



ENGLISH only

TO: The Organization for Security and Co-operation in Europe: Meeting of October 1, 2010 (Warsaw), Working Session 2
FROM: Roger Kiska, Alliance Defense Fund
DATE: October 1, 2010

THE FUNDAMENTAL RIGHTS OF FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION AND THE RIGHT OF CONSCIENTIOUS OBJECTION

The Alliance Defense Fund (“ADF”) is an international legal organization dedicated to protecting human rights and religious freedom for people of faith in Europe, the United States and abroad. Attorneys for ADF have served as counsel in cases before the European Court of Human Rights, national courts and have provided expert testimony before the European Parliament and the Congress of the United States of America. The Alliance Defense Fund is accredited to the United Nations with Special Consultative Status, to the European Parliament, the Fundamental Rights Agency, and is a frequent participant with the Organization for Security and Co-operation in Europe.

ADF is greatly concerned by the increasing threat to religious freedoms and denial of the right to conscientious objection in many participating OSCE Member States. While the OSCE has promoted the right to conscientious objection with regard to compulsory military service, it is important in the name of equal treatment, that the rights of all people be respected with regard to being able to practice their profession while maintaining adherence to their sincerely held religious or moral beliefs.

The European Court of Human Rights has recognized freedom of thought, conscience and religion, as being one of the cornerstones of a democratic society.¹ The Court has held that freedom of thought, conscience and religion is one of the vital elements that go to make up the identity of people of faith and their conception of life.² Freedom of thought, conscience and religion has taken the position of a substantive right under the European Convention.³

This fundamental freedom is emptied of its value without freedom of expression. Respect for a plurality of beliefs and convictions are a basic obligation of the State. Individuals must be able to freely choose, and States must allow individuals to freely adopt, their religious, moral and

¹ ECHR, 25 May 1993, *Kokkinakis v. Greece*, Series A No. 260-A, § 31: AFDI, 1994, p. 658.

² ECHR, 20 September 1994, *Otto-Preminger-Institut v. Austria*, Series A, No. 295-A: JDI, 1995, p. 772.

³ *Kokkinakis op.cit.*, ECHR, 23 June 1993, *Hoffmann v. Austria*, Series A, No. 255-C: JDI, 1994, p. 788; *Otto-Preminger-Institut, op. cit.*; ECHR, 26 September 1996, *Manoussakis and Others v. Greece*, Reports 1996-IV: AFDI, 1996, p. 749.

philosophical convictions. One mode of expressing those beliefs is through conscientious objection.

While the recognition to the right to conscientious objection is important in many fields as diverse as counseling, the profession of being a registrar or to the provision of private professional services such as wedding photography, it are medical professionals who are being most aggressively targeted by opponents of freedom of conscience.

Requiring physicians or medical personnel to perform or participate in abortions against their conscience would have a severe and irreparable chilling effect on the medical community. In essence, the medical community would thereafter be closed to people solely on the basis of a well founded moral or religious conviction. Such a position does violence to the principles of democracy which have been so dearly won in most participating OSCE states over the centuries: these principles being tolerance, pluralism and broadmindedness.⁴

For example, in the cases of *Roe v. Wade*⁵ and *Doe v. Bolton*⁶, the majority opinion being written by US Supreme Court Justice Blackmun, abortion became a federally protected practice. However even Justice Blackmun wrote approvingly of protections for conscientious objection to abortion by medical staff as a right.⁷

In the name of the democratic values of tolerance and pluralism, reasonable accommodations for sincerely held religious or moral beliefs must be made. This is particularly pertinent to the issue of performance or assistance in abortion, where among the general population of medical professionals great controversy abounds. For example, according to the Guttmacher Institute, a research organization affiliated with Planned Parenthood, the number of hospitals in the United States offering abortions dropped from 1,654 in 1977 to 603 in 2000.⁸ This coincided with a roughly 50 percent drop in the number of surgical abortionists. As clearly established by these statistics, the abortion issue raises tremendous moral controversy among medical professionals. In light of such strong moral opposition to abortion among medical professionals, it would be wholly inappropriate to require medical staff to go against such strong held views.

In a January 2009 poll conducted by The Polling Company, Inc., WomenTrend, 88 percent of respondents said it is either very or somewhat important to them that they share a similar set of morals as their healthcare providers.⁹ To maintain patient confidence and satisfaction among women, institutional conscientious objection must be recognized as a right.

Furthermore, conscience rights do not threaten patient access, they protect patient access. Many patients want to be able to access doctors who practice with integrity by obeying their consciences, and who share the patients' same values about the right to life. Restrictions on

⁴ ECHR, 30 September 1976, *Handyside v. the United Kingdom*, Series A, No. 24, § 49 *et seq.*

⁵ *Roe v. Wade*, 410 U.S. 113 (1973).

⁶ *Doe v. Bolton*, 410 U.S. 179 (1973).

⁷ *Doe v. Bolton* at 198.

⁸ See: Finer LB and Henshaw SK, Abortion incidence and services in the United States in 2000, *Perspectives on Sexual and Reproductive Health*, 2003, 35(1):6–15.

⁹ See: http://www.freedom2care.org/docLib/200905011_Pollingsummaryhandout.pdf.

conscience rights would exclude all abortion opponents from the medical field by forcing them to assist or refer for abortion, and therefore would deny the right to medical access of patients who desire pro-life doctors. The Hippocratic Oath's directives against certain medical practices exist so as to give patients access to doctors who do not harm human life in their medical practice.

Recommendation: OSCE participating Member States must respect the right of individual and institutional conscientious objection as a cornerstone of freedom of thought, conscience and religion.