The eighth and ninth parts of the report are devoted to weighing the welfare service provided by religious institutions. Reflections are presented on the value of hospitality⁷⁵ and the meaning of a true humanization of the dying process.⁷⁶

⁷³ Referring to laws in which the term collective memory is used. "Is not collective memory, collective conscience of a community, of a people? Can a collective have memory, can a community without legal personality have honor or conscience, and not admit that these are attributable to legal persons? It would be really paradoxical to admit, as Parliament itself has done, a collective memory, but deny the same character to conscience, given the inseparable connection between the two" (51, p. 27).

⁷⁴ "The ideological, religious and religious freedom of individuals and communities is guaranteed [emphasis added]. Thus, the literal tenor of the Constitution would not speak precisely of a freedom of conscience only for individuals" (51, p. 27).

⁷⁵ "The value of hospitality, then, comes to be identified today with the value of 'promoting quality and excellence' in the world of health care. Moreover, hospitality must become synonymous with total quality, or excellence, both in the technical order and in the care and personalized human treatment" (51, p. 32).

⁷⁶ "It is not so easy to die well, and it cannot be reduced to simply choosing a way and a moment. As Francesc Abel, prestigious bioethicist and founder of the first Bioethics center in Europe, said in his appearance in the Senate on February 16, 1999: 'Sad is the society that decides to eliminate patients to avoid suffering caused by social problems' (51, p. 34).

The dissenting opinion of Leonor Ruiz Sicilia shows her differences of opinion in relation to the following points: the consideration of euthanasia as a non-medical act and the possibility of institutional conscientious objection.

9. Conclusion

The analysis of the history of the CBE and its documents has served to highlight some of the critical points of this type of committee. The most obvious is the difficulty of making them truly independent of politics. Another point is the variety of problems that are being referred to in the field of bioethics and are the subject of the documents produced by these committees. Interesting reflections, but of relative value in the face of what we could call the core issues of bioethics, those that directly involve respect for human life. These fundamental problems are not adequately resolved. Consensus is built on plurality, which is derived from the relativism typical of postmodernity. A “bioethical mythology” that does not account for the reality of things.

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