

# **CONSCIENTIOUS OBJECTION AND REPRODUCTIVE RIGHTS**

International Human Rights Standards

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### Human Rights Standards on the Right to Conscientious Objection in Reproductive Health Care

The right to conscientiously object to providing health services means that health care professionals may legitimately be able to refuse to provide certain services because they are contrary to their personal convictions.<sup>1</sup> However, given that a refusal could potentially restrict or deny women's enjoyment of their human rights, the exercise of the right to conscientious objection is subject to certain limitations.

This toolkit explores international and regional human rights standards regarding conscientious objection and identifies which of those standards are applicable to conscientious objection in the health care context. It seeks to shed light on states' duty to strike a balance between the obligation to guarantee the expression of the right to freedom of conscience and the obligation to guarantee women's rights to personal integrity, life, health, and autonomy, among others. This toolkit examines the standards developed within three human rights systems: the universal system, the Inter-American system, and the European system.

The information in each fact sheet is divided into three sections. The first section looks at provisions relating to the right to freedom of conscience; the second explores standards on conscientious objection to military service; and the third examines standards that apply to conscientious objection to reproductive health services.

The different fact sheets include the standards on conscientious objection to military service because, in many cases, this is the only area in which the right to conscientious objection has been developed. Nevertheless, these standards are useful for understanding conscientious objection in the area of reproductive health care. However, the circumstances in which the objections apply significantly differ, and thus the right's scope and limits are different in each of the two cases.

### Conscientious Objection to Military Service and Reproductive Health Services

The standards established for conscientious objection to obligatory military service cannot be applied to conscientious objection to the provision of health services—particularly reproductive health services—since the activities affected are fundamentally different.

One of the defining characteristics of conscientious objection to military service is that military service is obligatory—in principle, males of a certain age are required by law to serve. Many times, a country's constitution makes the service obligatory. In contrast, conscientious objection in the area of reproductive health does not implicate an obligatory service. No one providing health care services is required by law to become a gynecologist or obstetrician.

Another important difference relates to impact. The exercise of conscientious objection in the area of military service does not have the same impact that it does in the provision of health services. In the area of health care, expressing personal convictions by conscientiously objecting to providing health services, including reproductive health services, directly affects the rights of others. In these cases, a provider's conscientious objection affects a particular individual, whose rights to personal integrity, autonomy, health, and sometimes life depend on the timely provision of a particular service.

All of the human rights instruments analyzed in this toolkit indicate that the right to freedom of conscience cannot be restricted. Nevertheless, *expression* of the right can indeed be limited. The limits to expressing one's own religion and conscience should be determined in accordance with the negative effects that such expression could have on the protection of other individuals' health, rights and freedoms.<sup>2</sup>

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<sup>1</sup> Inter-American Commission on Human Rights, Rep. on Access to Information on Reproductive Health from a Human Rights Perspective, (Nov. 22, 2011), OEA/Ser.L/V/II. doc. 61, para. 95, available at <http://www.cidh.oas.org/pdf%20files/womenaccessinformationreproductivehealth.pdf>.

<sup>2</sup> American Convention on Human Rights, *adopted* Nov. 22, 1969, art. 12(3), O.A.S.T.S No. 36, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (*entered into force* July 18, 1978); International Covenant on Civil and Political Rights, *adopted* Dec. 1, 1966, art. 18(3), G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, UN Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976); Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 9(2), G.A. Res 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* September 2, 1990).

# CONSCIENTIOUS OBJECTION IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

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## American Convention on Human Rights<sup>1</sup>

### Article 6: Freedom from Slavery

2. No one shall be required to perform forced or compulsory labor. . . .

3. For the purposes of this article, the following do not constitute forced or compulsory labor:

. . . b. military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;

### Article 12: Freedom of Conscience and Religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

### Article 27: Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: . . . Article 6 (Freedom from Slavery); . . . Article 12 (Freedom of Conscience and Religion) . . . or of the judicial guarantees essential for the protection of such rights.

## Inter-American Human Rights System

The Inter-American human rights system is a regional system for promoting and protecting human rights. It is comprised of the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (Inter-American Court). These bodies monitor compliance with the human rights obligations of member states of the Organization of American States (OAS).<sup>2</sup> The human rights treaties adopted by member states include the American Convention on Human Rights (American Convention); the Inter-American Convention to Prevent and Punish Torture; the Inter-American Convention on Forced Disappearance of Persons; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), among others.<sup>3</sup>

The IACHR fulfills its role of promoting and protecting human rights in the region in a number of ways. It makes country visits and issues reports on particular subjects or a particular country's human rights situation.<sup>4</sup> It also has a quasi-judicial function: it processes and analyzes individual petitions concerning human rights violations, issues the recommendations it considers necessary to states, and has the ability to refer these cases to the Inter-American Court when the parties are unable to reach a friendly settlement.<sup>5</sup> Finally, it has the authority to intervene in urgent cases where the adoption of precautionary measures is required.

For its part, the Inter-American Court interprets and applies the American Convention and the other human rights instruments adopted by member states. The Inter-American Court carries out its functions by deciding cases brought before it by the IACHR or by state parties to the American Convention,<sup>6</sup> intervening in urgent cases by issuing provisional measures, and issuing guidance through advisory opinions. In its judgments, the Inter-American Court determines whether the state is responsible for the violation of the human rights enshrined in the system's instruments.<sup>7</sup>

### Right to Freedom of Conscience

The American Convention recognizes the right of all persons to freedom of conscience and religion, which includes the right to preserve, change, profess, and divulge one's religion or beliefs. Thus far, this right has not been the subject of many pronouncements from either the IACHR or the Inter-American Court. The IACHR has ruled on freedom of conscience and religion in the context of human rights abuses against individuals participating in religious activities.<sup>8</sup> The Inter-American Court has ruled on freedom of conscience in connection with the censorship of a movie exhibition.<sup>9</sup>

An analysis of the text of the American Convention and the limited Inter-American Court and IACHR jurisprudence allows for the following interpretation of freedom of conscience and religion in the Inter-American system:

1. The right to freedom of conscience and religion allows individuals to preserve, change, profess, and divulge their religion or beliefs.<sup>10</sup> This right is foundational for a democratic society, and in its religious dimension, it represents a critical element for protecting believers' convictions and their ways of life.<sup>11</sup>
2. The right to freedom of conscience and religion cannot be suspended.<sup>12</sup> However, the freedom to express one's religion or beliefs can be limited. These limitations must be prescribed by law and be necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.<sup>13</sup>
3. The right to freedom of conscience and religion can be violated by, for example, denial of entry into one's country of origin; arbitrary detention and expedited deportation from a country; violation of the right to due process; and surveillance, threats, kidnapping, or torture at the hands of state agents designed to punish or stop the religious activities of persons.<sup>14</sup>
4. Banning the public exhibition of a work of art with religious content does not constitute a violation of the right to freedom of conscience since it does not deprive or endanger any individual's right to preserve, change, profess, or divulge a religion or beliefs.<sup>15</sup>

## Conscientious Objection to Military Service

The American Convention does not explicitly establish that the right to conscientious objection to obligatory military service derives solely from the right to freedom of conscience (article 12 of the American Convention). Rather, the right to conscientious objection is derived from article 12 in conjunction with article 6(3)(b) of the American Convention, which establishes that, in countries where conscientious objection is permitted, the alternative service provided for under domestic law does not constitute forced or obligatory labor. In other words, the right to freedom of conscience protects conscientious objection to military service only in cases where domestic legislation allows it.

In the Inter-American system, only the IACHR has issued commentary regarding the scope of the right to conscientious objection to military service.<sup>16</sup> In the 2005 case *Cristián Daniel Sahli Vera et al. v. Chile*, the IACHR found that “the American Convention does not establish—nor even mention—the right to ‘conscientious objection,’ the asserted right to not be required to follow the law for reasons of conscience.”<sup>17</sup> In its decision, the IACHR found that the right to conscientious objection to military service is recognized only in cases where conscientious objection is explicitly provided for under domestic law, and that the right could be derived from the right to protection of honor and dignity (article 11 of the American Convention) and the right to freedom of conscience and religion (article 12 of the American Convention), interpreted jointly with the article prohibiting slavery and servitude (article 6(3)(b) of the American Convention). This latter article establishes that neither military service nor alternative service constitutes forced or obligatory labor.<sup>18</sup>

The text of the American Convention and case law of the IACHR allow for the following interpretation of the right to conscientious objection to obligatory military service in the Inter-American system:

1. The American Convention does not prohibit obligatory military service, and there is no freestanding right to conscientious objection to military service.<sup>19</sup>
2. Obligatory military service is not considered to be forced or obligatory labor. Nor is the alternative service considered to be forced or obligatory labor in countries that recognize the right to conscientious objection.<sup>20</sup>
3. The American Convention recognizes the right to conscientious objection to obligatory military service in countries where such objections are recognized under domestic law. This is based on the interpretation of article 12 on freedom of conscience and religion in conjunction with article 6(3)(b) on the prohibition of forced labor.<sup>21</sup>
4. The American Convention recognizes that a state’s failure to recognize conscientious objection in its domestic law does not constitute an interference with citizens’ right to freedom of conscience.<sup>22</sup>

In its decision in the 2005 case *Cristián Daniel Sahli Vera et al. v. Chile*, the IACHR decided on the right to conscientious objection in military service, and based its arguments on the case law of the European human rights system and the United Nations Human Rights Committee (HRC). The IACHR indicated that this case law recognizes the status of conscientious objectors to military service only in cases where such status is provided for in domestic legislation.<sup>23</sup>

The adoption of these standards conflicts with General Comment 22 of the HRC from 1993, cited in *Sahli Vera*,<sup>24</sup> which recognizes that the right to conscientious objection to military service “can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief.”<sup>25</sup> Further, the HRC has confirmed in subsequent cases that the right to conscientious objection to military service derives from the right to freedom of conscience.<sup>26</sup>

For its part, since 2011, the European Court of Human Rights<sup>27</sup> has not found that the recognition of conscientious objection in domestic legislation is essential for recognizing the right to conscientious objection in cases of profound conflict between an obligation to fulfill military service requirements and personal convictions and beliefs. It is possible that the human rights bodies of the Inter-American system, were they to rule on a similar case today, would incorporate these more recent interpretations of the right to conscientious objection to military service. However, neither the IACHR nor the Inter-American Court has mentioned the issue since 2005, making it impossible to determine whether they would indeed share this perspective.

### Conscientious Objection to the Provision of Sexual and Reproductive Health Services

The standards established by the IACHR with regard to conscientious objection to military service are not applicable to conscientious objection in the area of health care or other areas. As indicated in the previous section, the jurisprudence that has been developed on the right to conscientious objection in the military sphere is not based exclusively on article 12 of the American Convention (freedom of conscience and religion) but on the specific standards of article 6(3)(b), which address domestic law on obligatory military service.

The right to conscientiously object to providing health services means that health care professionals are allowed to refuse to provide certain health services because such services contradict their personal convictions.<sup>28</sup> The IACHR has not had an opportunity to rule on this issue in the health care sphere in general or with respect to sexual and reproductive health services in particular. The Inter-American Court tangentially addressed the issue in *Artavia Murillo v. Costa Rica* when it examined whether Costa Rica, by banning in vitro fertilization on the grounds that it was a violation of the right to life from conception, was violating the right to integrity of couples who wished to have biological children. In its decision, the Inter-American Court found that “States are responsible for regulating and supervising the rendering of health services, so that the rights to life and humane treatment may be effectively protected”<sup>29</sup> and that “the lack of legal safeguards for taking into consideration reproductive health could seriously endanger the right to autonomy and reproductive freedom.”<sup>30</sup> This ruling is applicable to cases of conscientious objection in the area of sexual and reproductive health services. It establishes a precedent for states to regulate the provision of health services in cases where a woman’s life or personal integrity are in danger. In this way, states must guarantee that women receive the health services they need when their lives and health are threatened, including in cases where providers’ exercise of conscientious objection would be a barrier to women’s access to health services.

Although, as mentioned above, the Inter-American system has yet to decide on a case regarding health care providers’ right to conscientiously object to the provision of reproductive health services, in a report entitled *Access to Information on Reproductive Health from a Human Rights Perspective*, the IACHR does recognize the right of medical professionals to conscientiously object.<sup>31</sup> However, it indicates that “this freedom could come into conflict with patients’ freedoms. Consequently, the balance between the rights of healthcare professionals and the rights of patients is maintained through referrals.”<sup>32</sup>

In its report, the IACHR highlights case law from the European Court of Human Rights establishing that conscientious objection is not a justification for refusing to sell birth control in pharmacies<sup>33</sup> and requiring states to organize their health care systems so that they simultaneously ensure health care professionals’ exercise of freedom of conscience and guarantee patients’ access to the services to which they are legally entitled.<sup>34</sup>

In its report, the IACHR incorporates domestic standards on conscientious objection to the provision of health services, thereby legitimizing them as human rights standards relevant throughout the region. The report highlights a 2008

decision of the Constitutional Court of Colombia that established a number of standards on the right to conscientious objection.<sup>35</sup> These standards provide criteria for ensuring that the exercise of the right to conscientious objection does not constitute a mechanism for discriminating against women and violating their fundamental rights. The Constitutional Court's ruling established the following limits on the right to conscientious objection:

1. *“Conscientious objection is not a right held by legal entities or by the state; it can only be recognized for natural persons;*
2. *When a doctor raises a conscientious objection, he or she must refer the woman to another doctor who can provide the medical service requested, notwithstanding any later determination made via the mechanisms established by the medical profession as to whether the conscientious objection was admissible and pertinent.*
3. *Conscientious objection is an individual decision, not a collective or institutional one.*
4. *Conscientious objection applies only to direct providers and not to administrative personnel.*
5. *Conscientious objection is permissible when what is at issue is truly a duly grounded conviction of a religious nature. It must be presented in writing, with the physician invoking it having the obligation to immediately refer the woman to a doctor who can provide the necessary reproductive health service. This will prevent the denial of service from becoming a barrier to access to the provision of reproductive health services.”<sup>36</sup>*

Although the human rights bodies of the Inter-American system have not yet issued any rulings on conscientious objection in the specific area of reproductive health services, an interpretation of the Inter-American Court's *Artavia Murillo v. Costa Rica* decision and of the arguments made in the IACHR's report suggests the following conclusions regarding conscientious objection in the area of reproductive health care:

1. The right to conscientiously object to health services is derived from the right to freedom of conscience.<sup>37</sup> It is not an absolute right in the sense that it may not constitute an obstacle to access to sexual and reproductive health services.<sup>38</sup>
2. Conscientious objection is a right that can be held only by natural persons; it may not be held by legal entities or the state.<sup>39</sup>
3. Conscientious objection is an individual decision, not a collective or institutional one. It must be based on a duly grounded conviction and must be presented in writing.<sup>40</sup>
4. Conscientious objection applies only to direct providers and not to administrative personnel.<sup>41</sup>
5. A doctor who asserts conscientious objection has an obligation to immediately refer the patient to a doctor who can provide the requested medical service.<sup>42</sup>
6. States are responsible for regulating and supervising the provision of health services to ensure the effective protection of the rights to life and humane treatment.<sup>43</sup> Therefore, they are responsible for regulating access to sexual and reproductive health services in such a way that conscientious objections do not violate women's rights to life or to humane treatment.

In the Inter-American system, the status of conscientious objection in the area of reproductive health is uncertain due to the absence of binding decisions. However, as explored in this fact sheet, there are indications that the IACHR has acknowledged the complexity of the issue and the impact that conscientious objection can have on women's health and reproductive rights.

In its report, the IACHR's incorporation of the progressive domestic standards regarding the right to conscientious objection suggests a promising interaction between domestic and regional human rights law. This enhances the regional standards as a whole with regard to women's full enjoyment of their human rights.

- <sup>1</sup> American Convention on Human Rights, *adopted* Nov. 22, 1969, art. 12(3), O.A.S.T.S No. 36, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (*entered into force* July 18, 1978) [hereinafter American Convention].
- <sup>2</sup> INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), PETITION AND CASE SYSTEM, INFORMATIONAL BROCHURE (2010), available at <http://www.oas.org/en/iachr/docs/pdf/HowTo.pdf> [hereinafter IACHR, PETITION AND CASE SYSTEM].
- <sup>3</sup> *Information about the System, Complaints and Questions*, Inter-American Court of Human Rights (accessed on July 20, 2013) [hereinafter *Information about the System, Complaints and Questions*, INTER-AMERICAN COURT OF HUMAN RIGHTS].
- <sup>4</sup> IACHR, PETITION AND CASE SYSTEM, *supra* note 2, at 4.
- <sup>5</sup> *Id.*; *Information about the System, Complaints and Questions*, Inter-American Court of Human Rights, *supra* note 3.
- <sup>6</sup> IACHR, PETITION AND CASE SYSTEM, *supra* note 2, at 6.
- <sup>7</sup> *Information about the System, Complaints and Questions*, INTER-AMERICAN COURT OF HUMAN RIGHTS, *supra* note 3.
- <sup>8</sup> Juan Gerardi v. Guatemala, Case 7778, IACHR, Resolution No. 18/82, OEA/Ser.L/V/II.57, doc. 6 rev. 1, 1982); Dianna Ortiz v. Guatemala, Case 10526, Inter-Am. Comm'n. H.R., Report No. 31/96, OEA/Ser.L/V/II.95, doc. 7 rev., at 332 (1997); Loren Laroye Riebe Star, Jorge Alberto Barón Guttlein and Rodolfo Izal Elorz v. Mexico, Case 11610, Inter-Am. Comm'n. H.R., Report No. 49/99, OEA/Ser.L/V/II.95, doc. 7 rev., at 724 (1998). With regard to the first case, Bishop Juan Gerardi, a native of Guatemala, traveled to Rome, where he participated in the Synod of the Roman Catholic Church and presented a personal report to Pope John Paul II on the situation of the Catholic Church in Guatemala. When he returned, he was denied entry to the country. The IACHR found that the government of Guatemala had violated articles 22 (right to freedom of movement and residence), 12 (freedom of conscience and religion), and 13 (freedom of thought and expression) of the American Convention when it refused to allow Gerardi to reenter the country. In the second case, Dianna Ortiz, a United States (US) citizen and a Catholic nun, was working with rural indigenous populations. Ortiz was subjected to surveillance and threats. She was then kidnapped, tortured, and raped by agents of the Guatemalan government. The IACHR found that the abuses the petitioner was subjected to violated article 5 (right to humane treatment) of the American Convention and the Inter-American Convention to Prevent and Punish Torture, as well as articles 1 (obligation to respect rights), 7 (right to personal liberty), 11 (protection of honor and dignity), 12 and 16 (freedom of conscience and religion and freedom of association), and 8 and 25 (rights to a fair trial and to judicial protection) of the American Convention. In the third case, priests Loren Laroye Riebe Star, Jorge Alberto Barón Guttlein, and Rodolfo Izal Elorz, of US, Argentine, and Spanish nationalities, respectively, belonged to the Archdiocese of San Cristóbal de las Casas, in Chiapas, Mexico. They were arrested by unidentified police authorities, without arrest warrants, and were taken to police headquarters. They were then taken to the Mexico City airport and interrogated by Mexican immigration authorities. They were deported from the country for performing activities not allowed under their migratory status, such as allegedly proselytizing on behalf of organizations that perform illicit acts, such as inciting peasants and indigenous people to carry out actions against the government and private parties. The IACHR found that Mexico had violated articles 5 (right to humane treatment), 7 (right to personal liberty), 8 and 25 (rights to a fair trial and to judicial protection), 11 (right to protection of honor and dignity), 12 and 16 (freedom of conscience and religion and freedom of association), and 22 (right to freedom of movement and residence) of the American Convention.
- <sup>9</sup> "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile, Merits, Reparations and Costs, Judgment, Inter-Am Ct. (ser. C) No. 73 (Feb. 5, 2001). The Chilean government censored the showing of the movie *The Last Temptation of Christ* by Martin Scorsese. The Inter-American Court found that the state's actions did not violate the right to freedom of conscience and religion, because prohibiting the showing of the movie did not deprive or endanger any individuals of their right to maintain, change, profess, or divulge, with total freedom, their religion or beliefs. On the other hand, the state did violate the right to freedom of thought and expression.
- <sup>10</sup> *Id.*, para. 79.
- <sup>11</sup> *Id.*
- <sup>12</sup> American Convention, *supra* note 1, art. 27(2).
- <sup>13</sup> *Id.*, art. 12(3).
- <sup>14</sup> Juan Gerardi v. Guatemala, Case 7778, IACHR, Resolution No. 18/82, OEA/Ser.L/V/II.57, doc. 6 rev. 1, para. 2 of Resolves (1982); Dianna Ortiz v. Guatemala, Case 10526, Inter-Am. Comm'n. H.R., Report No. 31/96, OEA/Ser.L/V/II.95, doc. 7 rev., at 332 (1997); Loren Laroye Riebe Star, Jorge Alberto Barón Guttlein and Rodolfo Izal Elorz v. Mexico, Case 11610, Inter-Am. Comm'n. H.R., Report No. 49/99, OEA/Ser.L/V/II.95, doc. 7 rev., at 724 (1998).
- <sup>15</sup> Cristián Daniel Sahlí Vera et al. v. Chile, Case 12219, Inter-Am. Comm'n. H.R., Report No. 43/05, OEA/Ser.L/V/II.124 doc. 5 (2005); Alfredo Díaz Bustos v. Bolivia, Case 14/04, Inter-Am. Comm'n. H.R., Report No. 97/05, OEA/Ser.L/V/II.124 doc. 7 (2005); Xavier Alejandro León Vega v. Ecuador, Case 278-02, Inter-Am. Comm'n. H.R., Report No. 22/06, OEA/Ser.L/V/II.124 doc. 5, para. 31 (2006). With regard to the first case, the legislation in force in Chile at the time of the petition established that all men are required to perform obligatory military service upon turning 18. The petitioners filed individual requests with a state office expressing their conscientious objections to performing the obligatory military service. The IACHR affirmed that the fact that the Chilean state did not allow for conscientious objection does not violate the right to freedom of conscience or the right to privacy and private life of the petitioners. With regard to the second case, Bolivia's national defense service law establishes the possibility of exemption from military service for certain Catholics, such as clerics, seminarians, monks, nuns, and novices; this exemption does not apply to those of other religious convictions. Alfredo Díaz Bustos argued that he was not simply another member of the Jehovah's Witness congregation but a ministerial servant. He asserted that the only difference between him and Catholic theology students is the religion practiced. The petitioner reached a friendly settlement with the Bolivian state under which the Bolivian state committed, among other things, to including the right to conscientious objection to military service in a draft amendment to the military law and to pushing for Congress to pass that legislation. Finally, with regard to the third case, the Ecuadorian Constitution allows for conscientious objection to obligatory military service and requires objectors to perform civil service assigned by the state. The petitioner alleged that the obligatory military service law of the armed forces from 1994, violates the Constitution. The petitioner stated that he made a declaration of conscientious objection and then performed the civil community service at a human rights organization. Although he fulfilled the established requirements, the state did not grant him a conscientious-objector identification document or its equivalent, an omission that directly affected his freedom of conscience, the continuation of his education, his freedom to enter and leave the country's territory at will, and his right to work and freely enter into contracts. This petition was declared admissible by the IACHR in 2006 and currently awaits a decision.

- <sup>16</sup> “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 73, paras. 77, 79-80 (Feb. 5, 2001).
- <sup>17</sup> Cristián Daniel Sahli Vera et al. v. Chile, Case 12219, Inter-Am. Comm’n. H.R., Report No. 43/05, OEA/Ser.L/V/II.124 doc. 5, para. 37 (2005).
- <sup>18</sup> Xavier Alejandro León Vega v. Ecuador, Case 278-02, Inter-Am. Comm’n. H.R., Report No. 22/06, OEA/Ser.L/V/II.124 doc. 5, para. 31 (2006).
- <sup>19</sup> Cristián Daniel Sahli Vera et al. v. Chile, Case 12219, Inter-Am. Comm’n. H.R., Report No. 43/05, OEA/Ser.L/V/II.124 doc. 5, para. 100 (2005).
- <sup>20</sup> American Convention, *supra* note 1, art. 27(2).
- <sup>21</sup> Cristián Daniel Sahli Vera et al. v. Chile, Case 12219, Inter-Am. Comm’n. H.R., Report No. 43/05, OEA/Ser.L/V/II.124 doc. 5, paras. 85-86 (2005).
- <sup>22</sup> *Id.*, para. 100.
- <sup>23</sup> *Id.*, para. 38.
- <sup>24</sup> *Id.*, paras. 38-39.
- <sup>25</sup> Human Rights Committee, *General Comment No. 22: Freedom of thought, conscience or religion* (Article 18), (48th Ses., 1993), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 245, para. 11, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008) [hereinafter Human Rights Committee, *Gen. Comment No. 22*].
- <sup>26</sup> Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea, Communication Nos. 1321/2004 and 1322/2004, U.N. Doc. CCPR/C/88/D/1321-1322/2004 (2007); Eu-min Jung et al. v. The Republic of Korea, Communications Nos. 1593 to 1603/2007, U.N. Doc. CCPR/C/98/D/1593-1603/2007 (2010); among others.
- <sup>27</sup> In 2011, the European Court of Human Rights found in the case of Bayatyan v. Armenia that the right to freedom of conscience recognized in article 9 of the European Convention on Human Rights guarantees the right to conscientious objection to military service when it is based on a serious and insurmountable conflict between the obligation to serve in the military and an individual’s conscience or deep and profound beliefs. Bayatyan v. Armenia, No. 23459/03, Eur. Ct. H.R., para. 110 (2011).
- <sup>28</sup> Inter-Am. Comm’n. H.R. , *Access to Information on Reproductive Health from a Human Rights Perspective*, para. 95, OEA/Ser.L/V/II., doc. 61 (Nov. 22, 2011), available at <http://www.cidh.oas.org/pdf%20files/womenaccessinformationreproductivehealth.pdf>.
- <sup>29</sup> Artavia Murillo et al. v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 257, para. 148 (Nov. 28, 2012). Gretel Artavia Murillo and other petitioners argued that Costa Rica’s ban on in vitro fertilization represented arbitrary interference in the right to private and family life and the right to have a family, since the state was preventing access to a treatment that would have allowed people to overcome their disability of not being able to have biological children, and that this impediment affected women disproportionately. The Court found that the country’s ban on practicing in vitro fertilization violated articles 5(1) (right to physical, psychological, and moral integrity), 7 (right to personal liberty), 11(2) (right to private and family life), and 17(2) (right to marry and start a family) in connection with article 1(1) (obligation to respect rights) of the American Convention.
- <sup>30</sup> *Id.*, para. 147.
- <sup>31</sup> IACHR, *Access to Information on Reproductive Health*, *supra* note 28, para. 93.
- <sup>32</sup> *Id.*, para. 95. “[I]f a woman needs family planning information and services and/or other lawful reproductive health services, and the health professional has his or her own convictions with respect to the utilization of such services, the professional has the obligation to refer the patient to another health provider who can provide the information and services in question. This is in order not to create barriers in access to services.”
- <sup>33</sup> Pichon and Sajous v. France, No. 49853/99, Eur. Ct. H.R., (2001) cited in IACHR, *Access to Information on Reproductive Health*, *supra* note 28, para. 96.
- <sup>34</sup> R.R. v. Poland, No. 27617/04, Eur. Ct. H.R. (2011) cited in IACHR, *Access to Information on Reproductive Health*, *supra* note 28, para. 96.
- <sup>35</sup> Constitutional Court, February 28, 2008, Judgment T209/08, Gaceta de la Corte Constitucional [G.C.C.], cited in IACHR, *Access to Information on Reproductive Health*, *supra* note 28, para. 97.
- <sup>36</sup> *Id.*
- <sup>37</sup> IACHR, *Access to Information on Reproductive Health*, *supra* note 28, para. 93.
- <sup>38</sup> Constitutional Court, February 28, 2008, Judgment T209/08, Gaceta de la Corte Constitucional [G.C.C.], cited in IACHR, *Access to Information on Reproductive Health*, *supra* note 28, para. 97.
- <sup>39</sup> *Id.*
- <sup>40</sup> *Id.*
- <sup>41</sup> *Id.*
- <sup>42</sup> *Id.*
- <sup>43</sup> Artavia Murillo et al. v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-American Court (ser. C) No. 257, para. 148 (Nov. 28, 2012).

# CONSCIENTIOUS OBJECTION IN THE UNIVERSAL HUMAN RIGHTS SYSTEM

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## International Covenant on Civil and Political Rights

### Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

### Article 8(3)

(a) No one shall be required to perform forced or compulsory labour;

...

(c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include: . . .

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors; . . .

### Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

## Universal Human Rights System

The United Nations (UN) system of treaty monitoring was created to ensure that states comply with the obligations derived from the treaties that they have ratified.<sup>1</sup> Each of the seven main international human rights treaties is monitored by a committee whose principal mandate is to monitor states' progress in implementing the treaty. This oversight is carried out largely through the “country reporting process,” whereby states must report periodically on their efforts to respect, protect, and fulfill the human rights enshrined in the treaties to which they are a party. The committees, following a process of dialogue with

government representatives, then issue concluding observations to each state. Each year, these concluding observations are compiled in a report and sent to the UN General Assembly.

In addition to concluding observations, the committees have the authority to issue “general comments” or “general recommendations.” These documents elaborate on particular provisions contained within the treaties, with the aim of providing guidance to states with respect to their implementation.<sup>2</sup> Some committees are also authorized to receive individual complaints regarding violations of the obligations set forth in the treaties they monitor, in which case they issue written decisions.<sup>3</sup>

### Right to Freedom of Conscience

In its General Comment 22,<sup>4</sup> the UN Human Rights Committee (HRC), which oversees states’ compliance with the International Covenant on Civil and Political Rights (ICCPR), interpreted the right to freedom of thought, conscience, and religion as established in article 18 of the ICCPR. According to General Comment 22, article 18 distinguishes between freedom of thought, conscience, religion, and belief, on the one hand, and the freedom to express one’s own religion or beliefs, on the other.<sup>5</sup> While no limits can be placed on the former,<sup>6</sup> the freedom to express one’s religion or beliefs may be subject to restrictions. Any limitations on the freedom to express one’s religion or beliefs must be established by law and must be necessary for the protection of public safety, order, health, or morals, or the fundamental rights and freedoms of others.<sup>7</sup>

Regarding freedom of conscience and limits on expressing one’s religion or beliefs, in the case of *Yoon et al. v. Korea*,<sup>8</sup> in analyzing article 18 of the ICCPR, the HRC found that “while the right to manifest one’s religion or belief does not as such imply the right to refuse all obligations imposed by law, it provides certain protection, consistent with article 18, paragraph 3.”<sup>9</sup> The HRC also found that the state’s respect for a person’s beliefs or expressions of conscience is an important factor for ensuring cohesive and stable pluralism in a society.<sup>10</sup>

The ICCPR’s text and the HRC’s limited case law allow for the following interpretation of freedom of conscience and religion in the universal human rights system:

1. The right to freedom of thought, conscience, and religion includes the right of individuals to have or to adopt the religion or beliefs of their choosing and the freedom to express their religion or beliefs.<sup>11</sup>
2. The right to freedom of thought, conscience, and religion cannot be limited in any way.<sup>12</sup>
3. Individuals may refuse certain obligations by invoking the right to express their religion or beliefs.<sup>13</sup> However, the right to express one’s religion or beliefs can be limited. Limits on this right must be established by law and must be necessary for protecting public safety, order, health, or morals or the fundamental rights and freedoms of others.<sup>14</sup>

### Conscientious Objection to Military Service

The interpretation of the right to conscientious objection to military service has evolved over time. The interpretations of the Commission on Human Rights and then the HRC had originally been divergent but in recent years they have evolved towards a more coherent and consistent interpretation.

Conscientious objection to military service was the subject of a number of resolutions of the UN Commission on Human Rights,<sup>15</sup> the body that predated the Human Rights Council and that was the UN's primary entity for addressing issues related to human rights.<sup>16</sup> In its Resolution 1989/59, the Commission stated:

*Recognizing that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious . . . or similar motives . . . [the Commission] [d]raws attention to the right of everyone to have conscientious objections to military service as a legitimate exercise of the right of freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights . . . .*<sup>17</sup>

However, in 1990, in an interpretation of article 18 of the ICCPR concerning an individual case on conscientious objection to military service,<sup>18</sup> the HRC concluded that the article does not guarantee the right to conscientious objection to obligatory military service.<sup>19</sup> Then, in 1993, marking a turning point from its previous interpretation, the HRC issued General Comment 22, mentioned above, which comes closer to the understanding of conscientious objection to military service as outlined in the Commission on Human Rights' 1989 Resolution. In General Comment 22, the HRC maintains that although the ICCPR does not explicitly refer to the right to conscientious objection to military service, it is indeed a right that can be derived from the articles protecting freedom of conscience.<sup>20</sup>

The HRC reiterated the interpretation adopted in General Comment 22 in its decisions in *J.P. v. Canada*,<sup>21</sup> *Yoon et al. v. Korea*,<sup>22</sup> and *Eu-min Jung et al. v. Korea*,<sup>23</sup> among others. In these cases, the HRC established that the right to conscientious objection to obligatory military service is derived from the right to freedom of thought, conscience, and religion as protected under article 18(1) of the ICCPR.

### *Differentiated treatment*

In its decisions and concluding observations, the HRC has demonstrated its position regarding differentiated treatment for objectors who are part of certain religious groups. In 1990, the HRC decided *Brinkhof v. The Netherlands*,<sup>24</sup> in which the petitioner argued that his country's laws were discriminatory because they exempted Jehovah's Witnesses from obligatory military service and alternative service while denying this exemption to other conscientious objectors. The petitioner—a pacifist who objected to both services but who was not a Jehovah's Witness—was arrested and sentenced to six months in prison.<sup>25</sup> The HRC found that extending an exemption to one group of conscientious objectors while withholding it from others was not reasonable,<sup>26</sup> and called on the state to revise its regulations and practices in order to provide equal treatment to all individuals who strongly object to both services.<sup>27</sup> At the same time, the Committee found that in this case, the petitioner had not demonstrated that his convictions as a pacifist were incompatible with the alternative service system or that the privileged treatment provided to Jehovah's Witnesses had adversely affected his rights as a conscientious objector to military service. Therefore, the HRC found that the petitioner had not been the victim of a violation of article 26 (equal protection and nondiscrimination) of the ICCPR.<sup>28</sup>

Similarly, in its concluding observations to Finland in 2004, the HRC reiterated its concern over exemptions granted to Jehovah's Witnesses but not to other groups of conscientious objectors.<sup>29</sup> In both the *Brinkhof* decision and its concluding observations to Finland, the HRC established states' obligation to recognize the right to conscientious objection under equal conditions. Likewise, it determined that this recognition must not draw distinctions between or grant preferential treatment to objectors based on their membership in certain religious groups. It is not clear from the *Brinkhof* decision why the HRC, although it rejected the drawing of distinctions between objectors, did not find a violation of the ICCPR regarding the preferential treatment enjoyed by Jehovah's Witnesses in the Netherlands.

## Alternative service

In the event that states decide to require alternative service for conscientious objectors, the case of *Jeoung et al. v. Korea* establishes the criteria that the alternative services must meet.<sup>30</sup> In its decision, the HRC found that should states decide to require objectors to perform alternative civil service, that service must meet certain conditions: (i) the alternative civil service must be performed outside the military and not under military command; (ii) it should not be punitive in nature; and (iii) it must be a community service that is compatible with respect for human rights.<sup>31</sup>

The rules set forth in the jurisprudence of the HRC regarding alternative service have been reiterated consistently in its concluding observations.<sup>32</sup> In these concluding observations, the HRC has maintained that states have a duty to recognize the right to conscientious objection to military service, both in times of war and in times of peace.<sup>33</sup> Additionally, in its concluding observations, the HRC has stated that the duration of alternative service cannot be much longer than that of the military service, because this might cause the alternative service to take on a punitive nature that is discriminatory and in violation of articles 18 (right to freedom of thought, conscience, and religion) and 26 (equal protection and nondiscrimination) of the ICCPR.<sup>34</sup> The HRC has also expressed concern over situations where the institution charged with processing requests for conscientious objection to military service is the Ministry of Defense and not a civilian authority.<sup>35</sup>

In conclusion, the text of the ICCPR, the HRC's jurisprudence, and the HRC's concluding observations allow for the following interpretation of the right to conscientious objection to obligatory military service in the universal human rights system:

1. The right to conscientious objection to obligatory military service is derived from the right to freedom of thought, conscience, and religion protected under article 18(1) of the ICCPR.<sup>36</sup> The right to conscientious objection to military service must be recognized both in times of war and in times of peace.<sup>37</sup>
2. Requests for conscientious objection to military service must be processed exclusively through civilian authorities, without the intervention of authorities such as the Ministry of Defense or its equivalent.<sup>38</sup>
3. Exempting a group of conscientious objectors from military service while not applying that exemption to others is not reasonable.<sup>39</sup> Therefore, preferential treatment should not be granted to members of certain religious groups.<sup>40</sup> States must revise their regulations and practices in order to ensure equal treatment to all individuals who strongly object to both military and alternative services.<sup>41</sup>
4. States have the authority to require civilian service as an alternative to military service for conscientious objectors.<sup>42</sup>
5. Alternative civil service must meet the following conditions: (i) it must be performed outside the military and not under military command; (ii) it must not be punitive in nature; (iii) it must be a community service that is compatible with respect for human rights;<sup>43</sup> and (iv) its term cannot be much longer than that of military service.<sup>44</sup>

## Conscientious Objection to the Provision of Sexual and Reproductive Health Services

A number of committees have addressed conscientious objection in the specific context of sexual and reproductive health services. These include the HRC; the Committee on Economic, Social and Cultural Rights (which monitors compliance with the International Covenant on Economic, Social and Cultural Rights); and the Committee on the Elimination of Discrimination against Women (which monitors compliance with the Convention on the Elimination of All Forms of Discrimination against Women).

These committees have established important standards regarding the need for states to strike a balance between protecting the right to demonstrate one's freedom of conscience and the right of women to obtain safe and legal reproductive health services. To date, these standards have come in the form of concluding observations and general recommendations, because none of the committees has yet had the opportunity to examine an individual complaint regarding the issue.

In its concluding observations to Poland in 2010, the **HRC** expressed its concern over the country's lack of access to reproductive health services, including prenatal exams and abortion, and recommended that the state "introduce regulations to prohibit the improper use and performance of the 'conscience clause' by the medical profession."<sup>45</sup>

For its part, the **Committee on Economic, Social and Cultural Rights** (CESCR), in its concluding observations to Poland in 2009, also expressed concern that women would have to turn to clandestine abortions in response to doctors' and clinics' refusal—based on conscientious objection—to provide legal abortion services. The CESCR called on the state to take all measures necessary to ensure that women can enjoy their right to sexual and reproductive health, including by passing legislation to implement appropriate referral mechanisms in cases of conscientious objection.<sup>46</sup>

Further, General Recommendation 24<sup>47</sup> from the **Committee on the Elimination of Discrimination against Women** (CEDAW Committee) established that "[i]t is discriminatory for a state party to refuse to provide legally for the performance of certain reproductive health services for women. . . . If health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers."<sup>48</sup>

The CEDAW Committee has reiterated this position in at least three concluding observations to different states, recommending that they adopt the measures necessary to guarantee women's effective enjoyment of their reproductive rights and that women's access to reproductive health services (including legal abortion services) not be limited by the exercise of conscientious objection by health care professionals.<sup>49</sup> In its concluding observations to Hungary in 2013, the CEDAW Committee affirmed that the state must ensure that conscientious objection remains a personal decision rather than an institutional practice.<sup>50</sup> In general, the CEDAW Committee has identified a number of measures that states should undertake in this area: (i) guaranteeing access to abortion in public hospitals;<sup>51</sup> (ii) properly regulating conscientious objection, including, for example, by providing women with information on available alternatives;<sup>52</sup> and (iii) in cases where a provider refuses to perform a reproductive health service, ensuring the patient's referral to an alternative provider.<sup>53</sup>

The **UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**, Anand Grover, in his report on his 2009 mission to Poland, highlighted the need for the state to regulate the exercise of conscientious objection, recommending that the state take action to reconcile the exercise of conscientious objection with the needs and interests of health care users.<sup>54</sup> He also stated that health care systems must have mechanisms in place to ensure the availability of immediate alternatives and effective remedies in cases where providers conscientiously object to performing a service in order to ensure the effective enjoyment of women's sexual and reproductive rights.<sup>55</sup> The Special Rapporteur emphasized that health care providers who are conscientious objectors have an obligation to provide treatment to individuals whose lives or health are at immediate risk; and in cases where a patient's life or health is not in danger, the provider must refer the patient to another provider who is willing to provide the service requested.<sup>56</sup>

The standards established by the treaty monitoring bodies and the Special Rapporteur indicate that international human rights standards recognize the right of medical personnel to conscientiously object to the provision of sexual and reproductive health services, including abortion. Nevertheless, these standards also indicate that the exercise of this right cannot in any way constitute a barrier to the effective enjoyment of women's sexual and reproductive rights.

In conclusion, General Recommendation 24 of the CEDAW Committee; the concluding observations issued by the HRC, CESCR and CEDAW Committee; and the reports of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health allow for the following interpretation of the right to conscientious objection by providers of reproductive health services:

1. States must adopt the measures necessary to guarantee women's effective enjoyment of their reproductive rights, including access to legal abortion services. Such enjoyment should not be limited by the exercise of conscientious objections by health care professionals.<sup>57</sup>
2. States have an obligation to regulate the exercise of conscientious objection in order to guarantee women's access to sexual and reproductive health services.<sup>58</sup>
3. Sexual and reproductive health care providers who are conscientious objectors have an obligation to refer patients to another provider who is willing to provide the service; and in cases where a patient's life or health is in danger, providers have an obligation to provide treatment.<sup>59</sup>
4. States should adopt legislation that regulates the exercise of conscientious objection and provides appropriate systems and mechanisms for patients' timely referral to other health care providers in cases of conscientious objection.<sup>60</sup> States should ensure that conscientious objection remains a personal decision rather than an institutional practice.<sup>61</sup>
5. States have an obligation to prevent conscientious objection from becoming a barrier to women's access to sexual and reproductive health services. States must guarantee women's enjoyment of their reproductive rights—and, for example, in cases where abortion is legal, this includes guaranteeing access to abortion in public hospitals.<sup>62</sup>

<sup>1</sup> See OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS OF THE UNITED NATIONS, THE UNITED NATIONS TREATY SYSTEM: INTRODUCTION TO THE CORE HUMAN RIGHTS TREATIES AND THE TREATY BODIES, FACT SHEET No. 30.7 (2007), available at <http://www.ohchr.org/Documents/Publications/FactSheet30en.pdf>.

<sup>2</sup> For a more thorough examination of the committees' work, see CENTER FOR REPRODUCTIVE RIGHTS, BRINGING RIGHTS TO BEAR (2008) available at <http://reproductiverights.org/en/press-room/bringing-rights-to-bear-anew-2008-update>.

<sup>3</sup> Andrew Byrnes, *Toward More Effective Enforcement of Women's Human Rights Through the Use of International Human Rights Law and Procedures*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 189, 218 (Rebecca Cook ed., 1994).

<sup>4</sup> Human Rights Committee (HRC), *General Comment No. 22: Freedom of thought, conscience and religion* (Art. 18), (48th Sess., 1993), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 245, para. 11, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008) [hereinafter HRC, *Gen. Comment No. 22*].

<sup>5</sup> *Id.*, para 3.

<sup>6</sup> *Id.*

<sup>7</sup> International Covenant on Civil and Political Rights, *adopted* Dec. 1, 1966, art. 18(3), G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, UN Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter ICCPR]; HRC, *Gen. Comment No. 22, supra* note 4, para. 8.

<sup>8</sup> Yeo-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea, HRC, Communications Nos. 1321/2004 and 1322/2004, UN Doc. CCPR/C/88/D/1321-1322/2004 (2007). Yeo-Bum Yoon and Myung-Jin Choi, both Korean citizens and Jehovah's Witnesses, were arrested and sentenced to prison for refusing to perform military service. The HRC found that the state had failed to demonstrate why the restriction of the right to freedom of conscience was necessary, pursuant to the provisions of article 18(3) of the ICCPR.

<sup>9</sup> *Id.*, para 8(3).

<sup>10</sup> *Id.*, para. 8(4).

<sup>11</sup> ICCPR, *supra* note 7, art. 18(1); HRC, *Gen. Comment 22, supra* note 4, para. 3.

<sup>12</sup> HRC, *Gen. Comment No. 22, supra* note 4, para. 3.

<sup>13</sup> Yeo-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea, HRC, Communications Nos. 1321/2004 and 1322/2004, para. 8(3), UN Doc. CCPR/C/88/D/1321-1322/2004 (2007).

<sup>14</sup> ICCPR, *supra* note 7, art. 18(3); HRC, *Gen. Comment No. 22, supra* note 4, para. 8.

<sup>15</sup> Human Rights Commission Res.1987/46, 1989/59, 1991/65, 1993/84, 1995/83, 1997/117, 1998/77, 2000/34, 2002/45, 2004/35 on conscientious objection to military service. Office of the High Commissioner of Human Rights of the United Nations, *Conscientious Objection to Military Service 20* (2012), available at [http://www.ohchr.org/Documents/Publications/ConscientiousObjection\\_en.pdf](http://www.ohchr.org/Documents/Publications/ConscientiousObjection_en.pdf).

<sup>16</sup> *Id.* at 17.

<sup>17</sup> Commission on Human Rights, Res. 1989/59 (Mar. 8, 1989).

<sup>18</sup> LTK v. Finland, HRC, Communication No. 185/1984, para. 5(2), UN Doc. CCPR/C/OP/2, at 61 (1990).

<sup>19</sup> *Id.* LTK, a Finnish citizen, was criminally prosecuted for refusing to perform military service. He asserted that the Finnish state had violated articles 18 (freedom

- of thought, conscience, and religion) and 19 (freedom of expression) of the ICCPR by refusing to recognize LTK's status as a conscientious objector to military service. The HRC declared the communication inadmissible because the ICCPR does not recognize the right to conscientious objection.
- <sup>20</sup> HRC, *Gen. Comment No. 22, supra* note 4, para. 11.
- <sup>21</sup> Dr. J.P. v. Canada, HRC, Communication No. 446/1991, UN Doc. CCPR/C/43/D/446/1991, at 36 (1991). J.P., a Canadian citizen, refused to support Canada's military efforts due to her religious convictions. Consequently, she refused to pay a portion of her taxes equal to the portion of the federal budget set aside for the military. The petitioner argued that using her taxes for military and defense spending violated her freedom of conscience and religion, protected under article 18 of the ICCPR. The Committee declared the petition inadmissible, but stated that "[a]lthough article 18 of the Covenant certainly protects the right to hold, express and disseminate opinions and convictions, including conscientious objection to military activities and expenditures, the refusal to pay taxes on grounds of conscientious objection clearly falls outside the scope of protection of this article."
- <sup>22</sup> Yeo-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea, HRC, Communications Nos. 1321/2004 and 1322/2004, para. 8(3), UN Doc. CCPR/C/88/D/1321-1322/2004 (2007).
- <sup>23</sup> Eu-min Jung et al. v. Republic of Korea, HRC, Communications Nos. 1593 to 1603/2007, UN Doc. CCPR/C/98/D/1593-1603/2007 (2010). Eu-min Jung and ten other petitioners refused to perform obligatory military service for reasons of conscience and religious beliefs. They were sentenced to a year and a half in prison. The HRC reiterated its findings in *Yoon et al. v. Republic of Korea*, declaring that the state had violated article 18(1) of the ICCPR (freedom of thought, conscience, and religion) by failing to demonstrate why the restriction of the right to freedom of conscience was necessary, pursuant to the provisions of article 18(3) of the ICCPR.
- <sup>24</sup> Godefriedus Maria Brinkhof v. Netherlands, HRC, Communication No. 402/1990, UN Doc. CCPR/C/48/D/402/1990 (1993).
- <sup>25</sup> *Id.*, paras. 1-2.
- <sup>26</sup> *Id.*, para. 9(3).
- <sup>27</sup> *Id.*, para. 9(4).
- <sup>28</sup> *Id.*, para. 9.
- <sup>29</sup> In Finland, it is easier for Jehovah's Witnesses to object because their beliefs are verifiable. See HRC, *Concluding Observations: Finland*, para. 14, UN Doc. CCPR/CO/82/FIN (2004).
- <sup>30</sup> Min-Kyu Jeong et al. v. Republic of Korea, HRC, Communication No. 1642-1741/2007, UN Doc. CCPR/C/101/D/1642-1741/2007 (2011). Min-Kyu and the other 99 petitioners, all Jehovah's Witnesses, refused to perform obligatory military service for reasons of conscience and religious beliefs. As a result, they were sentenced to a year and a half in prison. Although they were willing to perform alternative service, the state did not recognize any alternative to military service. The HRC declared that the state was in violation of article 18(1) (freedom of thought, conscience, and religion). Likewise, it reiterated its position that conscientious objection is derived from the right to freedom of conscience and is inherent to it. The right therefore authorizes any individual to be exempted from obligatory military service if such service cannot be reconciled with that individual's beliefs or religion. Finally, the HRC found that the state has the authority to require objectors to perform alternative civilian service.
- <sup>31</sup> *Id.*, para. 7(3).
- <sup>32</sup> With regard to the state duty to consider alternative service, see, e.g., HRC, *Concluding Observations: Colombia*, para. 22, UN Doc. CCPR/C/COL/CO/6 (2010); Russian Federation, para. 23, UN Doc. CCPR/C/RUS/CO/6 (2009); *Greece*, para. 15, UN Doc. CCPR/CO/83/GRC (2005); *Mexico*, para. 19, UN Doc. CCPR/MEX/CO/5 (2010); *Mongolia*, para. 23, UN Doc. CCPR/C/MNG/CO/5 (2011); *Syrian Arab Republic*, para. 11, UN Doc. CCPR/CO/84/SYR (2005); *Tajikistan*, para. 20, UN Doc. CCPR/CO/84/TJK (2005); *Venezuela*, para. 26, UN Doc. CCPR/CO/71/VEN (2001).
- <sup>33</sup> HRC, *Concluding Observations: Finland*, para. 14, UN Doc. CCPR/C/CO/82/FIN (2004).
- <sup>34</sup> HRC, *Concluding Observations: Cyprus*, para. 17, UN Doc. CCPR/C/79/Add.88 (1998); *Russian Federation*, para. 23, UN Doc. CCPR/C/RUS/CO/6 (2009); *France*, para. 19, UN Doc. CCPR/C/79/Add.80 (1997); *Greece*, para. 15, UN Doc. CCPR/CO/83/GRC (2005); *Mongolia*, para. 23, UN Doc. CCPR/C/MNG/CO/5 (2011); *Syrian Arab Republic*, para. 11, UN Doc. CCPR/CO/84/SYR (2005).
- <sup>35</sup> HRC, *Concluding Observations: Greece*, para. 15, UN Doc. CCPR/CO/83/GRC (2005); *Russian Federation*, para. 23, UN Doc. CCPR/C/RUS/CO/6 (2009).
- <sup>36</sup> Dr. J.P. v. Canada, HRC, Communication No. 446/1991, para. 4(2), UN Doc. CCPR/C/43/D/446/1991, at 36 (1991); Yeo-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea, HRC, Communications Nos. 1321/2004 and 1322/2004, para. 8(3), UN Doc. CCPR/C/88/D/1321-1322/2004 (2007); Eu-min Jung et al. v. Republic of Korea, HRC, Communications Nos. 1593 to 1603/2007, para. 7(2), UN Doc. CCPR/C/98/D/1593-1603/2007 (2010).
- <sup>37</sup> HRC, *Concluding Observations: Finland*, para. 14, UN Doc. CCPR/C/CO/82/FIN (2004).
- <sup>38</sup> HRC, *Concluding Observations: Greece*, para. 15, UN Doc. CCPR/CO/83/GRC (2005); *Russian Federation*, para. 23, UN Doc. CCPR/C/RUS/CO/6 (2009).
- <sup>39</sup> Godefriedus Maria Brinkhof v. Netherlands, HRC, Communication No. 402/1990, para. 9(3), UN Doc. CCPR/C/48/D/402/1990 (1993).
- <sup>40</sup> In Finland, it is easier for Jehovah's Witnesses to object because their beliefs are verifiable. HRC, *Concluding Observations: Finland*, para. 14, UN Doc. CCPR/CO/82/FIN (2004).
- <sup>41</sup> Godefriedus Maria Brinkhof v. Netherlands, HRC, Communication No. 402/1990, para. 9(4), UN Doc. CCPR/C/48/D/402/1990 (1993).
- <sup>42</sup> Min-Kyu Jeong et al. v. Republic of Korea, HRC, Communication No. 1642-1741/2007, para. 7(3), UN Doc. CCPR/C/101/D/1642-1741/2007 (2011).
- <sup>43</sup> *Id.*
- <sup>44</sup> Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: Hungary*, para. 31, UN Doc. CEDAW/C/HUN/CO/7-8 (2013).
- <sup>45</sup> HRC, *Concluding Observations: Poland*, para. 12, UN Doc. CCPR/C/POL/CO/6 (2010).
- <sup>46</sup> Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations: Poland*, para. 28, UN Doc. E/C.12/POL/CO/5 (2009).
- <sup>47</sup> CEDAW Committee, *General Recommendation No. 24: Women and health (art. 12 of the Convention on the Elimination of All Forms of Discrimination against Women)*, (20th Session, 1999), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 104, para. 27, UN Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) [hereinafter CEDAW Committee, *General Recommendation No. 24*].
- <sup>48</sup> *Id.*, para. 11.
- <sup>49</sup> CEDAW Committee, *Concluding Observations: Croatia*, para. 117, UN Doc. A/53/38/Rev.1 (1998); *Italy*, para. 360, UN Doc. A/52/38/Rev.1 (1997); *Poland*, para. 25, UN Doc. CEDAW/C/POL/CO/6 (2007).
- <sup>50</sup> CEDAW Committee, *Concluding Observations: Hungary*, para. 31, UN Doc. CEDAW/C/HUN/CO/7-8 (2013).
- <sup>51</sup> CEDAW Committee, *Concluding Observations: Croatia*, para. 117, UN Doc. A/53/38/Rev.1 (1998); *Italy*, para. 360, UN Doc. A/52/38/Rev.1 (1997).
- <sup>52</sup> CEDAW Committee, *Concluding Observations: Hungary*, para. 31, UN Doc. CEDAW/C/HUN/CO/7-8 (2013).
- <sup>53</sup> CEDAW Committee, *Concluding Observations: Slovakia*, para. 43, UN Doc. A/63/38 (2008).
- <sup>54</sup> Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover - Addendum - Mission to Poland*, para. 55, UN Doc. A/HRC/14/20/Add.3 (May 20, 2010) [hereinafter SRRH, *Mission to Poland* (2010)].

<sup>55</sup> *Id.*, para. 50.

<sup>56</sup> *Id.*

<sup>57</sup> CEDAW Committee, *Concluding Observations: Croatia*, para. 117, UN Doc. A/53/38/Rev.1 (1998); *Italy*, para. 360, UN Doc. A/52/38/Rev.1 (1997); *Poland*, para. 25, UN Doc. CEDAW/C/POL/CO/6 (2007).

<sup>58</sup> CEDAW Committee, *Concluding Observations: Hungary*, para. 31, UN Doc. CEDAW/C/HUN/CO/7-8 (2013); HRC, *Concluding Observations: Poland*, para. 12, UN Doc. CCPR/C/POL/CO/6 (2010); SRRH, *Mission to Poland* (2010), *supra* note 54, para. 55.

<sup>59</sup> SRRH, *Mission to Poland* (2010), *supra* note 54, para. 50.

<sup>60</sup> *Concluding Observations: Poland*, para. 28, UN Doc. E/C.12/POL/CO/5 (2009); CEDAW Committee, *General Recommendation No. 24*, *supra* note 47, para. 11; CEDAW Committee, *Concluding Observations: Slovakia*, para. 43, UN Doc. A/63/38 (2008).

<sup>61</sup> CEDAW Committee, *Concluding Observations: Hungary*, para. 31, UN Doc. CEDAW/C/HUN/CO/7-8 (2013).

<sup>62</sup> CEDAW Committee, *Concluding Observations: Croatia*, para. 117, UN Doc. A/53/38/Rev.1 (1998); *Italy*, para. 360, UN Doc. A/52/38/Rev.1 (1997).

# CONSCIENTIOUS OBJECTION IN THE EUROPEAN HUMAN RIGHTS SYSTEM

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## European Convention on Human Rights<sup>1</sup>

### Article 4: Prohibition of slavery and forced labour

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term “forced or compulsory labour” shall not include: . . .

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;. . .

### Article 9: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

This fact sheet will focus on conscientious objection standards in the European human rights system, which is part of the Council of Europe. The European human rights system is composed of the European Court of Human Rights, the Committee of Ministers, and the Parliamentary Assembly. For more detail on these bodies and how they interact with one another, see the text box on the European human rights system.

The European human rights system has ruled on cases concerning both conscientious objection to obligatory military service and conscientious objection to reproductive health services. This fact sheet—in contrast to the fact sheets on the universal system and the inter-American human rights system, which provide a broader analysis of the right to freedom of conscience—examines standards emerging from specific rulings and relevant standards from the bodies of the Council of Europe.

## European Human Rights System

### Council of Europe: Its Bodies and Functions

The Council of Europe is a different body than the European Union.<sup>2</sup> The European Union is an economic and political association comprising 27 European countries. These countries have delegated a portion of their sovereignty to the European Union so that decisions on specific issues can be made democratically at the regional level. In contrast, the Council of Europe, which consists of 47 member states, was created to promote democracy, human rights, and the rule of law in Europe.<sup>3</sup>

This fact sheet explores the standards established by the European Court of Human Rights, as well as those from the Committee of Ministers and the Parliamentary Assembly. Although the standards set forth by the Committee of Ministers and the Parliamentary Assembly—which take the form of recommendations and resolutions—are not binding, they carry political weight.

The **European Court of Human Rights** is Europe’s highest authority on human rights law. Its specific mission is to apply the European Convention on Human Rights and verify that the rights and guarantees contained therein and in its additional protocols are respected by member states.<sup>4</sup>

Although the Court rules on allegations of violations of the European Convention on Human Rights, it may not examine cases of its own motion.<sup>5</sup> The Court can only rule in cases of violations brought as complaints by individuals or by one state against another.<sup>6</sup>

The Court can order the adoption of interim measures while it examines a case.<sup>7</sup> These are urgent, exceptional measures applied in situations of imminent risk of irreparable damage.<sup>8</sup> Should the Court determine that certain rights and guarantees established in the Convention have been violated, it will issue a judgment that is binding for the offending state.<sup>9</sup> The judgment may require the state to adopt general measures of non-repetition, such as legislative reforms,<sup>10</sup> and/or individual reparation measures, such as release from prison or granting residency, etc..<sup>11</sup> It may also award “just satisfaction”—that is, a payment of a certain amount of money to the victim by the state as compensation for the damage suffered.<sup>12</sup>

The Court is made up of 47 judges—one for each state that has ratified the European Convention on Human Rights.<sup>13</sup> Cases are generally decided by chambers consisting of seven judges. In exceptional cases, parties may request that a matter resolved by a chamber be sent to the Grand Chamber, which comprises 17 judges. The Grand Chamber’s judgments are final.<sup>14</sup> Should the Court find that a state has violated the European Convention, the Committee of Ministers of the Council of Europe<sup>15</sup> supervises compliance with the judgments.<sup>16</sup>

Due to the large number of repetitive cases brought before the Court—in other words, identical cases deriving from the same structural or systemic problem in a particular state—the “pilot judgment” procedure has been established.<sup>17</sup> Through this procedure, the Court can suspend the examination of any cases that would create repetitive case law until the general corrective measures called for in the pilot judgment are adopted.<sup>18</sup>

The **Committee of Ministers** is the body that makes decisions for the Council of Europe. It is composed of the foreign affairs ministers from each member state.<sup>19</sup> The **Parliamentary Assembly** is the deliberating body of the Council of Europe. Its members are designated by the national parliaments of the Council’s member states. The Parliamentary Assembly issues recommendations, resolutions, and opinions that serve as guides for the Committee of Ministers, as well as the parliaments and political parties of member states.<sup>20</sup> Both the Committee of Ministers and the Parliamentary Assembly<sup>21</sup> have the ability to influence the development of human rights standards—the Committee of Ministers has the authority to issue recommendations to state parties to the Convention,<sup>22</sup> and the Parliamentary Assembly issues recommendations and resolutions. Although these instruments are not binding for state parties, in certain cases the European Court of Human Rights uses these recommendations and resolutions as a reference in its judgments, which are binding. The Court uses these standards as persuasive authority in developing standards under the European Convention on Human Rights.

Given the relationship between the Court and these other bodies, the standards set forth by the Committee of Ministers and the Parliamentary Assembly have the potential to become binding for states if they are reiterated by the European Court.<sup>23</sup>

### Conscientious Objection to Military Service

Over the years, the Committee of Ministers<sup>24</sup> and the Parliamentary Assembly<sup>25</sup> of the Council of Europe have set forth standards on conscientious objection to obligatory military service. As noted above, these standards are relevant because of their political weight, but also because they have the potential to be incorporated by the European Court of Human Rights into its judgments.

Prior to 1993, cases on conscientious objection to military service were received by the European Commission of Human Rights,<sup>26</sup> a body that no longer exists. The Commission resolved these cases by jointly examining articles 9 (freedom of thought, conscience, and religion) and 4 (prohibition of forced labor) of the European Convention. In its judgments,

the Commission found that the right to conscientious objection to military service existed only where it was guaranteed by domestic legislation.<sup>27</sup>

The year 2011 marked a turning point. In *Bayatyan v. Armenia*,<sup>28</sup> the Grand Chamber of the European Court of Human Rights addressed conscientious objection to military service solely on the basis of article 9 of the European Convention.<sup>29</sup> In that ruling, the Court relied on recommendations from the Committee of Ministers and the Parliamentary Assembly concerning the interpretation of article 9.<sup>30</sup>

In this case, the Court found that article 9 should not be interpreted jointly with article 4(3), as had been the practice of the European Commission of Human Rights. This means that article 9, on freedom of conscience, is applicable to cases of conscientious objection to military service.<sup>31</sup> According to the Court, the Convention is a living instrument that should be interpreted based on current ideas and conditions among democratic states, which had changed significantly since the first relevant ruling of the European Commission of Human Rights on conscientious objection.

The Court found that although article 9 on freedom of thought, religion, and conscience does not explicitly address the right to conscientiously object to military service, this right should be guaranteed when the objection is based on serious and unassailable reasons of conscience that constitute a conviction or belief of sufficient weight and seriousness.<sup>32</sup>

This interpretation was later confirmed in *Savda v. Turkey*.<sup>33</sup> In this case, the Court indicated that authorities have a “positive obligation to offer the petitioner an effective and accessible procedure . . . that allows him to learn whether or not he has a right to be a conscientious objector, [ ] in order to preserve the interests guaranteed in article 9 of the Convention.”<sup>34</sup> The Court further stated that “in a system that provides no alternative service . . . and no effective and accessible procedure by which the petitioner can establish whether or not he has a right to be a conscientious objector, it cannot be said that there is a fair balance between the interests of society as a whole and that of conscientious objectors.”<sup>35</sup>

The text of the European Convention on Human Rights and the case law of the European Court of Human Rights allow for the following interpretation of the right to conscientious objection to obligatory military service in the European human rights system:

1. Although article 9 of the European Convention (freedom of thought, conscience, and religion) does not make explicit reference to the right to conscientious objection, when there exists a serious and unassailable conflict between the obligation to serve in the military and an individual’s conscience or profound and genuine religious or other beliefs, the right to conscientiously object to military service should be guaranteed by article 9.<sup>36</sup>
2. For religious or other beliefs to be protected under article 9, they must be deep and genuine.<sup>37</sup> In order to be protected by the guarantees of article 9, a belief must have sufficient force, seriousness, cohesiveness and importance.
3. Conscientious objection to obligatory military service must be distinguished from situations involving obligations that do not present specific issues of conscience in and of themselves, such as, for example, the payment of taxes.<sup>38</sup>
4. Article 9(2) of the European Convention establishes that restrictions on the freedom to express religion or convictions must be prescribed by law and must be 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.<sup>39</sup>
5. Although freedom of religion is, above all, a matter of individual conscience, it also includes, among other things, the freedom to express one’s religion in private or in community with others, in public, or in religious gatherings. Such expression can take many forms, including worship, teaching, practice, and observance.<sup>40</sup>

6. A state's duty to be neutral and impartial toward the exercise of religions, faiths, and beliefs "is incompatible with any power on the state's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed."<sup>41</sup>
7. The Europe Court's jurisprudence grants states a certain margin of appreciation in deciding whether and to what extent interference with or restrictions on the freedom to express one's beliefs are necessary. The Court determines whether measures taken at the national level are justified in principle and proportionate.<sup>42</sup>
8. A system of obligatory military service that does not offer alternatives to conscientious objectors cannot be considered a necessary measure in a democratic society<sup>43</sup> under article 9(2) of the Convention. There is no just balance between the interests of society and the interests of conscientious objectors in a system that neither allows alternative service nor has in place accessible and effective procedures for establishing whether an objector can exercise the right to conscientious objection.<sup>44</sup>
9. Authorities must establish effective and accessible procedures for those who wish to object to obligatory military service that allows such individuals to determine whether they have the right to conscientious-objector status and in order to guarantee their right to freedom of thought, conscience, and religion.<sup>45</sup>

### Conscientious Objection to the Provision of Sexual and Reproductive Health Services

As of mid-2013, the European Court of Human Rights had ruled three separate times on conscientious objection in the area of reproductive health. As noted earlier, the Court's rulings are binding for its state parties.

The first case heard by the Court was the 2001 case *Pichon and Sajous v. France*,<sup>46</sup> brought by the owners of a pharmacy who refused to stock or sell contraceptives for reasons of conscience.<sup>47</sup> The pharmacy owners claimed that their freedom to manifest their religious beliefs had been violated by the French state when it convicted them for refusing to sell contraceptives to customers. The Court declared the case inadmissible, noting that although article 9 protects freedom of conscience and some of its expressions, the right to practice it in public is not always guaranteed. According to the Court, given that contraceptives are legal and are sold only with a prescription and only in pharmacies, pharmacy owners cannot prioritize their beliefs over their professional obligations; these individuals have many other ways of expressing their beliefs outside the realm of their profession.

In the 2011 case of *R.R. v. Poland*,<sup>48</sup> the European Court ruled that the State of Poland had obstructed access to information that would have allowed the petitioner, *R.R.*, to decide whether or not to continue with her pregnancy. Medical professionals had found that the fetus carried by *R.R.* possibly had severe impairments. If the fetal impairments were confirmed, *R.R.* would have had the right to terminate her pregnancy—and she intended to do so. However, due to medical personnel's conscientious objections, *R.R.* was denied access to the necessary genetic tests to confirm the impairments. In the context of this case, the Court found that for the state to ensure citizens' right to respect for their physical and psychological integrity, the state may need to implement laws that guarantee patients' information about their own health.<sup>49</sup>

The Court reiterated that once a state decides to allow abortion, "it must not structure its legal framework in a way which would limit real possibilities to obtain it."<sup>50</sup> In response to the Polish government's argument that doctors have a right under article 9 of the Convention on freedom of thought, conscience and religion to refuse to provide certain services for reasons of conscience, the Court found that the word "practice" used in article 9(1) does not refer to "each and every act or form of behaviour motivated or inspired by a religion or belief."<sup>51</sup> The Court established that states "are obliged to organize the health services system in such a way as to ensure that an effective exercise of the freedom of conscience of

health professionals in the professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation.”<sup>52</sup>

In its decision in the 2012 case of *P. and S. v. Poland*,<sup>53</sup> the Court reiterated its position that states have “a positive obligation to create a procedural framework enabling a pregnant woman to effectively exercise her right of access to lawful abortion.”<sup>54</sup> Regarding the right of doctors to refuse to provide certain services for reasons of conscience, the Court—basing its argument on article 9 of the European Convention—reiterated what it had found in *R.R. v. Poland*: (i) the word “practice” used in article 9(1) of the Convention does not refer to every single act or form of behavior motivated or inspired by a religion or belief; and (ii) states are required to organize their health systems in a manner that guarantees that healthcare professionals’ exercise of freedom of conscience does not prevent patients from gaining access to services to which they are legally entitled.<sup>55</sup>

As part of this last point, the Court noted that Polish law recognizes the need to ensure that doctors are not required to provide services to which they object and establishes a mechanism through which they are able to express their objections. This mechanism reconciles the rights of medical professionals with the interests of patients by requiring that medical professionals note their objection in the patient’s medical history and provide a written referral to another doctor who is able to provide the service. The Court also found that despite the existence of these provisions, they were not followed in the case of *P. and S.*<sup>56</sup> The Court criticized the Polish state for its lack of implementation and monitoring of domestic guarantees that ensure women’s access to legal services in cases of conscientious objection. Based on this, it can be concluded that the Court established that when a conscientious objection to the provision of reproductive health services is raised, at a minimum, there must be referral mechanisms in place and the objection must be made in writing.

It is also important to mention to case of *Eweida and Others v. the United Kingdom*.<sup>57</sup> In this decision, the European Court found that an employer was justified in refusing to accommodate the Christian religious beliefs of its employees. It also found that another employer was justified in refusing to accommodate the conscientious objection of an employee who refused to provide services requested by same-sex couples. In the first case, the Court found that “the local authority’s policy aimed to secure the rights of others which are also protected under the Convention,”<sup>58</sup> and, in the other case, it stated that “the employer’s action was intended to secure the implementation of its policy of providing a service without discrimination.”<sup>59</sup>

In 2008, the Parliamentary Assembly issued Resolution 1607 (2008) on access to safe and legal abortion in Europe.<sup>60</sup> The resolution highlights the importance of effective access to safe and legal abortion and points to barriers that impede such access, including “the lack of doctors willing to carry out abortions,” which has “the potential to make access to safe, affordable, acceptable and appropriate abortion services more difficult, or even impossible in practice.”<sup>61</sup> The resolution also states that “the ultimate decision on whether or not to have an abortion should be a matter for the woman concerned, who should have the means of exercising this right in an effective way.”<sup>62</sup>

Subsequently, in 2010, the Parliamentary Assembly issued Resolution 1763 (2010) on the right to conscientious objection to lawful medical care.<sup>63</sup> Although this resolution—like all Parliamentary Assembly resolutions—is not binding on state parties, it is politically significant and could have an influence on future judgments of the European Court. Resolution 1763 establishes that no person, hospital, or institution can be pressured, held responsible, or discriminated against for refusing to perform, accommodate, or assist an abortion or miscarriage, practice euthanasia, or participate in any other procedure that could result in the “death of a person or embryo.”<sup>64</sup>

The wording of the resolution suggests that institutions have a right to conscientious objection. The resolution emphasizes the need to uphold the right to conscientious objection while also affirming states’ responsibility to ensure that patients can access

medical care in a timely manner.<sup>65</sup> Likewise, it notes that patients must be informed in a timely fashion of any conscientious objection and must be referred to another provider who is willing to perform the procedure in question.<sup>66</sup> Finally, the resolution calls on states to ensure that patients receive adequate treatment, especially in emergency situations.<sup>67</sup>

The resolution does not explicitly address conscientious objection to the provision of reproductive health services. However, it highlights the importance of the effective exercise of the right to access safe and legal abortion.<sup>68</sup> Without a doubt, the unregulated exercise of conscientious objection can, in practice, seriously restrict access to reproductive health services.

The text of the European Convention on Human Rights and the case law of the European Court of Human Rights allow for the following interpretation of the right to conscientious objection in the provision of reproductive health services:

1. Although article 9 of the Convention guarantees freedom of thought, religion, and conscience, the right to behave in public according to one's beliefs is not always guaranteed.<sup>69</sup>
2. In cases where reproductive health services are only available in certain circumstances, such as in the case of contraceptives, legal sale of which is allowed only in pharmacies and only with a doctor's prescription, healthcare professionals may not prioritize their beliefs above their professional obligations, because they have many other ways of expressing their beliefs outside the realm of their profession.<sup>70</sup>
3. Once a state decides to allow abortion, it has an obligation to structure its legal framework so that it does not limit women's ability to effectively access the service.<sup>71</sup>
4. The word "practice" in article 9(1) of the Convention does not denote every single act or form of behavior motivated or inspired by a religion or belief.<sup>72</sup> This interpretation is particularly relevant with respect to doctors' right to refuse to provide medical services.
5. States "are obliged to organise the health services system in such a way as to ensure that an effective exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation."<sup>73</sup>

<sup>1</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, adopted Nov. 4, 1950, 213 U.N.T.S. 222, Eur. T.S. No. 5 (entered into force Sept. 3, 1953) [hereinafter ECHR].

<sup>2</sup> *Do Not Confuse, Council of Europe in Brief*, <http://www.coe.int/aboutCoe/index.asp?Lang=en> (accessed on June 5, 2013) [hereinafter *Do Not Confuse, Council of Europe in Brief*]; European Union, *Basic Information on the European Union*, [http://europa.eu/about-eu/index\\_en.htm](http://europa.eu/about-eu/index_en.htm) (accessed on June 12, 2013).

<sup>3</sup> *Do Not Confuse, Council of Europe in Brief*, *supra* note 2.

<sup>4</sup> ECHR, *supra* note 1, art. 19; European Court of Human Rights, *Questions and Answers 4*, available at [http://www.echr.coe.int/Documents/Questions\\_Answers\\_ENG.pdf](http://www.echr.coe.int/Documents/Questions_Answers_ENG.pdf) [hereinafter *Questions and Answers*].

<sup>5</sup> ECHR, *supra* note 1, art. 20. As of July 2012, 14 additional protocols had been adopted. European Court of Human Rights, *The ECHR in 50 Questions 3, 6* (2012), available at [http://www.echr.coe.int/Documents/50Questions\\_ENG.pdf](http://www.echr.coe.int/Documents/50Questions_ENG.pdf) [hereinafter *The ECHR in 50 Questions*].

<sup>6</sup> *The ECHR in 50 Questions*, *supra* note 5, at 6. Individual applications can be brought by an individual, a group of individuals, or a nongovernmental organization against a specific state when it is believed that one or more of their rights has been violated. In other words, the individual, group, or organization filing the application must be personally and directly a victim of some violation of the European Convention on Human Rights, and the damage suffered must be significant. An application cannot be filed on behalf of a third party or over systemic human rights violations in a particular country. *Id.* at 6-7; European Convention on Human Rights, *supra* note 1, arts. 34, 35(3)(b).

<sup>7</sup> EUROPEAN COURT OF HUMAN RIGHTS, RULES OF COURT 21 (2013), available at [http://www.echr.coe.int/Documents/Rules\\_Court\\_ENG.pdf](http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf) [hereinafter EUROPEAN COURT OF HUMAN RIGHTS, RULES OF COURT]; *The ECHR in 50 Questions*, *supra* note 5, at 9.

<sup>8</sup> EUROPEAN COURT OF HUMAN RIGHTS, FACTSHEET: INTERIM MEASURES (2013), available at [http://www.echr.coe.int/Documents/FS\\_Interim\\_measures\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf).

<sup>9</sup> ECHR, *supra* note 1, art. 46; *Questions and Answers*, *supra* note 4, at 4.

<sup>10</sup> *The ECHR in 50 Questions*, *supra* note 5, at 10.

<sup>11</sup> EUROPEAN COUNCIL, EUROPEAN CONVENTION ON HUMAN RIGHTS, EXERCISE OF RIGHTS AND LIBERTIES: PEDAGOGICAL RESOURCES 3-4 (2012).

<sup>12</sup> ECHR, *supra* note 1, art. 41; *The ECHR in 50 Questions*, *supra* note 5, at 10.

<sup>13</sup> ECHR, *supra* note 1, art. 20.

<sup>14</sup> *Id.*, art. 26(1); *The ECHR in 50 Questions*, *supra* note 5, at 4.

<sup>15</sup> *About the Committee of Ministers*, COUNCIL OF EUROPE, COMMITTEE OF MINISTERS [http://www.coe.int/t/cm/aboutcm\\_en.asp](http://www.coe.int/t/cm/aboutcm_en.asp) (accessed May 22, 2013) [hereinafter *About the Committee of Ministers*].

- <sup>16</sup> ECHR, *supra* note 1, art. 46(2); *The ECHR in 50 Questions*, *supra* note 5, at 9.
- <sup>17</sup> EUROPEAN COURT OF HUMAN RIGHTS, FACT SHEET: PILOT JUDGMENTS (2013), available at [http://www.echr.coe.int/Documents/FS\\_Pilot\\_judgments\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf); EUROPEAN TRIBUNAL OF HUMAN RIGHTS, RULES OF COURT, *supra* note 7, at 35-36.
- <sup>18</sup> EUROPEAN COURT OF HUMAN RIGHTS, RULES OF COURT, *supra* note 7, at 35.
- <sup>19</sup> *About the Committee of Ministers*, COUNCIL OF EUROPE, *supra* note 15.
- <sup>20</sup> *How We Work, the Council of Europe in Brief*, COUNCIL OF EUROPE <http://www.coe.int/aboutCoe/index.asp?page=CommentTravillonsNous&1+ES> (accessed June 5, 2013) [hereinafter *How We Work, the Council of Europe in Brief*]; PACE, the Parliamentary Assembly of the Council of Europe, Brochure available at <http://assembly.coe.int/Communication/Brochure/Bro03-e.pdf> [hereinafter PACE, Brochure].
- <sup>21</sup> *How We Work, the Council of Europe in Brief*, *supra* note 20; PACE, Brochure, *supra* note 20.
- <sup>22</sup> *About the Committee of Ministers*, *supra* note 15.
- <sup>23</sup> ECHR, *supra* note 1, art. 46; Questions and Answers, *supra* note 4, at 4.
- <sup>24</sup> See, e.g., Recommendation R (87)8 on conscientious objection to military service; Recommendation CM/Rec(2010)4 on the human rights of members of the armed forces.
- <sup>25</sup> See, e.g., Resolution 337 (1967) on the right to conscientious objection; Recommendation 816 (1977) on the right to conscientious objection to obligatory military service; Recommendation 1518 (2001) on the exercise to the right to conscientious objection to military service in member states of the Council of Europe; Recommendation 1742 (2006) on the human rights of members of the armed forces.
- <sup>26</sup> The European Commission of Human Rights became part of the European system in 1953, together with the Court, and played the role of filtering applications brought before the system. The Commission had as many members as states that had ratified the Convention. In 1998, with the entry into force of Protocol No. 11 of the European Convention on Human Rights, its functions were suspended.
- <sup>27</sup> EUROPEAN COURT OF HUMAN RIGHTS, FACTSHEET: CONSCIENTIOUS OBJECTION (2012), available at [http://www.echr.coe.int/Documents/FS\\_Conscientious\\_objection\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Conscientious_objection_ENG.pdf); *Bayatyan v. Armenia*, No. 23459/03, Eur. Ct. H.R., paras. 93-97 (2011).
- <sup>28</sup> *Bayatyan v. Armenia*, No. 23459/03, Eur. Ct. H.R. (2011). Based on his religious convictions as a Jehovah's Witness, Vahan Bayatyan refused to perform obligatory military service. Bayatyan was willing to perform alternative civilian service, but in the absence of legislation allowing for this alternative, he was convicted and sent to prison. The Court found that Armenia had violated article 9 of the European Convention, ruling that obligatory military service constitutes interference with the applicant's right to express his freedom of conscience and that the state did not demonstrate that such interference had a legitimate goal and was necessary in a democratic society.
- <sup>29</sup> *Bayatyan v. Armenia*, No. 23459/03, Eur. Ct. H.R., para. 109 (2011).
- <sup>30</sup> *Id.* para. 107.
- <sup>31</sup> *Id.* para. 109.
- <sup>32</sup> *Id.* para. 110.
- <sup>33</sup> *Savda v. Turkey*, No. 42730/05, Eur. Ct. H.R. (2012). Halil Savda, a Turkish citizen, declared himself a conscientious objector based on his antimilitary and pacifist convictions. He refused to serve in the armed forces after being conscripted in 2004. Turkey does not provide for alternative civilian service for those who do not wish to perform military service. Savda was arrested and sent to prison on a number of occasions, and he alleged that these successive convictions were humiliating and degrading, in violation of the European Convention. The Court found that Turkey had violated articles 3 (prohibition of torture), 9 (freedom of thought, conscience, and religion), and 6(1) (right to a fair trial) of the Convention.
- <sup>34</sup> *Id.* para. 99.
- <sup>35</sup> *Id.* para. 100.
- <sup>36</sup> *Bayatyan v. Armenia*, No. 23459/03, Eur. Ct. H.R., para. 110 (2011).
- <sup>37</sup> *Id.*
- <sup>38</sup> *Id.* para. 111.
- <sup>39</sup> European Convention on Human Rights, *supra* note 1, art. 9(2).
- <sup>40</sup> *Bayatyan v. Armenia*, No. 23459/03, Eur. Ct. H.R., para. 119 (2011).
- <sup>41</sup> *Id.* para. 120.
- <sup>42</sup> *Id.* para. 121.
- <sup>43</sup> *Id.* para. 124.
- <sup>44</sup> *Savda v. Turkey*, No. 42730/05, Eur. Ct. H.R., para. 100 (2012).
- <sup>45</sup> *Id.* para. 99.
- <sup>46</sup> *Pichon and Sajous v. France*, No. 49853/99, Eur. Ct. H.R. (2001) (inadmissible).
- <sup>47</sup> *Id.*
- <sup>48</sup> *R.R. v. Poland*, No. 27617/04, Eur. Ct. H.R. (2011). The Court found that Poland had violated articles 3 (prohibition of torture) and 8 (right to respect for private and family life) of the European Convention.
- <sup>49</sup> See, e.g., *Guerra et al. v. Italy*, No. 116/1996/735/932, Eur. Ct. H.R., para. 60 (1998); *Roche v. United Kingdom*, No. 32555/96, Eur. Ct. H.R., para. 155 (2005); *Pretty v. United Kingdom*, No. 2346/02, Eur. Ct. H.R., para. 61 (2002); *K.H. et al. v. Slovakia*, No. 32881/04, Eur. Ct. H.R., paras. 50-56 (2009), cited in *R.R. v. Poland*, No. 27617/04, Eur. Ct. H.R., para. 188 (2011).
- <sup>50</sup> *R.R. v. Poland*, No. 27617/04, Eur. Ct. H.R., para. 200 (2011).
- <sup>51</sup> *Id.* para. 206.
- <sup>52</sup> *Id.*
- <sup>53</sup> *P. and S. v. Poland*, No. 57375/08, Eur. Ct. H.R. (2012). P., a 14-year-old Polish girl, was raped and became pregnant. Although she had the right to a legal abortion under Polish law, her access to abortion was seriously obstructed. With the support of her mother, S., P. went to three different hospitals, where she received incorrect information on the requirements for obtaining an abortion. One of the hospitals revealed P.'s medical and personal information to the press and the general public. In addition, medical professionals raised a conscientious objection without referring P. to another provider or hospital. After suffering numerous hindrances and abuses at the hands of the system, she was finally able to obtain an abortion in a medical center 500 kilometers away from her home and thanks to the intervention of the Ministry of Health. The Court found that Poland had violated articles 3 (prohibition of torture), 5(1) (right to liberty and security), and 8 (right to respect for private and family life) of the European Convention.
- <sup>54</sup> *Id.* para. 99.
- <sup>55</sup> *Id.*, para. 106.

<sup>56</sup> *Id.* para. 107.

<sup>57</sup> *Eweida and Others. v. the United Kingdom*, No. 48420/10, 59842/10, 51671/10, and 36516/10, Eur. Ct. H.R. (2013). The cases referred to here are the cases of Lilian Ladele and Gary McFarlane. Ladele, a local government employee, refused to register same-sex unions, arguing that marriage is the lifelong union of a man and a woman and that civil unions between persons of the same sex are against the law of God. After Ladele made a number of attempts to mold her responsibilities to fit her convictions, local authorities carried out an administrative process that led to the written proposal of a new job description that included an obligation to register civil unions between persons of the same sex, which Ladele opposed. McFarlane, for his part, worked as a relationship counselor. He refused to work with same-sex couples, arguing that the Bible states that homosexual activity is sinful and that he would not take actions condoning that activity. McFarlane was fired in 2008 after being sanctioned for having violated the organization's policies.

<sup>58</sup> *Id.* para. 106.

<sup>59</sup> *Id.* para. 109.

<sup>60</sup> Eur. Parl. Ass., Res. 1607 (2008), available at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta08/eres1607.htm>.

<sup>61</sup> *Id.* para. 3.

<sup>62</sup> *Id.* para. 6.

<sup>63</sup> Eur. Parl. Ass., Res. 1763 (2010) available at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta10/eres1763.htm> [hereinafter Resolution 1763 (2010)]. This resolution was the result of a negotiation process in the Parliamentary Assembly between members of parliament in support of access to abortion and members of parliament opposed to such access. Although the purpose of the original resolution was to strengthen women's right to access legal services, members of parliament opposed to abortion were able to introduce last-minute amendments that led to the adoption of the statement that institutions have a right to conscientiously object to providing legal abortion services, in clear contradiction of the principles established by the European Court of Human Rights. This explains why parts of the final resolution conflicts with the European Court's jurisprudence. Christina Zampas and Ximena Andión-Ibañez, *Conscientious Objection to Sexual and Reproductive Health Services: International Human Rights Standards and European Law and Practice* 19.

<sup>64</sup> Eur. Parl. Ass., Res. 1763 (2010), *supra* note 61, para. 1.

<sup>65</sup> *Id.* para. 2.

<sup>66</sup> *Id.* para. 4(2).

<sup>67</sup> *Id.* para. 4(3).

<sup>68</sup> *Id.* para. 7(2).

<sup>69</sup> *Pichon and Sajous v. France*, No. 49853/99, Eur. Ct. H.R. (2001) (inadmissible).

<sup>70</sup> *Id.*

<sup>71</sup> *R.R. v. Poland*, No. 27617/04, Eur. Ct. H.R., para. 200 (2011); *a a Ct. H.R.*, para. 200 (2011). a reproductive health service (such as contraceptives) is allowed only in pharmacies and only wP. and S. v. Poland, No. 57375/08, Eur. Ct. H.R., para. 99 (2012).

<sup>72</sup> *Id.*, para. 106; *R.R. v. Poland*, No. 27617/04, Eur. Ct. H.R., para. 206 (2011).

<sup>73</sup> *R.R. v. Poland*, No. 27617/04, Eur. Ct. H.R., para. 206 (2011); *P. and S. v. Poland*, No. 57375/08, Eur. Ct. H.R., para. 106 (2012).

