

CONSCIENTIOUS OBJECTION

As humanists we set high value on freedom of religion or belief. This is guaranteed unconditionally by the European Convention on Human Rights which protects both religious and non-religious beliefs, including Humanism. Such beliefs normally entail obligations affecting one's conduct, and the Convention also protects the freedom to act (or refrain from acting) in accordance with these obligations. Importantly, however, this protection is conditional: there is no fundamental right to conscientious objection.

We strongly value individual freedom to act in accordance with such conscientious obligations, which may be moral, religious or both. Restraints on individual liberty should in any case be minimised but if they involve forcing someone to defy the dictates of moral or religious convictions they are the more objectionable.

Obedience to one's convictions may sometimes require conduct that is contrary to social norms, which may affect the attitudes and behaviour of others towards one. More seriously, however, it may dictate conduct that either is against an existing law or for demands for it to be made unlawful. In such cases the question arises whether the law can be justified within the bounds of the European Convention on Human Rights and the extensive jurisprudence of the European Court of Human Rights: is the law

necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others ?

This test of necessity is a demanding one, making it clear that the presumption should be in favour of individual freedom to act in accordance with one's religion or belief. However, the Convention brings out an essential consideration: that there is potentially more than one party involved. Other individuals and indeed society as a whole have legitimate interests that need to be taken into account.

Specific provision in law to recognise individual objection - usually if not always appropriately called "conscientious objection"¹ - dates from the end of the nineteenth century when exemptions were allowed for objectors to vaccination. This provided the model during the first World War for dealing with objectors to military conscription. When in the second half of the twentieth century laws were passed decriminalising and regulating abortion, provision was often made for conscientious objection by doctors and nurses to participating in such procedures.

Conscientious objection to laws or public policies - typically, to taxation for military spending -

¹ Objections are sometimes purely religious rather than conscientious: for example, dietary rules or obligations of prayer or pilgrimage involve only a duty to God rather than a moral (conscientious) obligation.

has from time to time led to defiance by individuals prepared to suffer the legal penalties for breaking the law concerned. This can sometimes be seen as a method of raising public awareness rather than purely as a matter of private conscience, being allied therefore to the political tactic of civil disobedience - deliberate defiance of a sometimes unrelated law, as when demonstrators block a road and refuse to move.

In recent years claims for conscientious exemption from laws or duties have become much more frequent. They have usually been made by religious groups² and have been based on

- religious objections to procedures related to the start or end of life, for example: abortion, contraception, *in vitro* fertilisation, embryonic stem cell research, or euthanasia;
- religious views of some types of person, for example: women, lesbian or gay or bisexual people, transgender people, even disabled people;
- claims to a right to manifest religion in contexts or ways where it would not otherwise be permitted (usually in a context of employment and involving, for example, preaching, wearing religiously mandated clothing or accessories contrary to rules about uniforms or safety, or refusing to have contact with food or drink to which there is a religious objection).

Moreover, claims are made that institutions (such as hospitals) have a right to exercise a conscientious objection that applies to all their members or employees, whatever their individual views.

These claims give rise to complex legal, social and moral considerations. The European Humanist Federation, while (as stated above) fundamentally in favour of an approach based on freedom of conscience and of religion or belief, recognises that concessions to conscientious objection are not without a cost. There are significant countervailing considerations that need to be taken into account, among them the following:

- Only individuals have consciences and can entertain conscientious objection. Hence claims of conscientious objection can be made only by individuals, not by institutions. Moreover, institutional pressure on employees and others to claim a conscientious objection they do not spontaneously feel is totally unacceptable.
- Any exemption from laws on equality and non-discrimination imposes a price on the people who as a result are not treated equally and suffer discrimination. It is not self-evident that religious claims should supervene over the rights of other people. If, for example, a religious claim of conscientious exemption from laws against discrimination on grounds of sexuality is to be allowed, why not one to allow discrimination on grounds of race or disability?

² Similar claims have sometimes been made by animal rights campaigners.

- Accommodating conscientious objections should not result in disproportionate impositions on others. For example, it may not be acceptable at work for some onerous or unpleasant duty to be left entirely to those not holding the relevant religious belief. Nor in the general community should the rule of law or social cohesion be put at risk by conscientious objection resulting in unfair favours to one group over another.
- Considerations of the general good are legitimate. If (for example) it is public policy that services such as *in vitro* fertilisation, abortion or assisted dying should be provided, then it may be legitimate to allow a right of conscientious objection to taking part - but if the scale of exercise of conscientious objection is so great as to undermine the policy then some limitation of the right may also be legitimate so as to ensure that the service is reliably supplied. This is especially true when there are organised religious campaigns to maximise the claim of conscientious objection so as to achieve a *de facto* frustration of the policy.
- Conscientious objection is more supportable to a proximate action and not to some remoter or associated involvement - for example, to performing an abortion by comparison to dealing with related paperwork.
- There is no need for conscientious objection to be cost-free for the objector. In wartime, conscientious objectors do not continue their ordinary lives but are assigned to alternative war work - and if they are unwilling to do that, they go to jail. Corresponding alternative obligations may legitimately be imposed on those exercising a conscientious objection so long as they are proportionate and not punitive.

The European Humanist Federation therefore rejects simplistic assertions of an absolute right to conscientious objection and supports such restrictions as are necessary and justifiable under the European Convention on Human Rights. Further, we recommend that governments and the courts take account of the considerations set out above in framing their approach to the difficult questions that inevitably arise.

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