

**AMICUS CURIAE BRIEF IN SUPPORT OF MR. NETIWIT
CHOTIPHATPHAISAL'S APPLICATION BEFORE THE CONSTITUTIONAL
COURT**

I. Introduction

1. SOAS, University of London (**SOAS**) specialises in the study of Asia, Africa, and the Middle East, with a longstanding commitment to human rights and the rule of law.. Over the past fifteen years, SOAS Law School's International Human Rights Clinic (**SOAS HRC**) has advanced human rights and social justice internationally by partnering with organisations around the world.¹ Through working with Thai human rights Clinic partners, the SOAS HRC seeks to contribute to the promotion of human rights in Thailand.
2. The SOAS HRC (**the intervener**) provides these submissions in the context of criminal proceedings initiated against Mr Netiwit Chotiphatphaisal (**Mr Chotiphatphaisal**), a conscientious objector facing prosecution under section 45 of the Military Service Act.² If convicted, Mr Chotiphatphaisal faces a maximum penalty of 3 years imprisonment.³
3. These proceedings began after Mr Chotiphatphaisal appeared at the Bang Pu Municipality conscription centre in Samut Prakan Province on 5 April 2024 and read a statement declaring that he would not participate in the compulsory military draft. Mr Chotiphatphaisal's refusal to carry out military service stems from his religious and moral beliefs, which commit him to nonviolence, freedom, and justice.
4. The intervener submits that Mr Chotiphatphaisal's prosecution violates his conscience, as well as his right to freely express and practice his religious beliefs which, beyond being recognised in Thailand's 2017 Constitution,⁴ are fundamental rights protected under international law. We therefore respectfully provide these submissions to assist the Court in understanding the international law implications of Mr Chotiphatphaisal's prosecution. Additionally, this case carries broader significance in light of Thailand's current membership of the UN Human Rights Council, affording it a unique

¹SOAS, University of London, 'International Human Rights Clinic', <<https://www.soas.ac.uk/research/research-centres/centre-human-rights-law/international-human-rights-clinic>> accessed 3 February 2026.

² Military Service Act B.E. 2497 (1954).

³ Ibid.

⁴ The Constitution of the Kingdom of Thailand (Thai Constitution) B.E. 2560 (2017)

opportunity to demonstrate leadership in the advancement of human rights domestically, regionally, and internationally.⁵

5. Pursuant to Section 27 of the Organic Act on Procedures of the Constitutional Court⁶, the Constitutional Court is empowered to admit any form of evidence in determining questions of fact, except where expressly rendered inadmissible by law. In light of this provision, this *amicus curiae* submission respectfully establishes these facts for the Court's consideration:

- I. That Mr. Chotiphatphaisal is a conscientious objector;
- II. That comparative jurisdictions consistently recognize conscientious objection as a protected right and provide institutional mechanisms for its accommodation.

6. Furthermore, this *amicus curiae* submission is in line with the now well-established practice in civil law countries to accept amicus briefs.⁷ Amicus briefs are submitted by third-party interveners to provide the court with additional knowledge and offer a broader perspective of the implications of the case under consideration.⁸ Consistent with UN guidelines on amicus curiae interventions, this submission aims at respectfully drawing attention to Thailand's international human rights law obligations regarding the right to conscientious objection and providing an overview over best practice examples for the recognition of this right and alternative service to compulsory military conscription in the case study included.⁹ The SOAS HRC has extensive expertise in international human rights law and has partnered with Thai legal organizations to advance human rights and social justice in Thailand.

7. These submissions also aim to assist this Court by addressing the following issues in respect to Mr Chotiphatphaisal's case:

- I. The right to conscientious objection is a non-derogable right under international law;

⁵ Ministry of Foreign Affairs of Thailand, 'Outline of Thailand's Engagement with the Human Rights Council' <https://image.mfa.go.th/mfa/0/OznAy3tii2/HRC/แนบ_THAILAND4HRC_outline.pdf> accessed 11 February 2026.

⁶ Organic Act on the Procedures of the Constitutional Court B.E. 2561 (2018)

⁷ Organization for Security and Co-operation in Europe (OSCE), 'Amicus Curiae Concept in Modern Justice' (10 June 2022) 15 <<https://www.osce.org/files/f/documents/2/6/523437.pdf>> accessed 4 February 2026; Steven Kochevar, 'Amici Curiae in Civil Law Jurisdictions' (2013) Yale Law Journal, 1653, 1659, 1662.

⁸ OSCE (n 7) 5.

⁹ UNESCO, 'Guide for Amicus Curiae Interventions in Freedom of Expression Cases' (2021) 15 <<https://unesdoc.unesco.org/ark:/48223/pf0000379020>> accessed 4 February 2026.

- II. The right to conscientious objection is also guaranteed under the European Convention on Human Rights;
- III. International law requires the introduction of alternative service regimes where conscription remains; and
- IV. An outline of how other jurisdictions balance the right to conscientious objection with national security through the introduction of alternative service regimes.

II. The right to conscientious objection is a non-derogable right under international law

- 8. The right to conscientious objection is considered a non-derogable right under international law, derived from a person's freedom of thought, conscience, and religion. To comply with its obligations under international law, Thai law must permit Mr Chotiphathaisal to exercise his right to conscientious objection without limitation.

(a) The obligation to apply international law

- 9. The right to freedom of thought, conscience, and religion is enshrined in article 18 of the Universal Declaration of Human Rights (**UDHR**)¹⁰ and article 18 of the International Covenant on Civil and Political Rights (**ICCPR; the Covenant**)¹¹ – the former of which Thailand supported and the latter to which Thailand is a state party, obligating Thailand to guarantee these rights to its citizens.¹²

- 10. Article 18 of the UDHR provides that:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom [...] to manifest his religion or belief in teaching, practice, worship and observance.¹³

- 11. Article 18 of the ICCPR relevantly provides:

¹⁰ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) (UDHR).

¹¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

¹² Thailand acceded to the ICCPR without reservation in October 1996; United Nations Office of the High Commissioner for Human Rights (UN OHCHR), 'Treaty Body Database' <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172> accessed 3 February 2026.

¹³ UDHR (n 10).

- (1) Everyone shall have the right to freedom of thought, conscience and religion.
This right shall include freedom [...] 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 [...] 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.¹⁴
12. These obligations are mirrored in section 31 of Thailand's 2017 Constitution.¹⁵
 13. As a state party to the ICCPR, Thailand is bound to perform any obligations outlined within it in good faith (the *pacta sunt servanda* principle), pursuant to article 26 of the Vienna Convention on the Law of Treaties (VCLT).¹⁶ Consistent with that principle, article 27 of the VCLT expressly prohibits a state party from invoking the provisions of its internal law as justification for its failure to perform a treaty.¹⁷
 14. Collectively, these articles establish the supremacy of international law where it conflicts with domestic law.¹⁸ This principle applies equally to Thailand's executive, legislative, and judicial branches of government.¹⁹ The effect of this is that the Constitutional Court is bound to interpret Thai law – namely the 2017 Constitution and Military Service Act – in a manner that gives effect to Thailand's obligations under the ICCPR and UDHR, regardless of whether such a reading conflicts with domestic law.

¹⁴ ICCPR (n 11).

¹⁵ Thai Constitution (n 4).

¹⁶ Vienna Convention on the Law of Treaties (concluded 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331; the *pacta sunt servanda* rule is an elementary and universally agreed principle fundamental to all legal systems that agreements which are legally binding must be performed, discussed in Anthony Aust, 'Pacta Sunt Servanda', *Max Planck Encyclopedias of International Law* (February 2007) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1449>> accessed 26 January 2026.

¹⁷ This rule applies without prejudice to article 46 of the VCLT, which provides a limited carveout to sections 26 and 27. Article 46 provides that internal law may not be invoked by a state to avoid performing its obligations under international law save for circumstances where the treaty itself is invalid. See discussion in Michael Bothe, '1969 Vienna Convention: Article 46 Provisions of internal law regarding competence to conclude treaties' in Olivier Corten and Pierre Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary*, *Oxford Commentaries on International Law* (online edn, Oxford Law Pro, 2011), <<https://academic.oup.com/oxford-law-pro/book/57893/chapter/472073733>> accessed 10 February 2026.

¹⁸ Ibid.

¹⁹ United Nations Human Rights Committee, 'General Comment No 34, Article 19, Freedoms of opinion and expression' (12 September 2011) [7] UN Doc CCPR/C/GC/34.

(b) The commentary

15. The United Nations – through the Human Rights Committee (**HRC**) and Human Rights Council (**HR Council**)²⁰ – has concluded, on several occasions, that the right to conscientious objection is an implied right derived from the wording of article 18 of the UDHR and ICCPR.
16. Although not binding, as a treaty body of the ICCPR HRC commentary on the Covenant is deemed to be authoritative – and therefore highly persuasive – when decisions are reached by consensus or majority.²¹ Accordingly, HRC opinions ought to guide how the Constitutional Court interprets the Covenant.²² Notwithstanding that the HRC’s position has changed over time, the intervener submits that international law regarding the right to conscientious objection is now settled.
17. Initially, the HRC denied that a right to conscientious objection could be derived from the ICCPR.²³ However, this interpretation developed alongside changing social and political norms. Such a shift was first alluded to in *J.P. v Canada*,²⁴ where the HRC determined that ‘a right to hold, express and disseminate opinions and convictions, including conscientious objection to military activities and expenditures’ existed.²⁵
18. In 1993, the HRC explicitly recognised that the right to conscientious objection could be derived from article 18 of the ICCPR for the first time, remarking in General Comment No. 22 that:

[While] the Covenant does not explicitly refer to a right of conscientious objection [...] the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict

²⁰ And its predecessor, the UN Commission on Human Rights.

²¹ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd edn, NP Engel 2005), 27.

²² United Nations Office of the High Commissioner for Human Rights (UN OHCHR), ‘Conscientious Objection to Military Service Handbook’ (1 February 2013) 12
<<https://www.ohchr.org/en/publications/special-issue-publications/conscientious-objection-military-service>>
accessed 3 February 2026.

²³ *L.T.K v Finland* Communication No 185/1984 (UN HRC, 9 July 1985).

²⁴ *J.P. v Canada* Communication No 446/1991 (UN HRC, 7 November 1991).

²⁵ *Ibid* [4.2]; noting however, that the claim in question was determined to be inadmissible because the HRC considered the refusal to pay taxes on the grounds of a conscientious objection to the military service fell beyond the scope of article 18 ICCPR.

with the freedom of conscience and the right to manifest one's religion or belief
(emphasis added).²⁶

19. Of equal importance, the HRC remarked that ‘the freedom of thought and conscience are protected equally with the freedom of religion and belief’ and, pursuant to article 4(2) of the Covenant, ‘cannot be derogated from, even in time of public emergency’.²⁷
20. Since then, the Commission on Human Rights, and its successor the HR Council,²⁸ have passed 12 resolutions affirming that conscientious objection is a legitimate exercise of a person’s right to freedom of thought, conscience, and religion, and is protected by article 18 of the ICCPR.²⁹
21. In 2006, the HRC delivered its landmark decision in *Yoon et al v Republic of Korea*,³⁰ reversing earlier decisions that rejected the existence of the right to conscientious objection, beginning the process of unification between HRC jurisprudence and UN HR Council and Commission resolutions. That case related to two Jehovah’s Witnesses (**the authors**) who were imprisoned after they refused to fulfil mandatory military service in South Korea on the basis that it would contravene their religious beliefs. In its majority decision, the HRC determined that the right to conscientious objection could be derived from article 18 of the ICCPR, noting that:

[T]he understanding [of article 18] evolves as that of any other guarantee of the Covenant over time in view of its text and purpose.³¹

22. The HRC went on to find that:

[W]hile 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, against being forced to act against genuinely held religious belief.³²

²⁶ United Nations Human Rights Committee, ‘General Comment No 22, Article 18, Freedom of Thought, Conscience or Religion’ (30 July 1993) [11] UN Doc CCPR/C/21/Rev1/Add4.

²⁷ Ibid [2].

²⁸ Note that these bodies are distinct from the UN Human Rights Committee, which is a body of independent experts that monitors implementation of the ICCPR by States parties. The Council and Commission, on the other hand, are forums for member states to discuss human rights issues.

²⁹ United Nations Human Rights Council, ‘Analytical report of the OHCHR: Conscientious Objection to Military Service’ (11 May 2022) [4] UN Doc A/HRC/50/43.

³⁰ *Yoon et al v Republic of Korea* Communication No 1322/2004, 1321/2004 (UN HRC, 3 November 2006).

³¹ Ibid [8.2].

³² Ibid [8.3]

23. Consequently, South Korea's decision to prosecute, convict, and imprison the authors violated article 18 of the Covenant because the refusal to undertake military service constituted a legitimate exercise of their genuinely held religious beliefs.³³
24. Importantly, the HRC considered the right to conscientious objection through the lens of article 18(1) and (3), noting that the authors' conviction and sentence restricted their ability to manifest their religion or belief.³⁴ Such restrictions, they noted, were only permissible under article 18(3) where the restriction was prescribed by law and necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.³⁵ Notwithstanding South Korea's argument that conscription was necessary for national security, the HRC determined that the government failed to demonstrate any special disadvantage should the authors' rights be respected.³⁶
25. In rejecting South Korea's necessity argument, the HRC endorsed alternative service as a mechanism to balance the article 18(1) and (3) considerations, asserting that it was possible to conceive of 'alternatives to compulsory military service that do not erode the basis of the principle of universal conscription but render equivalent social good and make equivalent demands on the individual'.³⁷ Without alternatives to military service, South Korea's conscription laws violated article 18 of the Covenant.³⁸
26. The HRC affirmed this decision in *Jung et al v Republic of Korea*³⁹ which was a decision relating to 100 Jehovah's Witnesses who had each refused military service on the grounds that it contravened their religious beliefs. In reaching this decision, the HRC took its analysis a step further than *Yoon*, holding 'that the authors' refusal to be drafted for compulsory military service was a direct expression of their religious beliefs'.⁴⁰ By concluding that the authors refusal constituted a direct expression of their religious beliefs rather than a manifestation of them, the HRC situated the right to conscientious objection within article 18(1) of the Covenant, rather than article 18(3).
27. The effect of that ruling was clarified by the HRC in its 2012 decision, *Atasoy and Sarkut v Türkiye*.⁴¹ That case involved two Turkish Jehovah's Witnesses who were

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid [8.4].

³⁷ Ibid [8.4].

³⁸ Ibid.

³⁹ *Jung et al v Republic of Korea* Communication No 1603/2007, 1593/2007 (UN HRC, 23 March 2010).

⁴⁰ Ibid [7.4].

⁴¹ *Atasoy and Sarkut v Türkiye* Communication No 1853/2008, 1854/2008 (UN HRC, 29 March 2012).

prosecuted after objecting to military service on the grounds that it contravened their religious beliefs. In rejecting Türkiye's argument that article 18(3) of the Covenant enabled the state to limit rights guaranteed under article 18(1) to protect public safety and public order, the majority of the HRC remarked:

The Committee thus recalls its general comment No. 22 (1993), in which it considers that the fundamental character of the freedoms enshrined in article 18, paragraph 1, of the Covenant is reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4, paragraph 2, of the Covenant [...] The Committee reiterates that the right to conscientious objection to military service is inherent to the right to freedom of thought, conscience and religion [...] The right must not be impaired by coercion.⁴²

28. In his concurring decision, member Salvioli remarked that:

It is precisely because freedom of thought, conscience and religion is inherent in conscientious objection to compulsory military service, as recognised by the Committee that the matter cannot be dealt with under article 18, paragraph 3. There can now be no limitation or possible justification under the Covenant for forcing a person to perform military service (emphasis added).⁴³

29. Separately, member Rodley reasoned that there was a certain unreality in appealing to article 18(3) to limit rights guaranteed under article 18(1), because it stood in contrast to the Committee's experience of conscientious objection, remarking that:

[I]t is precisely in times of armed conflict, when the community interests in question are most likely to be under greatest threat, that the right to conscientious objection is most in need of protection, most likely to be invoked and most likely to fail to be respected in practice.⁴⁴

30. In an attempt to explain the reasoning behind the majority's decision, member Rodley tied his analysis of article 18 of the Covenant to article 6, the right to life, reasoning that the right to life is a 'supreme right' that put it on another plane than other deep

⁴² Ibid [10.4]; note also that the Committee determined that the authors' prosecution for objecting to mandatory military service violated their rights under article 18(1) of the Covenant [10.5].

⁴³ Ibid 19-20.

⁴⁴ Ibid 15 (per member Rodley, with members Thelin and Flinterman concurring).

human goods protected in the Covenant.⁴⁵ If a state was permitted to infringe on a person's article 18(1) rights by reference to article 18(3), article 6 would be at inherent risk of being violated should citizens be forced to engage in military service; an absurd result given the context and purpose of the Covenant.⁴⁶

31. Read together, the HRC's decision in *Atasoy* makes it abundantly clear that it considers the right to conscientious objection to be non-derogable, and that state-parties cannot limit this right by appealing to article 18(3) of the Covenant.
32. Between 2017 and 2022, the HRC reaffirmed and clarified this position in five separate views on individual communications.⁴⁷ In each case, the HRC affirmed that the right to conscientious objection derived from article 18(1) of the Covenant, not article 18(3).⁴⁸ Further, in each case the HRC affirmed that while a person could not be coerced to undertake military service, they could be compelled to undertake a civilian alternative to military service, outside the military sphere and not under military command – so long as that alternative service is not punitive and is compatible with human rights.⁴⁹ Accordingly, it is submitted that the principles set down in *Atasoy* constitute settled law.
33. Likewise, the HRC and Committee on the Elimination of Discrimination against Women have urged States parties to ensure the right to conscientious objection is protected under domestic law on several occasions since 2017.⁵⁰ The HRC has also stressed, with equal vigour, that the protections guaranteed under article 18 of the Covenant are to be interpreted and applied broadly so that they apply to theistic, non-theistic, and atheistic beliefs, as well as the right not to profess any religion or belief.⁵¹ Furthermore, alternative service must be of a civilian nature,⁵² and must not

⁴⁵ United Nations Human Rights Committee, 'General Comment No 6, Article 6, Right to Life' (30 April 1982) [1].

⁴⁶ *Atasoy* (n 41) 15, 16.

⁴⁷ *Durdyev v Turkmenistan* Communication No 2268/2013 (UN HRC, 17 October 2018); *Dawletow v Turkmenistan* Communication No 2316/2013 (UN HRC, 29 March 2019); *Nazarov et al v Turkmenistan* Communication No 2302/2013 (UN HRC, 25 July 2019); *Jong-bum Bae et al v Republic of Korea* Communication No 2846/2016 (UN HRC, 13 March 2020); and *Petromelidis v Greece* Communication No 3065/2017 (UN HRC, 2 July 2021).

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ United Nations Human Rights Committee, 'Concluding observations on Eritrea in the absence of its initial report' (3 May 2019) UN Doc CCPR/C/ERI/CO/1; United Nations Committee on the Elimination of Discrimination Against Women, 'Concluding observations on the sixth periodic report of Eritrea' (10 March 2020) UN Doc CEDAW/C/ERI/CO/6.

⁵¹ General Comment No 22 (n 25).

⁵² United Nations Human Rights Committee, 'Concluding observations on the fourth periodic report of Lithuania' (29 August 2018) [26] UN Doc CCPR/C/LTU/CO/4.

be punitive or discriminatory in its nature or duration when contrasted to military service.⁵³

34. The cumulative effect of these decisions is clear: international law recognises a right to conscientiously object to military service, derived from article 18(1) of the ICCPR. That right is non-derogable and must be always adhered to by States parties. As a State party to the Covenant, the VCLT provides that Thailand must import a right to conscientious objection into its domestic law.

(c) International law entitles Mr Chotiphatphaisal to conscientiously object to military service

35. Provided the Court accepts that Thailand's international law obligations require it to recognise a right to conscientious objection to military service under domestic law, it falls to the legislature to establish a regime that considers whether Mr Chotiphatphaisal is entitled to exercise that right. To do so, it must determine whether (i) his religious beliefs are legitimately held, and (ii) his conscientious objection constitutes a legitimate exercise of those beliefs.

(i) Mr Chotiphatphaisal's religious beliefs are legitimately held

36. Two ICCPR compatible models exist to determine whether a conscientious objector's religious beliefs are legitimately held.⁵⁴ First, a State party can accept claims of conscientious objection to military service as valid without inquiry.⁵⁵ In the alternative, a State party can establish an independent and impartial decision-making body to assess an objector's claim.⁵⁶ Plainly, the nature and content of Mr Chotiphatphaisal's beliefs and the lengths he has gone to preserve them suggest they are legitimately held.

(ii) Mr Chotiphatphaisal's conscientious objection constitutes a legitimate exercise of his beliefs

37. In determining this issue, two important considerations arise:

⁵³ United Nations Human Rights Committee, 'Concluding observations on the third periodic report of Tajikistan' (22 August 2019) [46] UN Doc CCPR/C/TJK/CO/3; United Nations Human Rights Committee, 'Concluding observations on the fifth periodic report of Belarus' (22 November 2018) [48] UN Doc CCPR/C/BLR/CO/5.

⁵⁴ United Nations Human Rights Council, 'Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards' (24 May 2019) UN Doc A/HRC/41/23.

⁵⁵ Ibid [7].

⁵⁶ Ibid [8].

- a. First, article 18 of the ICCPR is not directed at religious pluralism *per se*, or of the collective right to practice a religion.⁵⁷ Rather, it aims to protect a person's right to freely adhere to one of the systems of belief mentioned in the first line of article 18 – thought, conscience, or religion.⁵⁸ Consequently, to be protected by article 18, Mr Chotiphatphaisal need only establish that his conscientious objection is a legitimate exercise of the religious beliefs he personally holds. It would not matter if his beliefs do not conform with established teachings of his religion, nor would it matter if his views were inconsistent with the dominant tradition among adherents of the same religion or ideology.⁵⁹ This reading stems from the HRC's decision in *Yaker v France*.⁶⁰ There, the Committee considered whether French legislation which allowed police to fine people covering their faces in public, including niqab-wearing Muslim women, was compatible with article 18. While accepting that the majority of Muslim women in France did not wear a niqab, as well as evidence from Islamic scholars that a niqab was not mandated under Islam, the Committee determined that the wearing of a niqab was a legitimate expression of that author's beliefs. Accordingly, in banning 'any apparel intended to conceal the face' in public, Act No. 2010-1192 of 11 October 2010 constituted a restriction on the authors article 18(1) rights.⁶¹
- b. Second, the HRC has stressed, on several occasions, that the protections guaranteed under article 18 of the Covenant apply equally to theistic, non-theistic, and atheistic beliefs, as well as the right not to profess any religion or belief.⁶² Moreover, article 18 does not only apply to traditional religions, or to religions and beliefs that carry the institutional characteristics and practices analogous to those of traditional religions.⁶³ That is to say, the scope of article 18 permits a person to conscientiously object to military service owing to any one of their thought, conscience, or religion. The essential

⁵⁷ Yuval Shany, 'The Road Taken: ICCPR and Discriminatory Restrictions on Religious Freedom' (2021) 34 Harvard Human Rights Journal 306, 308.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ *Yaker v France* Communication No 2747/2016 (UN HRC, 17 July 2018).

⁶¹ Ibid [8.3]. It is also worth noting that this decision occurred prior to *Jung* and *Atasoy*, so went on to consider whether the restriction was necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, ultimately finding that the provision was unnecessary.

⁶² General Comment No 22 (n 26) [2].

⁶³ Ibid.

task, therefore, is for an objector to establish that they legitimately hold a belief that places their conscience in opposition to military service.

38. It is submitted that Mr Chotiphatphaisal's conscientious objection constitutes a legitimate exercise of his religious beliefs and of his conscience. First, applying the approach adopted in *Yaker*,⁶⁴ Mr Chotiphatphaisal's religious beliefs permit him to conscientiously object to military service because his Buddhist beliefs inhere in him a pacifism that prevents him from taking another person's life, or engaging in an activity that creates a risk of doing so. Second, even if Mr Chotiphatphaisal's conscience is separated from his Buddhist beliefs, it still prevents him from entering into the military because the risk of taking another person's life directly conflicts with his conscience. Being a legitimate expression of his religious beliefs and of his conscience, it is submitted that Mr Chotiphatphaisal is entitled to conscientiously object to military service pursuant to article 18(1) of the ICCPR.

(d) Conclusion

39. The intervener respectfully invites this Court to find that:

- a. Article 18(1) of the ICCPR guarantees the right to conscientiously object to mandatory military service, where such service conflicts with a person's thought, conscience, or religion; and
- b. Thailand, as a State party to the ICCPR, is legally bound to uphold this right pursuant to its obligations under the VCLT.

III. The right to conscientious objection is also guaranteed under the European Convention on Human Rights

40. The right to conscientious objection has also been recognised under the European Convention on Human Rights (**ECHR; the Convention**) deriving from the right to freedom of thought, conscience and religion enshrined in article 9.⁶⁵

41. It is respectfully submitted that, should this Court (contrary to Thailand's international obligations under the ICCPR) decline to regard the right to conscientious objection as non-derogable, it should be predisposed toward considering and at a minimum

⁶⁴ *Yaker* (n 60).

⁶⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

complying with the jurisprudence of the European Court. Section 31 of the Thai Constitution mirrors the framework of the Convention in that it recognises the right to profess a religion, the right to manifest it, and allows for reasonable limitations on such manifestation. Given these structural similarities, the ECHR commentary provides a framework to interpret Thailand's obligations in a human rights compatible manner.

42. The European Court of Human Rights (**the European Court**), in contrast to the HRC's interpretation of article 18 ICCPR, has adopted an approach under which the right to conscientious objection may be subject to restrictions under certain circumstances. However, it has consistently subjected any such limitations to strict judicial supervision. Notably, although theoretically allowing limitations of the right to conscientious objection, the European Court has never, in the cases it has considered concerning military service, concluded that any of the permissible restrictions on the manifestation of religion or belief were justified.⁶⁶
43. The jurisprudence of the HRC and the European Court clearly demonstrate that the right to conscientious objection is firmly established in international human rights law.

(a) The law

44. Article 9 of the ECHR relevantly provides that:

- (1) Everyone has the right to freedom of thought, conscience and religion [which] includes freedom [...], 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 for the protection of the rights and freedoms of others.

(b) The commentary

45. Even though the right to conscientious objection is not explicitly mentioned in the ECHR, various European institutions, including the Parliamentary Assembly of the

⁶⁶ UN Human Rights Council Analytical report (n 29) [5]; see also Quaker United Nations Office, 'Input for OHCHR Report on Conscientious Objection to Military Service' (March 2022) <<https://www.ohchr.org/sites/default/files/2022-05/QUINO-HRC50.pdf>> accessed 10 February 2026.

Council of Europe (PACE; the Parliamentary Assembly), the Committee of Ministers of the Council of Europe and the European Parliament, have repeatedly read the right to conscientious objection into article 9.⁶⁷

46. The Parliamentary Assembly, for example, first declared in its Resolution 337 (1967) that individuals subject to conscription for military service shall enjoy a personal right to be released from the obligation to perform military service if, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service.⁶⁸ Such a right was characterised as deriving from the fundamental rights guaranteed in article 9 of the ECHR.
47. Additionally, the European Parliament in its Resolution of 7 February 1983 on conscientious objection stated that the ‘protection of freedom of conscience implies the right to refuse to carry out military service and to withdraw from such service on grounds of conscience’.⁶⁹

(c) The Jurisprudence of the European Court of Human Rights

48. As with the HRC’s early jurisprudence, the former European Commission on Human Rights did not infer that a right to conscientious objection could be derived from article 9 of the Convention.⁷⁰ This position shifted in 2011, when the Grand Chamber of the European Court determined *Bayatyan v Armenia* first recognising the right to conscientious objection as protected under article 9 of the Convention.⁷¹
49. In *Bayatyan v Armenia*, the applicant, a Jehovah’s Witness, objected to military service on the basis that it contravened his religious beliefs. In addressing this objection, the European Court recognised that the interpretation of the Convention needed to evolve over time, consistently with developments in international and

⁶⁷ Amnesty International and others, ‘Bayatyan v Armenia: Third Party intervention to the Grand Chamber of the European Court of Human Rights’ (Amnesty International, 15 July 2010)

<<https://www.amnesty.org/en/documents/pol31/001/2010/en/>> accessed 23 November 2025; Council of Europe Parliamentary Assembly Resolution 337 (1967); Council of Europe Parliamentary Assembly Recommendation 478 (1967); Council of Europe Committee of Ministers, ‘Recommendation R(87)8 regarding conscientious objection to compulsory military service’ (9 April 1987); Council of Europe Committee of Ministers, ‘Recommendation CM/Rec (2010)4 on human rights of members of the armed forces’ (24 February 2010).

⁶⁸ Council of Europe Parliamentary Assembly Resolution 337 (1967).

⁶⁹ European Parliament Resolution on conscientious objection (Macciocchi resolution) (7 February 1983) OJ C 68/14.

⁷⁰ The European Commission of Human Rights assisted the European Court of Human Rights from 1953 to 1998 and was abolished through Protocol no 11 in 1998 due to the restructuring of the Court; UN OHCHR (n 21) 16.

⁷¹ *Bayatyan v Armenia* App no 23459/03 (ECtHR, 7 July 2011); UN OHCHR (n 21) 16.

regional law. In doing so, it reasoned that, while not expressly outlined in the Convention, conscientious objection to military service motivated by a person's conscience or deeply and genuinely held religious or other beliefs was of such importance to attract protection under article 9 of the Convention.⁷²

50. In reaching this decision, the European Court relied extensively on evolving standards within the Council of Europe, in particular a series of resolutions and recommendations recognising conscientious objection, including Resolution 337 (1967) described above.
51. The European Court classified the applicant's refusal to perform military service as a manifestation of his religious beliefs.⁷³ His subsequent conviction for draft evasion was therefore deemed an interference with his right to manifest his religion under article 9 (1) of the Convention. Such interference must be justified under article 9(2) of the Convention which only permits limitations that are prescribed by the law, pursue one or more of the legitimate aims set enumerated therein (interests of public safety, protection of public order, health or morals, or protection of the rights and freedoms of others), and are necessary in a democratic society.⁷⁴ *Bayatyan* therefore established that criminal sanctions imposed on conscientious objectors to military service constitute interferences with article 9 of the Convention that can only be justified in the most exceptional circumstances.
52. Applying this framework in *Bayatyan*, the European Court found that the applicant had acted out of sincerely held religious convictions opposing military service, while at the same time expressing his willingness to fulfil his civic duty through alternative civilian service.⁷⁵ As no such alternative civilian service existed in Armenia at the relevant time, the applicant had no choice but to act contrary to his conscience or refuse military service and face criminal prosecution. The European Court consequently held that the State had 'failed to strike a fair balance between the interests of society as a whole and those of the applicant'.⁷⁶ The interference with the applicant's rights under article 9 of the Convention was therefore not justified.

⁷² *Bayatyan* (n 71) [110].

⁷³ *Ibid* [112].

⁷⁴ *Ibid* [121]; Grégor Puppnick, 'Conscientious Objection and Human Rights: A Systematic Analysis' (2017) 1(1) *Law and Religion* 1, 9 (revised 1 June 2025) <<http://dx.doi.org/10.2139/ssrn.5355560>> accessed 10 February 2026.

⁷⁵ *Bayatyan* (n 71) [125].

⁷⁶ *Ibid* [124].

53. The European Court reaffirmed that although states enjoy a certain margin of appreciation in assessing whether and to what extent an interference with the manifestation of conscience or religion is necessary, that margin is subject to supervision by the European Court. The Court's task is to determine whether the measures adopted at national level were justified in principle and proportionate to the legitimate aim pursued.⁷⁷
54. In defining the scope of the margin of appreciation in cases concerning conscientious objection, the European Court has repeatedly emphasised that freedom of thought, conscience and religion constitutes one of the foundations of a democratic society and represents a vital element of individual identity, not only for religious believers but also for atheists, agnostics, sceptics and the unconcerned.⁷⁸
55. The European Court also observed that any system of military conscription imposes a heavy burden on citizens, which can be justified only if it is shared equitably.⁷⁹ Exemptions from this duty must therefore rest on solid and convincing grounds, which include conscientious objection.⁸⁰
56. Accordingly, where a state has failed to introduce alternative civilian service capable of reconciling the conflict between individual conscience and military obligations, the margin of appreciation is necessarily narrow. In such cases, the state must advance convincing and compelling reasons to justify any interference with the rights enshrined in article 9 of the Convention and demonstrate that the interference responds to a 'pressing social need'.⁸¹
57. A system of compulsory military service that allows no conscience-based exceptions and penalises those who refuse to perform military service based on conscience, cannot be considered necessary in a democratic society.⁸² Nor can such a system be justified by a general or abstract invocation of the need to defend the territorial integrity without explaining why such restriction on the right to conscientious objection is necessary to ensure the territorial integrity of the country.⁸³

⁷⁷ Ibid [121].

⁷⁸ Ibid [118].

⁷⁹ Ibid [125].

⁸⁰ Ibid.

⁸¹ Ibid [123].

⁸² Ibid.

⁸³ *Mushfig Mammadov and Others v Azerbaijan* App no 14604/08 (ECtHR, 17 October 2019) [97]; European Court of Human Rights, 'Guide on Article 9 of the European Convention on Human Rights' (31 August 2025) Council of Europe 29.

58. Since *Bayatyan v Armenia*, the European Court has confirmed its decision on numerous occasions and further developed its jurisprudence concerning the requirements of an alternative civilian service.⁸⁴
59. Compulsory alternative service as an allowance for conscientious objectors to military service can only be lawful if it enables objectors to fulfil their civic duty without denying their conscience and convictions.⁸⁵ Otherwise, it would undermine the right to conscientious objection guaranteed by article 9 of the Convention.⁸⁶
60. The recognition of the right to conscientious objection is further reflected in article 10 (2) of the Charter of Fundamental Rights of the European Union (EU), which explicitly guarantees the right to conscientious objection in accordance with national laws governing its exercise.⁸⁷

(d) Mr Chotiphatphaisal's beliefs fall squarely within Article 9 of the Convention

61. The beliefs of Mr Chotiphatphaisal fall squarely within the scope of conscientious objection as protected under article 9 of the Convention.
62. The Convention, like the ICCPR, does not only include religious beliefs but guarantees the freedom of conscience without restrictions, consequently encompassing pacifist beliefs as legitimate grounds for conscientious objection.⁸⁸
63. The European Court has repeatedly emphasised that the exercise of religions, faiths and beliefs must be independent from the state's intervention to guarantee public order, religious harmony and tolerance in a democratic society. Therefore, the state duty of neutrality and impartiality excludes any competence on the part of the state to evaluate the validity of religious beliefs or their modes of expression.⁸⁹
64. Any assessment under article 9 of the Convention is therefore limited to determining whether the conscientious objection of the relevant individual had been motivated by

⁸⁴ See as examples *Bukharatyan v Armenia* App no 37819/03 (ECtHR, 10 April 2012); *Adyan and Others v Armenia* App no 75604/11 (ECtHR, 12 October 2017).

⁸⁵ *Adyan* (n 84) [66].

⁸⁶ *Ibid.*

⁸⁷ Charter of Fundamental Rights of the European Union [2012] OJ C326/02.

⁸⁸ *Kanatlı v Türkiye* App no 18382/15 (ECtHR, 12 March 2024); European Court of Human Rights Guide (n 82) 30.

⁸⁹ *Bayatyan* (n 71) [120].

convictions or beliefs of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of article 9 of the Convention.⁹⁰

65. This does not permit the state to evaluate the validity of the beliefs themselves but serves solely to ensure that exemptions from compulsory military service, which imposes a heavy burden on citizens, are only granted if they are based on solid and convincing grounds.⁹¹ The assessment shall not be used to unlawfully restrict the right to conscientious objection but to prevent any abuse of the exemption.⁹²
66. Any examination of a conscientious objection and investigation into an individual's beliefs must be impartial and independent. Otherwise, the state does not meet its positive obligations under article 9 of the Convention. Besides this requirement, the European Court accepts that states have a margin of appreciation on how they want to conduct these assessments.⁹³
67. As described above, Mr Chotiphatphaisal, believes that military conscription violates human rights and is undemocratic and unjust. He considers himself as a pacifist with his convictions stemming from his Buddhist faith. Mr Chotiphatphaisal has consistently expressed his beliefs and lives his life according to it. His conscientious objection is therefore clearly motivated by convictions of sufficient cogency and seriousness to attract the protection of article 9 of the Convention. As Thailand does not provide for any alternative civilian service, the restrictions on the right to conscientious objection and penalisation of conscientious objectors cannot be justified.

IV. International law requires the introduction of alternative service regimes where conscription remains

68. Should Thailand maintain its military conscription regime, there are two options open to it in respect of conscientious objectors.⁹⁴ First, it could excuse conscientious objectors from military service without any additional obligations. Second, it could establish a regime for alternative service. The parameters of human rights compatible alternative service regimes are outlined below.

⁹⁰ Ibid [110].

⁹¹ *Dyagilev v Russia* App no 49972/16 (ECtHR, 10 March 2020) [59-63].

⁹² *Teliatnikov v Lithuania* App no 51914/19 (ECtHR, 7 June 2022).

⁹³ *Enver Aydemir v Türkiye* App no 26012/117 (ECtHR, 7 June 2016) [81].

⁹⁴ *Min-Kyu Jeong et al v Republic of Korea* Communications No 1642-1741/2007 (UN HRC, 27 April 2011) [7.3]

(a) Alternative service is compatible with international law

69. The HRC and the European Court have both stated that alternative service is compatible with the right to conscientious objection.⁹⁵ The rationale for this was initially explained by the HRC in *Yoon et al. v Republic of Korea*, where it observed that:

It is in principle possible, and in practice common, to conceive alternatives to compulsory military service that do not erode the basis of the principle of universal conscription but render equivalent social good and make equivalent demands on the individual, eliminating unfair disparities between those engaged in compulsory military service and those in alternative service.⁹⁶

70. Later, in *Jong-bum Bae et al v Republic of Korea*,⁹⁷ the HRC affirmed that while a person could not be coerced to undertake military service, they could be compelled to undertake a civilian alternative to military service, outside the military sphere and not under military command – so long as that alternative service is not punitive and is compatible with human rights.⁹⁸

71. Separately, the United Nations Office of the High Commissioner for Human Rights (OHCHR) has asserted that alternative service is consistent with the exercise of religious beliefs and conscience, even within military conscription-based systems, provided that such service is genuinely civilian in character and neither punitive in duration nor conditions.⁹⁹ Indeed, the OHCHR has cautioned against mere legal recognition of the right to conscientious objection and the need to establish a regime for alternative service, arguing that recognition without implementing provisions creates legal uncertainty and frustrates the practical exercise of these rights.¹⁰⁰

72. The intervener respectfully submits that, in addition to being required by international law, alternative service strikes a fair balance between society's general interest and the

⁹⁵ United Nations Human Rights Council, 'Conscientious Objection to Military Service' (8 October 2013) UN Doc A/HRC/RES/24/17 [4] observes 'We urge States with a system of compulsory military service, where such provision has not already been made, to provide for conscientious objectors various forms of alternative service'; *Adyan* (n 84); *Teliatnikov* (n 91).

⁹⁶ *Yoon* (n 30) [8.4].

⁹⁷ *Jong-bum Bae* (n 47) [9].

⁹⁸ *Ibid* [7.3].

⁹⁹ UN OHCHR (n 22) [37].

¹⁰⁰ *Ibid* 48.

rights of conscientious objectors.¹⁰¹ By establishing a clear, non-punitive civilian track, Thailand can respect individual conscience while ensuring that such service continues to benefit society as a whole.¹⁰²

(b) A human rights compatible model of alternative service

73. To comply with the ICCPR and ECHR, alternative service can take one of two distinct forms – with the appropriateness of the form depending on the convictions of the individual.¹⁰³ First, it could be unarmed military service conducted within the military structure but without the requirement to bear arms.¹⁰⁴ Second, it can be alternative civilian service – conducted outside the military structure and done in the public interest.¹⁰⁵ These divergent approaches distinguish those conscientious objectors whose objection is to personally bearing arms, but who are not opposed to unarmed military service. For this category of conscientious objector, non-combatant service in the military is acceptable.¹⁰⁶ In the present case, alternative civilian service is the only appropriate form because Mr Chotiphatphaisal’s religious and pacifistic beliefs preclude him from engaging in military service of any kind.¹⁰⁷

74. The fundamental purpose of alternative civilian service is to accommodate conscientious objectors while enabling them to fulfill their societal obligations through contributions to fields such as healthcare, environmental conservation, disaster relief, or social welfare.¹⁰⁸ Accordingly, it is respectfully submitted that alternative service would strengthen Thailand’s compulsory conscription regime by equally protecting constitutionally enshrined duties and freedoms, ensuring that the rights of all citizens are respected while allowing them to contribute meaningfully to civil society.¹⁰⁹

¹⁰¹ *Kanath* (n 88).

¹⁰² United Nations High Commissioner for Refugees (UNHCR), ‘Guidelines on International Protection No 10: Claims to Refugee Status related to Military Service’ (3 December 2013) UN Doc HCR/GIP/13/10/Corr 1 [3].

¹⁰³ United Nations Human Rights Committee, ‘Concluding observations of the Human Rights Committee: Russian Federation’ (1 December 2003) UN Doc HRC CCPR/CO/79/RUS [17].

¹⁰⁴ United Nations Commission on Human Rights, ‘Conscientious objection to military service’ (22 April 1998) UN Doc E/CN4/RES/1998/77 [4]; Council of Europe Committee of Ministers Recommendation R(87)8 (n 66); General Comment No 22 (n 25) [11].

¹⁰⁵ *Ibid.*

¹⁰⁶ UN OHCHR (n 22) [38].

¹⁰⁷ *Jong-bum Bae* (n 47) [7.5].

¹⁰⁸ UN OHCHR (n 22) [65-73].

¹⁰⁹ UN OHCHR (n 22) [7, 11]; Venice Commission of the Council of Europe, ‘Ukraine: amicus curiae brief on alternative (non-military) service’ (18 March 2025) Doc No CDL-AD(2025)006 [53-54, 64].

75. The international human rights standards for alternative service have been discussed at length by both the HRC and the European Court.¹¹⁰
76. In the case of Mr Chotiphatphaisal, an ICCPR compatible model of alternative service must strictly adhere to the following international human rights standards:¹¹¹
- a. Be a civilian alternative to military service, outside the military sphere and not under military command;
 - b. Not be of a punitive nature;
 - c. Be a real service to the community; and
 - d. Be compatible with respect for human rights.
77. A service is considered punitive if its duration is significantly longer than military service, specifically 1.75 to 2 times the length without a reasonable or objective justification beyond merely ‘testing’ the sincerity of the objector’s beliefs.¹¹² Furthermore, the service is deemed punitive if its conditions involve performing duties far from one’s permanent residence, receiving salaries below subsistence levels, or facing restrictions on freedom of movement.¹¹³
78. This standard is mirrored in the European Convention on Human Rights. In *Adyan and Others v Armenia*, the European Court determined the requirements for a genuinely civilian alternative service which must be provided for to meet the state’s obligations under article 9 of the Convention.¹¹⁴ While the European Court grants states a certain margin of appreciation regarding the implementation of an alternative service, the system must be of a genuinely civilian nature and not punitive in character to accommodate the guarantees of the right to conscientious objection under article 9 of the Convention. To determine if an alternative service system is truly civilian, the European Court examines, inter alia, the nature of the work, authority, control, applicable rules and appearances. In particular, the service must be hierarchically and institutionally separated from the military.¹¹⁵

¹¹⁰ *Yoon* (n 30) see also Council of Europe Committee of Ministers (n 66).

¹¹¹ *Jeong* (n 94) [7.2].

¹¹² United Nations Human Rights Committee, ‘Concluding observations on Estonia’ (15 April 2003) UN Doc CCPR/CO/77/EST.

¹¹³ United Nations Human Rights Committee, ‘Concluding observations on the sixth periodic report of the Russian Federation’ (24 November 2009) UN Doc CCPR/C/RUS/CO/6 [23].

¹¹⁴ *Adyan* (n 84).

¹¹⁵ *Adyan* (n 84) [67-70]; *Teliatnikov* (n 91) [105-107].

(c) Conclusion

79. For Thailand, implementing such a regime provides a critical mechanism to harmonise the rights to freedom of religion and conscience – enshrined under section 31 of the Constitution – with the duty to national defence enshrined under section 50.¹¹⁶ Rather than viewing these as competing interests, it is submitted that an alternative service model balances them by allowing the state to uphold its security obligations while simultaneously respecting the fundamental rights of its citizens. By enabling conscientious objectors to fulfill their societal duties through civilian roles, Thailand can ensure that the rights of all citizens are protected in allowing them to serve the public interest in a manner consistent with their deeply held beliefs.¹¹⁷

V. Relevant domestic law and the right to freedom of thought, conscience or religion

(a) Introduction

80. This section of the amicus curiae considers how military conscription, conscientious objection, and alternative service are structured in a select group of jurisdictions – South Korea, Taiwan, Colombia, Armenia, Germany, Finland, and Denmark. Although there are several additional states that formally recognise some form of conscientious objection,¹¹⁸ the countries addressed in this brief are highlighted because of their relevance, the clarity of their frameworks, and their substantial compliance with the ICCPR and ECHR models discussed above. Specifically, these jurisdictions recognise conscientious objection as a protected right to freedom of thought, conscience, and religion, and provide for alternative service that generally avoids punitive measures and ensures independent adjudication. As such, an examination of each of their approaches provides a useful comparative lens through which the Court may evaluate persuasive state practice and emerging norms regarding the accommodation of conscientious objection.

¹¹⁶ Thai Constitution (n 4).

¹¹⁷ UN OHCHR (n 22).

¹¹⁸ Center on Conscience and War, ‘Conscientious Objection Internationally: A Survey of the Americas’ (2020) <<https://centeronconscience.org/conscientious-objection-internationally/>> accessed 16 December 2025; European Bureau for Conscientious Objection, ‘Annual Report: Conscientious Objection to Military Service in Europe 2022/23’ (12 May 2023) <https://ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2023-05-12-EBCO_Annual_Report_2022-23.pdf> accessed 10 February 2026.

(b) South Korea

81. The question of whether to exempt conscientious objectors from the Republic of Korea's (**South Korea**) mandatory military service has been a subject of debate within the country for some time. Over the course of the last 60 years, hundreds of South Korean men were imprisoned for objecting to military service based on their religious beliefs.¹¹⁹ As discussed below, South Korea made a historic shift concerning conscientious objection in 2018, when its Supreme Court recognised the right for the first time.
82. Article 10 of the Constitution of the Republic of Korea ensures that '[a]ll citizens shall be assured of human dignity and worth and have the right to pursuit of happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals'.¹²⁰ Moreover, article 11 guarantees that '[a]ll citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status'.¹²¹ And, importantly, articles 19 and 20(1) guarantee freedom of conscience and freedom of religion.¹²²
83. In South Korea, all male citizens aged nineteen and above are required to perform mandatory military service.¹²³ The length of this required military service ranges from eighteen to twenty-two months and is determined by the branch of military service conscripts join.¹²⁴ Article 88(1) of the Military Service Act is a penalty provision for those who evade or avoid the duty of military service without justifiable cause after receiving a notice of enlistment in active service or a written draft notice.¹²⁵ If an individual called for military service fails to enlist, that individual 'shall be punished by imprisonment for not more than three years'.¹²⁶

¹¹⁹ Amnesty International, 'South Korea: Drop charges against first conscientious objector to refuse alternative service' (Amnesty International, 22 August 2022) <<https://www.amnesty.org/en/latest/news/2022/08/south-korea-conscientious-objector-military-service-hye-min-kim/>> accessed 12 November 2025.

¹²⁰ Constitution of the Republic of Korea 1987, article 10.

¹²¹ Ibid article 11.

¹²² Ibid article 19-20(1).

¹²³ Ibid article 39.

¹²⁴ Military Service Act 2021 (Republic of Korea) article 18(2).

¹²⁵ Ibid.

¹²⁶ Ibid.

84. In 2018, the Supreme Court of Korea considered whether conscientious objection based on religious grounds constituted a justifiable cause for rejecting South Korea's mandatory military service. In that case, the defendant, a Jehovah's Witness, was indicted on the charge of violating the Military Service Act when he did not enlist because of his religious beliefs.¹²⁷
85. In its landmark *en banc* Decision, 2016 DoC10912, the Supreme Court legalised conscientious objection to military service for the first time in South Korea's history, overruling decades of previous Supreme Court decisions that held that religious beliefs were not a legal or valid reason to refuse mandatory military service. Specifically, the Supreme Court reasoned that criminally punishing individuals who refused military service based on deeply held, genuine conscientious objection excessively limited their freedom of conscience and violated fundamental human rights guaranteed by articles 10 and 11 of the Constitution.¹²⁸
86. Further, the decision reinterpreted the meaning of 'justifiable cause' in article 88(1) of the Military Service Act to include conscientious objection.¹²⁹ As a result of this ruling, in the weeks following the Supreme Court's ruling, the South Korean Ministry of Justice's parole review board determined that 58 currently imprisoned conscientious objectors were to be released on parole.¹³⁰
87. Following the Supreme Court's decision, the government introduced an alternative military service system in 2020.¹³¹ This system allows individuals who object to military service on grounds of conscience and religious beliefs to undertake 36 months of alternative service.¹³² Alternative service primarily requires conscientious objectors to perform duties within correctional facilities, including stints in kitchens, laundries, and other administrative duties.¹³³ Importantly, however, conscientious objectors are not incarcerated and retain their liberty. Although alternative service is significantly

¹²⁷ Supreme Court of Korea *en banc* Decision 2016Do10912 (1 November 2018).

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ Kim Min-kyoung, 'South Korea: 58 conscientious objectors to be released from prison simultaneously' *The Hankyoreh* (Mapo-gu, 27 November 2018)

<https://english.hani.co.kr/arti/english_edition/e_national/872011.html> accessed 12 November 2025.

¹³¹ Act on Assignment to and Performance of Alternative Service 2019 (Republic of Korea) article 1.

¹³² *Ibid* article 18.

¹³³ Chad Guzman, 'Inside South Korea's Harsh Alternative to Military Service' *Time* (New York, 1 September 2022) <<https://time.com/6208211/south-korea-military-service-draft-conscription-conscientious-objector/>> accessed 16 December 2025.

longer than ordinary military service, the introduction of such alternative service is a significant step toward compliance with international human rights standards.

(c) Taiwan

88. Compulsory military service was first introduced to Taiwan during the final year of Japanese colonial rule in January 1945.¹³⁴ It was comprehensively re-established in December 1949, following the Republic of China's (ROC) retreat to Taiwan.¹³⁵ Military conscription is rooted in the 1947 Constitution and the Act of Military Service System.¹³⁶ The constitutional foundation derives from article 20, which mandates that citizens have the duty to perform military service in accordance with the law, as well as article 137 which establishes the military's objective to safeguard national security and preserve world peace.¹³⁷ Statutory implementation of conscription through the Act of Military Service System requires males reaching the age of 19 to register and serve active duty if deemed fit.¹³⁸
89. The legal inflexibility of conscription led to the systematic criminalisation and repeat incarceration of conscientious objectors, due to the lack of a legally recognised alternative service. This cycle of punishment created a fundamental conflict with the constitutional guarantee of religious freedom, leading litigants to challenge the Act's strict enforcement provisions before the Constitutional Court (Judicial Yuan).¹³⁹
90. The Constitutional Court addressed this conflict in its decision *Re Grand Justice Interpretation* No 490 (1999).¹⁴⁰ While the majority reached the conservative conclusion of upholding the general constitutionality of mandatory conscription, the ruling sparked intense public and political debate.¹⁴¹

¹³⁴ Han Cheung, 'Taiwan in Time: Conscription and Its Discontents' *Taipei Times* (Taipei, 23 July 2017) <<https://www.taipeitimes.com/News/feat/archives/2017/07/23/2003675116>> accessed 11 February 2026.

¹³⁵ Ibid.

¹³⁶ The Constitution of the Republic of China 1947 (Taiwan); Act of Military Service System 1933 (Taiwan).

¹³⁷ Constitution of Taiwan (n 146).

¹³⁸ Ministry of the Interior, 'Who is considered "of conscription age?" How do you calculate the conscription age of 19? How is conscription age calculated?' (Ministry of the Interior, 13 August 2014)

<https://www.moi.gov.tw/english/News_Content.aspx?n=8354&s=124869> accessed 11 February 2026.

¹³⁹ Constitution of Taiwan (n 147) article 13; Chien-Chih Lin, 'Unpatriotic Heretics or Conscientious Objectors: Difficulties Which Jehovah Witnesses Face in Taiwan and South Korea' 5(1)

<<https://lawdata.com.tw/tw/detail.aspx?no=32306>> accessed 8 February 2026.

¹⁴⁰ Constitutional Court of Taiwan, In re Grand Justice Interpretation No 490 (1999) 88 *Ssu-Fa-Yuan Kung-Pao*.

¹⁴¹ Irene Lin, 'Jehovah's Witnesses may get break under new law' *Taipei Times* (Taipei, 16 October 1999) <<https://www.taipeitimes.com/News/local/archives/1999/10/16/0000006644>> accessed 11 February 2026.

91. This pressure led the Government to pass the Substitute Service Act,¹⁴² which was fully promulgated on October 30, 1999, and came into effect in 2000, establishing the alternative civilian service (ACS) program. This system focuses on social welfare by allowing citizens to complete their education alongside ACS, maximising their contribution to Taiwanese society.¹⁴³
92. Although Taiwan is not formally a party to the ICCPR, it is submitted that the establishment of alternative service, which recognises the right to conscientious objection on the basis of a person's religious beliefs, represents a clear, concrete adherence to article 18 of the ICCPR.
93. Under Taiwan's Substitute Service Act, which is governed by chapter 4 of the Military Service Act, the alternative service encompasses civilian roles such as public safety, elderly care, firefighting, or healthcare support.¹⁴⁴ Alternative service is administered under the Ministry of the Interior's Department of Conscription.¹⁴⁵
94. The Director General of Taiwan's National Conscription Agency, who successfully implemented this scheme, noted that many were concerned that alternative service might be used as a means of evading military service. However he noted, their fear proved to be invalid. The Director General went on to remark:

[w]hen we implemented alternative service, the law specifically allowed individuals to choose alternative service on religious grounds rather than go to prison. This helped to solve a religious human rights problem that existed in our country for a long time. [...] I really hope that other countries will come and draw lessons from our experience.¹⁴⁶
95. In response to increased concerns about the risk of conflict in its region, Taiwan has increased the term of conscripted military service from the current requirement of four

¹⁴² Substitute Services Act 2000 (Taiwan).

¹⁴³ Jehovah'sWitnesses.org, 'Alternative Service Proves a Success in Taiwan' (11 August 2017) <<https://www.jw.org/en/news/region/taiwan/successful-alternative-service-conscientious-objectors/>> accessed 11 February 2026.

¹⁴⁴ Irene Lin, 'Optional service available for conscientious objectors' *Taipei Times* (Taipei, 3 May 2000) <<https://www.taipeitimes.com/News/local/archives/2000/05/03/0000034557>> accessed 8 February 2026.

¹⁴⁵ Office of Information Services, Executive Yuan, 'Substitute military service key to transition to all-volunteer system' (10 April 2014) <<https://english.ey.gov.tw/Page/61BF20C3E89B856/53a4498f-3da5-4c49-a252-ca5bb0ea00f4>> accessed 8 February 2026.

¹⁴⁶ Jehovah'sWitnesses.org (n 154).

months to a full year.¹⁴⁷ The alternative civilian service in Taiwan is not being eliminated but rather recalibrated to ensure that, while accommodating conscientious objection and specialised needs, it still contributes meaningfully to the nation's strengthened defence and civil resilience structure.¹⁴⁸

(d) Colombia

96. Initially, the Constitutional Court of Colombia adopted a doctrine of outright denial of the right to conscientious objection. The first conscientious objection ruling, T-409/1992, concerned two young men who were members of the Mennonite Church.¹⁴⁹ They argued that their religious beliefs, which promote non-violence and love, prevented them from participating in military service. In its decision, the Court acknowledged that the Constitution guaranteed the right to conscience but considered it to be subordinate to the constitutionally enshrined duty to bear arms. In coming to this decision, the Court distinguished the difference between a person's conscience, which was inviolable and unable to be interfered with by the state, and the outward manifestations of a person's conscience. Consequently, it reasoned that conscientious objection to military service as an external manifestation of a person's religious and moral beliefs, was a right that could be limited.¹⁵⁰
97. Judgment C-728/09 signalled a major shift in the operation of Colombia's military service regime.¹⁵¹ Although it maintained Law 48 of 1993 – the law enabling military conscription – it recognised that the rights to freedom of conscience and religion enabled a person to conscientiously object to military service.¹⁵² In reaching this decision, the Court effectively reversed its earlier finding in T-409/1992. Having been omitted from Law 48 of 1993 entirely, the Court ruled that a person's beliefs should entitle them to conscientiously object to military service; the right to do so would stem

¹⁴⁷ Indo-Pacific Defense Forum, 'Taiwan enhances force posture, military recruit skills with expanded conscription' (28 May 2024) <<https://ipdefenseforum.com/2024/05/taiwan-enhances-force-posture-military-recruit-skills-with-expanded-conscription/>> accessed 8 February 2026.

¹⁴⁸ Ibid; see also Jehovah's Witnesses.org, 'Grateful for 25 Years of Alternative Civilian Service in Taiwan' (15 August 2025) <<https://www.jw.org/en/news/region/taiwan/Grateful-for-25-Years-of-Alternative-Civilian-Service-in-Taiwan/>> accessed 8 February 2026.

¹⁴⁹ Constitutional Court of Colombia (Corte Constitucional) Judgment T-409/92 (19 June 1992) Judge José Gregorio Hernández Galindo.

¹⁵⁰ Ibid [3, 10-13].

¹⁵¹ Constitutional Court of Colombia (Corte Constitucional) Judgment C-728/09 (14 October 2009).

¹⁵² Ibid 1.

from the constitutional guarantees to the freedom of conscience and religion.¹⁵³ Without the power to rule on this issue specifically, the Court urged the Colombian Parliament to introduce a law enabling conscientious objection as a means of upholding the constitutionally enshrined rights to freedom of thought, conscience, and religion.¹⁵⁴ Moreover, in an attempt to clarify the majority's decision, Judge Gabriel Eduardo Mendoza Martelo reasoned that there was no basis to distinguish between a person's objective characteristics, such as a physical disability, which the law recognised as precluding a person from completing military service, with a person's subjective characteristics that included moral and religious objections to military service.¹⁵⁵

98. Between 2009 and 2017, the Constitutional Court considered the issue of conscientious objection on several occasions. In Judgment T-430/2013, the Court considered three tutela actions filed against the national army. In each case, the Chamber reaffirmed that the right to conscientious objection was protected under the Constitution through the rights to freedom of religion and conscience; this remained so, even in the absence of legislative developments specifically addressing the right to conscience objection, urged by the Court in Judgment C-728/09.¹⁵⁶ In Judgment SU-108/16, the Court asserted that it was the duty of a conscientious objector to prove that their conscience influenced their actions to the extent that they should be excused from mandatory military service.¹⁵⁷ Consequently, it was necessary for objectors to show (i) that their beliefs had verifiable external manifestations, and (ii) that those beliefs were profound, unwavering, and sincere.¹⁵⁸
99. These developments culminated in the approval of Act No. 1861 of 2017 regulating military recruitment in Colombia.¹⁵⁹ That law recognises conscientious objection as grounds for exemption from compulsory military service and established a comprehensive procedural framework to facilitate conscientious objection, including

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid (per Judge Gabriel Eduardo Mendoza Martelo).

¹⁵⁶ Constitutional Court of Colombia (Corte Constitucional) Judgment T-430/13 (10 July 2013).

¹⁵⁷ Constitutional Court of Colombia (Corte Constitucional) Judgment SU-108/16 (3 March 2016) 46-47.

¹⁵⁸ Ibid.

¹⁵⁹ Law 1861/2017 (Colombia); War Resisters' International, 'Colombia: About the law that regulates Conscientious Objection' (War Resisters' International, 23 November 2018) <<https://wri-irg.org/en/story/2018/colombia-about-law-regulates-conscientious-objection>> accessed 12 February 2026.

by introducing an Interdisciplinary Committee to adjudicate applications for conscientious objection.¹⁶⁰

100. In 2022, Colombia implemented Law 2272, which established the Social Service for Peace – a civilian alternative service that enabled objectors to complete their national service by contributing to projects aimed at peacebuilding, human rights promotion, and democratic strengthening.¹⁶¹

(e) Armenia

101. The study of the recognition of the right to conscientious objection in Armenia provides a compelling example of how a state developed its legal frameworks incorporating the European Court's decisions to fulfill its international human rights obligations.

102. As a result of legislative amendments, Armenia now has put in place a genuine alternative service of civilian nature accessible to all conscientious objectors, which has not only been embraced by the HRC but can serve as a compelling example.¹⁶²

103. Armenia has had compulsory military service ever since gaining its independence from the Soviet Union in 1991.¹⁶³ Under the Armenian Constitution 'every citizen shall be obliged to take part, as prescribed by the law, in the defence of the Republic of Armenia'.¹⁶⁴ Compulsory military service in Armenia is governed by the Law on Military Service and the Status of Servicemen and obliges all male Armenian citizens aged 18 to 27 to undertake military service.¹⁶⁵

104. While Armenia historically did not recognise the right to conscientious objection and many objectors were imprisoned until 2013, the Alternative Service Law was adopted

¹⁶⁰ United Nations Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Colombia: Addendum — Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review' (30 August 2018) A/HRC/39/6/Add1; Jhony Arango, 'Protect the right to Conscientious Objection' (*Community Peacemaker Teams*, 20 May 2022)

<<https://cpt.org/2022/05/20/protect-the-right-to-conscientious-objection>> accessed 8 February 2026

¹⁶¹ Law 2272/2022 (Colombia) art 10-11.

¹⁶² United Nations Human Rights Committee, 'Concluding observations on the third periodic report of Armenia' (25 November 2021) UN Doc CCPR/C/ARM/CO/3, [9].

¹⁶³ Amnesty International, 'ARMENIA "Respect my human dignity": Imprisonment of conscientious objectors' (1999) AI Index: EUR 54/06/99.

¹⁶⁴ Constitution of the Republic of Armenia 1995 (as amended in 2005 and 2015), article 14 (3).

¹⁶⁵ Law of the Republic of Armenia on Military Service and the Status of Servicemen 2017; Nikolay Hovhannisyan, 'Conscientious Objection: Context and Developments in Armenia' (BYU LAW, 18 November 2024) <<https://talkabout.iclrs.org/2024/11/18/conscientious-objection-in-armenia/>> accessed 26 January 2026.

in 2003 first acknowledging the right to conscientious objection to military service and establishing alternative service.¹⁶⁶

105. Although this represented an initial step forward, the Alternative Service Law of 2003 failed to establish a genuinely civilian alternative to military service, thereby constraining the effective realization of the right to conscientious objection.¹⁶⁷

106. Only after the landmark ruling of the European Court in *Bayatyan v Armenia* and subsequent decisions did Armenia substantively change its legislation.¹⁶⁸ These changes led to the amendment of the Alternative Service Law in 2013 and the release of several imprisoned conscientious objectors.¹⁶⁹

107. The Alternative Service Law now offers two options of alternative service: first, alternative service within the military without bearing arms, and second, alternative civilian service outside the military.¹⁷⁰ It is therefore compliant with the standards of the ICCPR as well as the ECHR.

108. Some challenges remain in the determination of who gets granted conscientious objector status. Although Jehovah's Witnesses are generally able to obtain recognition without notable disputes, individuals who object to military service on other grounds (religious, ethical, etc.) are still imprisoned, since their objection is in practice not recognised.¹⁷¹ This contravenes international standards which prohibit discrimination among conscientious objectors based on the nature of their specific beliefs.¹⁷²

109. Even in light of these remaining challenges, Armenia has nevertheless, in accordance with its international human rights obligations, recognised conscientious objection to military service in general and created an alternative service that meets international human rights law standards. It has notably done so, despite being in political and even military conflict with a neighbouring country for decades.¹⁷³

¹⁶⁶ Hovhannisyan (n 164); Law of the Republic of Armenia on Alternative Service 2003.

¹⁶⁷ Issues included military supervision and extended length of the alternative service as held by the European Court in 2017 in its ruling *Adyan* (n 83).

¹⁶⁸ *Bayatyan* (n 70); *Bukharatyan* (n 83); *Tsaturyan v Armenia* App no 37821/03 (ECtHR, 10 April 2012).

¹⁶⁹ Hovhannisyan (n 165).

¹⁷⁰ Hovhannisyan (n 165); Law of the Republic of Armenia on Alternative Service 2003 (as amended in 2013), article 3.

¹⁷¹ Hovhannisyan (n 166).

¹⁷² General Comment No 22 (n 26) [2].

¹⁷³ Felix Light, 'What is the history of the conflict between Armenia and Azerbaijan?' *Reuters* (London, 13 March 2025)

<<https://www.reuters.com/world/what-is-history-conflict-between-armenia-azerbaijan-2025-03-13/>> accessed 9 February 2026.

(f) Germany

110. The recognition of the right to conscientious objection in Germany constitutes one of the earliest and most robust examples of constitutional protection of this right in Europe, illustrating a distinct model of compliance with international human rights law.¹⁷⁴
111. Military conscription for men who have reached the age of 18 is anchored in article 12a (1) of the German Constitution (Basic Law), which was adopted in 1949 after the Second World War.¹⁷⁵ Although the obligation to perform compulsory military service was suspended by law in 2011, it may be reinstated at any time and would automatically apply in a state of emergency or war.¹⁷⁶ In 2025, the German Parliament passed a law introducing a new form of voluntary military service.¹⁷⁷ Should personnel needs or defence policy considerations so require, the Parliament retains the authority to adopt further measures, including the possible reintroduction of compulsory military service.¹⁷⁸
112. The right to conscientious objection is a fundamental right of every citizen guaranteed under article 4 (3) of the Basic Law as a concrete manifestation of the freedom of conscience.¹⁷⁹
113. Article 12a (2) of the Basic Law further provides that conscientious objectors may be required to perform alternative service, the duration of which shall not exceed that of military service. It also requires that such service be genuinely civilian in nature and institutionally separate from the military.¹⁸⁰
114. The right to conscientious objection is not only guaranteed in peacetimes but also in times of war, and objections may be based on both religious and non-religious

¹⁷⁴ Donald Kommers and Russell Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany* (3rd edn, Duke University Press 2012) 550.

¹⁷⁵ Basic Law for the Federal Republic of Germany 1949.

¹⁷⁶ War Resisters' International, 'World Survey of Conscription and Conscientious Objection to Military Service: Country report and updates: Germany' Rebecca Hummler (Researcher) (1 October 2017) <https://wri-irg.org/en/programmes/world_survey/reports/Germany#sdfootnote6sym> accessed 11 February 2026; Conscription Act 1956 (Germany) (last amended in 2025) § 2.

¹⁷⁷ Bethany Bell, 'Germany votes to bring in voluntary military service programme for 18-year-olds' *BBC news* (Berlin, 5 December 2025) <<https://www.bbc.co.uk/news/articles/ckg9drg8pg1o>> accessed 11 February 2026; Military Service Modernization Act 2025 (Germany).

¹⁷⁸ Conscription Act (n 176) § 2a.

¹⁷⁹ Basic Law (n 175); Kommers and Miller (n 173) 550.

¹⁸⁰ Basic Law (n 175) article 12a.

beliefs.¹⁸¹ It is generally recognised for conscripts as well as professional military servicemen.¹⁸²

115. Alternative service in Germany – currently suspended along with compulsory military service – was genuinely civilian in nature and was performed as community service in non-military institutions such as hospitals, nursing homes or social welfare institutions.¹⁸³ Military service could instead have taken the form of a multi-year obligation to participate in civil defence or disaster control which could be accomplished alongside studies or work.¹⁸⁴

116. Although compulsory military service in Germany is currently suspended and alternative service is therefore not in operation, the constitutional framework recognising the right to conscientious objection, together with Germany's longstanding practice of providing genuinely civilian alternative service, continues to represent a strong example of a human rights compliant system.

(g) Finland

117. The Constitution of Finland grounds national defence as a universal civic obligation: section 127 provides that every Finnish citizen is obligated to participate or assist in national defence, while at the same time ensuring the right to conscientious objection by mandating the existence of legislation.¹⁸⁵ Likewise, the rights to freedom of religion and conscience are guaranteed under section 11.¹⁸⁶

118. Conscription has long been a central feature of Finnish defence policy, with conscientious objection to military service recognised in Finland as early as 1931, making it one of the earliest European states to do so.¹⁸⁷ Since then, the legal framework has evolved through the Conscription Act and parallel legislation

¹⁸¹ War Resisters' International Germany (n 175); Act on the refusal to render military service involving the use of arms on grounds of conscience 2003 (Germany) § 11; Kommers and Miller (n 173) 551; Federal Constitutional Court (Bundesverfassungsgericht), BVerfGE 12, 45 (1961) [31].

¹⁸² Act on the refusal to render military service (n 181) § 2 [6].

¹⁸³ Wissenschaftliche Dienste des Deutschen Bundestages, 'On a National Mandatory Military Service' (3 November 2022)

<https://www.bundestag.de/resource/blob/935156/7bee4f1dc83f4a24a5e80b1cc4d301a1/WD-2-087-22_EN-pdf.pdf> accessed 11 February 2026.

¹⁸⁴ Ibid.

¹⁸⁵ Constitution of Finland 1999.

¹⁸⁶ Ibid.

¹⁸⁷ European Bureau for Conscientious Objection (EBCO), 'Annual Report: Conscientious Objection to Military Service in Europe 2024: Finland' (5 June 2025) 175 <<https://ebco-beoc.org/reports>> accessed 6 February 2025.

governing non-military service.¹⁸⁸ Under the current Conscription Act, all male citizens between the ages of 18 and 60 are liable to be conscripted.¹⁸⁹

119. Section 37 of the Conscription Act provides the terms of military service.¹⁹⁰ Under that provision, rank and file conscripts undergo 180 days of training, specialised soldiers undergo 270 days of training, while officers, non-commissioned officers, and conscripts trained for especially demanding duties, undergo 362 days.¹⁹¹ In 2024, 24,285 conscripts completed military service – equating to 76% of the male age group.¹⁹²

120. Conscientious objection is governed by the Non-Military Service Act.¹⁹³ Chapter 1 permits a person to object to military service where their conscience prevents them from entering into military service.¹⁹⁴ A person is entitled to object to military service at any stage after a call up notice is issued where their application will then be assessed by the call-up board.¹⁹⁵ In 2024, there were 2,292 applications for non-military service, all of which were approved.¹⁹⁶ If conscientious objector status is granted, a person must complete a form of alternative service in either a public or non-governmental organisation, excluding those under the command of the Ministry of Defence.¹⁹⁷ Alternative service lasts for 347 days.¹⁹⁸

121. Total objectors – conscientious objectors who refuse to complete either military or non-military service – are imprisoned for half of their remaining non-military service time or a maximum term of imprisonment being 173 days, whichever is shorter.¹⁹⁹ Since 2013, total objectors have been permitted to serve their sentences under home detention and are monitored by electronic monitoring devices.²⁰⁰ These penalties are compatible with both the ICCPR and the ECHR, which recognise that the right to

¹⁸⁸ Ibid 54.

¹⁸⁹ Conscription Act Finland 1438/2007.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² EBCO (n 187).

¹⁹³ Non-Military Service Act Finland 1446/2007.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid, section 21.

¹⁹⁶ EBCO (n 187).

¹⁹⁷ Ibid.

¹⁹⁸ Non-Military Service Act (n 205), section 4.

¹⁹⁹ EBCO (n 187).

²⁰⁰ Ibid.

conscientiously object to military service does not extend to a right to object to all national service.²⁰¹

(h) Denmark

122. Military service in Denmark is currently governed by the National Service Law (1980), as amended in 1992 and 1998, and the Danish Constitution.²⁰² Pursuant to Article 81 of the Danish Constitution, '[e]very male person able to carry arms shall be liable with his person to contribute to the defence of his country under such rules as are laid down by Statute'²⁰³ with the length of service generally lasting four months.

123. In a recent development, a new conscription system is to be commenced in 2027. This will see the expansion of conscription to women, which will increase conscripts from approximately 4,700 to 6,500 a year, and an increased duration of 11 months of service or more.²⁰⁴

124. Despite Denmark's mandatory military service, the government has recognised conscientious objector status since 1917.²⁰⁵ Its present legal basis is outlined in the 2006 National Service Law and 2006 Civil Service Act.²⁰⁶ According to article 1 of the Civil Service Act, conscripts who believe military service is incompatible with their conscience may be exempt from military service on the condition that they engage in other national work that is separate from any military purpose.²⁰⁷

125. To be considered for conscientious objector status, conscripts must apply for recognition within eight weeks of receiving call-up papers, which include information about the right to refuse military service for conscientious or religious reasons. Those who oppose military service must then provide an application in writing stating the reasons for applying, which must be based 'on religious or ethical reasons'.²⁰⁸

²⁰¹ *Yoon* (n 30).

²⁰² United Nations Economic and Social Council, 'Report of the Secretary-General submitted pursuant to Commission resolution 1998/77' (17 December 1999) UN Doc E/CN.4/2000/55.

²⁰³ Constitutional Act of Denmark (1953) article 81.

²⁰⁴ European Bureau for Conscientious Objection (EBCO), 'Annual Report: Conscientious Objection to Military Service in Europe 2024: Denmark' (5 June 2025) 175 <<https://ebco-beoc.org/reports>> accessed 6 February 2026.

²⁰⁵ *Ibid.*

²⁰⁶ War Resisters' International, 'World Survey of Conscription and Conscientious Objection to Military Service: Country report and updates: Denmark' (23 October 2008) <https://wri-irg.org/en/programmes/world_survey/reports/Denmark#sdfootnote2sym> accessed 16 December 2025.

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

- 126.If conscientious objector status is granted, conscientious objectors are required to work in institutions pursuant to agreement between the institutions and the conscientious objection administration.²⁰⁹ Institutions are typically chosen that are in close proximity to the home of the conscientious objector.²¹⁰ Moreover, conscientious objectors are prohibited from working in institutions in which they have already been employed.²¹¹
- 127.Despite its liberal stance on conscientious objector status and alternative service, individuals who avoid or refuse conscription without cause can be prosecuted. According to the Ministry of Defence, 54 conscripts were prosecuted for evasion or refusal of military service in 2024. Additionally, of those convicted, 50 individuals were fined for military evasion and only three individuals were imprisoned.²¹² However, none of the 54 conscripts had applied for conscientious objector status.²¹³
- 128.When taken as a whole, Denmark provides a compelling illustration of how compulsory military service can coexist with a genuine and effective system of conscientious objection and alternative service. Its well-established recognition of conscientious objector status and availability of non-punitive alternative service demonstrates that accommodating individuals' religious and moral beliefs need not undermine national defence. Denmark's approach thus offers a persuasive example of how states can balance security interests with respect for individual conscience through meaningful civilian alternatives.

VII. Conclusion

- 129.To ensure Thailand's good-faith adherence to its international human rights obligations under article 18(1) of the ICCPR, section 45 of the Military Service Act must be declared unconstitutional insofar as it criminalises a conscientious objector's refusal to perform compulsory military service. Accordingly, Thai law must permit Mr Chotiphatphaisal to exercise his right to conscientious objection without limitation, as his refusal – based on convictions of nonviolence, freedom, and justice – constitutes a legitimate expression of his conscience and religious beliefs.

²⁰⁹ United Nations Economic and Social Council (n 202).

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid.

²¹³ Ibid.

130. Alternatively, the Court could adopt the approach taken by the European Court of Human Rights and recognise the right to conscientious objection as a protected manifestation of religion or belief, which can only be restricted in the most exceptional circumstances. It is important to note that the European Court has consistently held there is no justification for limiting conscientious objection in military service cases.
131. Ultimately, the intervener urges this Court to ensure that Thailand's legal framework governing military conscription operates in a manner that fully respects freedom of thought, conscience, and religion.