

Working Session 14: Fundamental Freedoms II

*As delivered by Robert Clarke
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In a 2011 joint opinion, the Venice Commission on the basis of comments by the Office for Democratic Institutions and Human Rights evaluated draft legislation from Armenia against the following standard:

“the draft law expressly guarantees the right to change one’s religion or belief, the freedom to manifest religion or belief in public or private; **the right to act according to one’s religion in daily life** and the liberty of parents and guardians to ensure the religious education of their children in conformity with their own convictions – **all of which are fundamental aspects of religion or belief...**”

Our consciences are inseparable from our human existence. They are very much part of what it is to be human. Conscience is often what will drive people to cooperative and mutually beneficial behavior and it is only sometimes that someone’s conscience will clash with social or legal norms. However, such is the fundamental importance of conscience that society should seek to accommodate those whose consciences point in a different direction to the prevailing orthodoxy. At times in history it has been those very people who we now honour. Or as two Judges of the European Court of Human Rights put it: “Freedom of conscience has in the past all too often been paid for in acts of heroism, whether at the hands of the Spanish Inquisition or of a Nazi firing squad.”

Recognition of conscience originated with war. And that makes sense. Otherwise, the state can force its citizens to kill other human beings even though everything within them tells them it is wrong. But the same principle that means that is good human rights policy also means that states should not force someone to act in a way that violates their innermost convictions. To draw the line at conscientious objection from military service says that states shouldn’t force a citizen to take the life of another, but that otherwise, the states is the arbiter of morality and religious doctrine and anyone who deviates from the party line can be coerced out of their job, the right to raise their children in accordance with their beliefs and even their liberty. There must be a better way. And there is.

The European Court of Human Right’s recent decision in *Eweida* put an end to a line of cases which had held that where an employee could simply resign and find a new job, there was no need to accommodate their belief. That line of cases robbed fundamental convictions of conscience of their validity, and the holders of their humanity. In an approach to be commended, the Court said the choice of employment should be but one factor in evaluating how that belief could be accommodated. A similar test for the accommodation of beliefs in Canada requires ‘impossibility’ before dismissal could be appropriate.

Acting according to one’s religion in daily life is getting harder for Christians within the OSCE region. In order therefore to protect this fundamental right of conscience, **Alliance Defending Freedom strongly urges participating States to recognize not just the freedom to hold diverse and divergent beliefs – but the freedom to act in accordance with them.**