This chapter aims to describe the legal narrative of conscientious objection based on religious and other ethically salient grounds. We start by briefly assessing the concept on the literal, political and historical levels. We demonstrate how the rhetoric to conscientiously object has evolved from a military context to a broad range of situations related to public health, public administration or the mere provision of goods and services (point 1). Next, we retrace the troubled path of conscientious objection as a human right in the international and regional legal systems. We show that military service is the only area in which conscientious objection has been recognized as a human right (points 2 and 3). Finally, we conclude by discussing major difficulties in trying to transpose the debate surrounding conscientious objection beyond the participation in the military forces. In this debate, we show the extent to which the use of conscientious objection is inflating as it is somewhat blurred with reasonable accommodation (point 4).

1. Definition, Boundaries and Harm

When one searches the expression ‘conscientious of objection’ in ordinary dictionaries, in different languages, it pops up almost unanimously definitions related to the refusal to serve the military forces: ‘objection for reasons of conscience to complying with a particular requirement, especially serving in the armed forces’;¹ ‘a person who refuses to work in the armed forces for moral or religious reasons’;² ‘objection on moral or religious grounds (as to serve in the armed forces or to bearing arms)’,³ or still in French, ‘refus de porter les armes formulé par un objecteur de conscience’.⁴

The twentieth Century modern basis of conscientious objection is grounded on the introduction of a universal conscription for the military service after the French Revolution. With the impetus to create a national army, in addition to the lack of enough


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volunteers to conscript, Napoleon implemented large-scale conscription. European countries followed his steps on mandatory conscription setting the stage for the wars in the 19th and 20th Centuries.

During World War I, the first massive wave of ‘conscientious objectors’ appeared in Europe and the United States. Among countries with a system of peacetime conscription, Denmark became the first one to pass legislation recognizing conscientious objection. After World War II, with conscription being largely used in all continents, conscientious objection became a human right issue. In the US, the number of secular conscientious objectors severely increased throughout World Wars I and the Vietnam War. At that time, more than 100,000 American men opposed to the military service, of which 22,500 men were prosecuted and 8,800 were convicted for the violation of conscriptions law. Contrary to previous conflicts, an average of 72 percent of those convicted were secular objectors. On global scale, conscientious objection was construed by the United Nations as a derived right of freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Right (article 18 UDHR) and later in the International Covenant on Civil and Political Rights (article 18 ICCPR).

However, people also object to actions according to their moral or religious values in distinct contexts from the military service. Currently, objectors are widely found in the area of health treatment, with parents objecting to vaccinate their children, Jehovah’s Witnesses refusing to have blood transfusions, doctors opposing abortion procedures; in the public administration, with public officers declining to celebrate marriage to same-sex couples; or even in the private sector, with bakers refusing to make custom wedding cakes for same-sex couples. The use of conscientious objection

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7 Devi Prasad & Tony Smythe, Conscription: A World Survey—Compulsory Military Service and Resistance to It 56 (1968).
8 United Nations, supra note 6, at 5.
10 United Nations, supra note 6, at 7.
13 Emmanuelle Bribosia & Isabelle Rorive, Seeking to Square the Circle: a Sustainable Consciuos Objection in Reproductive Healthcare, in Conscience Wars 392 (Susanna Mancini & Michel Rosenfeld eds, 2018).
15 Lee v Ashers Baking Company Ltd and others, UKSC 2017/0020, pending before the UK Supreme Court; Masterpiece Cakeshop, Ltd. v Colorado Civil Rights Commission, pending before the US Supreme Court. See Emmanuelle Bribosia & Isabelle Rorive, Why a Global Approach to Non-discrimination Law Matters? Struggling with the ‘Conscience’ of Companies, in Human Rights Tectonics: Global Dynamics of Integration
radiated to various layers of modern life with objectors alleging their right to be exempted from their obligations for reasons of personal morality. The expression, which has its roots in the military service, was appropriated over the time by different social actors. It is more and more used to name individual exemption on religious or other ethically salient grounds.

From a theoretical point of view, the question whether a person can object to a legal obligation has been assessed. Should it be considered lawlessness? Many scholars start from the premise that the essence of the law, in contemporary democracies, is to be equally applied to all independently of deeply held beliefs. In liberal regimes, political participation rights are protected by law and provide people with adequate opportunities to dispute it.16 In other words, declining to obey a legal rule, even for moral or ethical reasons, is forbidden and punished. Doing otherwise would have deleterious consequences on the general nature of the law and the neutrality of the State. Conversely, some argue that legal disobedience should at times be tolerated because the meaning or the constitutionality of certain rules is highly controversial, or their application might cause harm to third parties.17 Additionally, objecting specific laws might go beyond individual reasons and aims to challenge unfair legal rules. In this line, political scientists often define civil disobedience ‘as a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government’18.

Conscientious objection and civil disobedience are clearly related. They involve social practices motivated by religious, moral or political beliefs that are linked by ‘a certain conception of conscientious action that requires that a person’s convictions and her conduct be consistent’.19 However, whereas civil disobedience is, by definition, a breach of law, conscientious objection might be legally protected. Conscientious objection is also considered to be less overtly political than civil disobedience as it is more about an individual will not to participate in practices one opposes than about people’s ambition to change those practices. However, the frontiers are occasionally blurred when the issue is more about replaying, in court, battles that have been lost in parliament than seeking individual judicial exemptions based on conscience and religious freedom.20 This has been documented over the past few years with respect to reproductive rights or LGBT rights.21

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18 RAWLS, supra note 17, at 364; more on this perspective: HUGO ADAM BEDAU, On Civil Disobedience, 58 Journal of Philosophy 653 (1961); HOWARD ZINN, Disobedience and Democracy 119 (1968).
21 BIBOSIA & RORIVE, supra note 13, at 392–413.
One cannot address the range of individual exemptions based on religious or other ethically salient grounds in the same way. This is mainly because the harm involved greatly varies depending on the situation at stake. While there is little impact on the rights of others when conscientious objection is raised in the military service, objecting to providing reproductive health services might greatly impair women’s human rights. Undue delay puts women’s lives at risk, and may result in unsafe, clandestine and illegal abortions, which endangers the lives and physical and mental health of women. The harm might also be indirect. It might be experienced by gay couples having to face a civil registrar’s officer refusing to marry them on religious grounds, even though their marriage will be celebrated in the end. Equality and non-discrimination law relates to recognition and dignity as humiliation, stigma or stereotyping can be experienced regardless of any particular material disadvantage. Indirect harm is part of Robert Wintemute’s test to define when accommodation of the manifestation of a religious belief is legally allowed (or even required). Cecile Laborde also recommends a strict balancing test which takes dignitary harm into account in order to decide when a conscience claim justifies an exemption from a fair law of general application. With respect to conscience claims raised by civil marriage commissioners in Canada, it is fascinating to see that the whole range of legal options was discussed in different Provinces in Canada. Alberta government tried to enact legislation to back up religious and civil officials who do not wish to perform same-sex marriage. Saskatchewan courts denied civil marriage commissioners any form of accommodation to avoid the perpetuation of social and political prejudice and negative stereotyping. And Ontario provided for a statutory exemption limited to religious officials, while relying on informal ad hoc accommodation for civil marriage commissioners.

2. Conscientious Objection and International Human Rights Law

In international human rights law, conscription is not covered by the prohibition of forced labour and no major treaty has explicitly granted protection to conscientious objectors. The matter has been highly debated in the United Nations (UN) with respect

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24 WINTEMUTE, supra note 14, at 228–29. Wintemute’s triple test reads as follows: ‘(i) the particular manifestation of religious beliefs itself causes no direct harm to others; and (ii) the requested accommodation involves minimal cost, disruption or inconvenience to the accommodating party; and (iii) the requested accommodation will (upon further examination) cause no indirect harm to others’.
28 Bill 171 amendments to the Ontario Human Rights Code and Marriage Act explicitly provide that registered religious officials for whom same-sex marriage is contrary to their religious beliefs are not required to solemnize such marriages.
29 Article 8(3)(a) ICCPR. See also article 2(a) of the 1930 Forced Labour Convention (No. 29) of the International Labour Organization, Geneva, 14th ILC session (28 June 1930).
to military forces. During the negotiations of the ICCPR, in the late 1950s, the Philippines strongly argued that a right to conscientious objection should be added to the provision guaranteeing the right to freedom of thought, conscience and religion (the future article 18 ICCPR). They failed as several States considered that such a right to conscientious objection was *de facto* protected in article 18 UDHR and that any additional amendment would be unnecessary. Some States were also concerned that adding a clause of conscientious objection would make a consensus on the Covenant hardly attainable.\(^{30}\)

More generally, one has to keep in mind that States are not much limited in terms of conscription for their military forces by the international human rights regimes. There are just a few international law safeguards, such as the restriction of the recruitment of children under the age of fifteen (or eighteen in some cases) or the interdiction to discriminatorily and arbitrarily arrange forced recruitment.\(^{31}\) Furthermore, any person has the right to refuse serving the military forces in apartheid regimes.\(^{32}\)

Initially, the UN Human Rights Committee, which monitors the implementation of the ICCPR, did not use to consider that article 18 of the Covenant provided for a right to conscientious objection. In 1985, the Committee declared inadmissible a complaint filed by a Finish conscientious objector, who refused to serve the military forces but volunteered to do an alternative service. According to the Committee ‘the Covenant does not provide for the right to conscientious objection; neither article 18 nor article 19 of the Covenant (...) can be construed as implying that right’.\(^{33}\) In any case, the alleged victim ‘was not prosecuted and sentenced because of his beliefs or opinions as such, but because he refused to perform military service’.\(^{34}\)

The Human Rights Committee started to shift its position in the beginning of the 1990s. Change came in the form of an incremental evolution. In a 1991 case, *J.P. v Canada*, the Committee inferred some kind of conscientious objection from article 18 ICCPR in a case that was finally declared inadmissible. The case involved a Canadian citizen, member of the Society of Friends (Quakers), who refuses that a fraction of her taxes goes towards military expenditures because of her religious convictions. The Committee conceded for the first time that ‘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’.\(^{35}\) However, the case was rejected on the ground that the refusal to pay taxes for religious reasons clearly falls outside the scope of the Covenant.

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\(^{31}\) The 1977 Additional Protocols I (art. 77 (2)) and II (art. 4(3) (c)) to the 1949 Geneva Conventions; the Convention on the Rights of the Child (art. 38); the Rome Statute of the International Criminal Court (art. 8 (2) (b) (xxvi) and (e) (viii)); the Optional Protocol to the Convention on the Rights of the Child (art. 2); the 1990 African Charter on the Rights and Welfare of the Child (art. 22 (2)); the 2003 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Art. 11 (4)); the ILO Worst Forms of Child Labour Convention (No. 182) (art. 3).


\(^{34}\) Id.

\(^{35}\) *J.P. v Canada*, Communication no. 466/1991, UN doc. CCPR/C/43/D/466/1991, para. 4.2
Thereafter, in the 1993 *Brinkhof v the Netherlands* case, the Human Rights Committee declared that religious exemptions should be granted without discrimination. A Dutch citizen was condemned to twelve months’ imprisonment and dismissed from the military forces altogether for having refused to serve the army and to perform the substitute public service on the grounds of his pacifist beliefs. According to Mr Brinkhof, ‘by performing military service, he would become an accessory to the commission of crimes against peace and the crime of genocide, as he would be forced to participate in the preparation for the use of nuclear weapons’. The issue concerned more equality before the law and legal protection without discrimination (article 26 ICCPR) than the right to freedom of thought, conscience and religion. In the Netherlands, Jehovah’s Witnesses have been automatically exempted from military service and substitute service since 1974, contrary to other conscientious objectors who had to perform an alternative service. In the view of the Netherlands, ‘membership of Jehovah’s Witnesses constitutes strong evidence that the objections to military service are based on genuine religious convictions’. In addition, the Netherlands stressed that the special treatment for Jehovah’s Witnesses could be justified by the fact ‘that baptised members form a closed group of people who are obliged, on penalty of expulsion, to observe strict rules of behaviour, applicable to many aspects of their daily life and subject to strict informal social control’. The Committee did not share this view and emphasized that, ‘when a right of conscientious objection to military service is recognized by a State party, no differentiation shall be made among conscientious objectors on the basis of the nature of their particular beliefs’. However, once again, the alleged victim did not win his case on the ground that ‘he has not shown that his convictions as a pacifist are incompatible with the system of substitute service in the Netherlands or that the privileged treatment accorded to Jehovah’s Witnesses adversely affected his rights as a conscientious objector against military service’.

Finally, in 2007, the Human Rights Committee unequivocally expressed the view that article 18 ICCPR provides for a right of conscientious objection. *Yoon et al. v Republic of Korea* was brought before the Committee by two Jehovah’s Witnesses sent to prison for refusing to serve in the armed forces. No alternative civilian service was provided for them and the Republic of Korea argued that ‘this restriction is necessary for public safety, in order to maintain its national defensive capacities and to preserve social cohesion’. The Committee emphasised ‘that an increasing number of (...) States parties to the Covenant which have retained compulsory military service have introduced alternatives to compulsory military service’. In addition, the Committee ‘observes 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

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37 *Id.*, para. 3.6.
38 *Id.*, para. 4.2.
39 *Id.*, para. 7.3.
40 *Id.*, para. 9.3. Note that the UN Committee relied on its General Comment No. 22 on article 18, adopted in 1993.
41 *Id.*, para. 9.3.
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.\textsuperscript{43} From the wording of the ruling, it is clear that the Human Rights Committee considers that all States party to the ICCPR, without any exception, have to grant the right of conscientious objection.\textsuperscript{44}

Still within the UN, the Commission on Human Rights recognized the right of everyone to object to military service as a legitimate exercise of the right of freedom of thought, conscience and religion. The Commission also observed that the conviction to object can arise not only from religious motives, but also from ethical or similar reasons. States should not allow conscientious objection solely on religious grounds, at the risk of discriminatory treatment. The Commission additionally called States to enact legislation aimed at exemption from military service based on profound convictions against armed service. Finally, it invited States to abstain from imprisonment of conscientious objectors, emphasizing that the alternative service should be civilian and non-armed with a public interest and without a punitive nature.\textsuperscript{45}

\section*{3. Conscientious Objection and Regional Human Rights Law}

The Charter of Fundamental Rights of the European Union is the only regional human rights instrument that expressly mentions a right to conscientious objection which is ‘recognized in accordance with the national laws governing the exercise of this right’ (article 10.2).\textsuperscript{46} In the Council of Europe, the issue of the recognition of a fundamental right to conscientious objection has been much debated. For years, numerous applications were brought before the former European Commission of Human Rights and the European Court of Human Rights. As before the Human Rights Committee, most applications were based on a breach of freedom of thought, conscience and religion which is enshrined in article 9 of the European Convention for Human Rights (ECHR). In many cases, the former European Commission of Human Rights refused to recognize a derived right to conscientious objection, stressing that the European Convention on Human Rights does not explicitly guarantee such a right which is not covered by the prohibition of forced labour (article 4 ECHR). In 1966, for the first time, the Commission decided that a total objector, who refused to perform military and civilian service in Germany, does not find protection under article 9 ECHR. The Commission stressed that

\textsuperscript{43} Id., para. 8.4.

\textsuperscript{44} For other references to Views of the UN Human Rights Committee on individual cases concerning conscientious objection to military service, see the webpage of the UN Human Rights Office of the High Commissioner: http://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/ConscientiousObjection.aspx


\textsuperscript{46} Note also that the European Parliament approved a Recommendation to the Council of 13 June 2013 on the draft EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief (2013/2082(INI)).
each Contracting State could decide whether or not to grant the right to conscientious objection.\textsuperscript{47} In several subsequent cases, the European Commission of Human Rights stood on the same line and defended a literal construction of article 9 ECHR considering article 4 ECHR.\textsuperscript{48}

By contrast, the Parliamentary Assembly of the Council of Europe, as early as 1967, adopted Resolution 337 according to which: ‘1. persons liable to conscription for military service, who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service shall enjoy a personal right to be released from the obligation to perform such service (...) 2. This right shall be regarded as deriving logically from the fundamental rights of the individual in democratic Rule of Law States which are guaranteed in Article 9 of the European Convention on Human Rights’.\textsuperscript{49}

It was not before 2011, in the famous Grand Chamber case \textit{Bayatyan v Armenia}\textsuperscript{50} that the European Court of Human Rights ruled the applicability of article 9 ECHR to conscientious objectors. Mr Bayatyan, a Jehovah’s Witness, refused to perform military service, but agreed to an alternative civil service. At the time, Armenian law did not provide for any such alternative service. Mr Bayatyan was convicted of draft evasion and sentenced to prison. He claimed that the Court should decide the case taking due account to the European consensus on the matter as most Member States had implemented a right of conscientious objection. Based on the ‘living instrument’ doctrine, the Court departed from the position of the former European Commission of Human Rights and ruled that article 9 ECHR is applicable when the refusal to military service is motivated by serious and insurmountable religious or other beliefs. In several subsequent judgments, the Court held that article 9 ECHR was violated in cases of refusal to perform military service based on serious personal convictions.\textsuperscript{51}

In other regional human rights jurisdictions, the right to conscientious of objection has also been raised under the guarantee of freedom of thought and religion. The American Convention on Human Rights, like the European Convention on Human Rights, explicitly

\textsuperscript{48} See for instance G.Z. v Austria App no 5591/72 (decision of the Commission, 2 April 1973); X. v Germany App no 7705/76 (decision of the Commission, 5 July 1977); N. v Sweden App no 10410/83 (decision of the Commission, 11 October 1984); Peters v the Netherlands App no 21132/93 (decision of the Commission, 30 November 1994).
\textsuperscript{50} Bayatyan v Armenia App no 23459/03 (ECHR, 7 July 2011).
\textsuperscript{51} Erçep v Turkey App no 43965/04 (ECHR, 22 November 2011); Khachatryan and others v Armenia App no 23978/06 (ECHR, 27 November 2012); Feti Demirtas v Turkey App 5260/07 (ECHR, 17 January 2012); Buldu and others v Turkey App 14017/08 (ECHR, 03 September 2014); Sauda v Turkey App 42730/05 (ECHR, 12 June 2012); Tarhan v Turkey App 9078/06 (ECHR, 12 July 2012); Enver Aydemir v Turkey App 26012/11 (ECHR, 7 June 2016); Papavasilakis v Greece App 66899/14 (ECHR, 15 September 2016); Adyan and others v Armenia App 75604/11 (ECHR, 12 October 2017).
enshrines freedom of conscience and religion (article 12), but it does not mention a right of conscientious objection. In 2005, the Inter-American Commission on Human Rights decided the issue for the first time. The case Cristián Daniel Sahli Vera et al. v Chile concerned a refusal to military service due to complete conscientious objection. In Chili, military service is compulsory and the law only provides for very specific exemptions in some religious instances. The Inter-American Commission extensively acknowledged the position of the UN Human Rights Committee according to which a right to conscientious objection to military service is a legitimate exercise of freedom of thought, conscience and religions (article 18 ICCPR). The Inter-American Commission also pointed out that the European human rights system, at the time, had a different stance on the matter. Taking stock of the controversy, the Commission considered that the freedom of conscience and religion did not apply to a conscientious objector such as the applicant. The Inter-American Commission further stressed that compulsory military service is not prohibited under the Inter-American Convention and that States are free to grant a right to conscientious objection.

Freedom of conscience and religion is also protected in the African Charter on Human and People’s Rights (article 8). Therefore, the right to conscientious objection to military service could be derived from this provision, similar to the approaches now favoured by the UN Human Rights Committee and the European Court of Human Rights. However, the African Human Rights system has yet to be mobilized in this respect and there is no regional standard established to define a right to conscientious objection to military service.

4. A Global Jigsaw

In human rights law, conscientious objection is strongly associated with the refusal to participate in military forces and a legitimate exercise of the right to freedom of thought, conscience and religion. It is not so long that anyone has, at least on paper, a fundamental right to a legal alternative to military service and that States have to organize some form of civilian public service or provide for complete exemption for conscientious objectors. Still, the nature of the procedure to establish conscientious objector status vary from country to country and not every country has a distinctive legal basis on the matter. Furthermore, there are still some countries where conscientious objection is a criminal offense. In 2017, Amnesty International singled out South Korea as the country which imprisons more people for their conscientious

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52 Cristián Daniel Sahli Vera et al. v Chile case 12219 (ICHR, 10 March 2005).
54 Id., p 20.
objection than the rest of the world.\textsuperscript{57} UN bodies have repeatedly rejected the reasons put forwards by the government of South Korea, specifically that conscientious objectors would jeopardize national security and undermine social cohesion in an environment of vivid tension between North and South Korea. Recently, an increasing number of judges at district courts are using ‘not guilty’ verdicts based on freedom of conscience ‘to emphasize the need for a social consensus’.\textsuperscript{58} Meanwhile, the Supreme Court and the Constitutional Court have, once again,\textsuperscript{59} this matter under review while lawmakers are still hesitating to introduce an alternative military service system.\textsuperscript{60}

The case of Israel shows that the boundaries of military conscientious objection might be tricky to draw. Since the State’s foundation, Israel has a long history of people refusing military service. With a growing amount of troops’ energy devoted to the occupation of the West Bank and Gaza Strip as well as safeguarding settlements erected on Palestinian land, the phenomenon of soldiers who remain inside the army but refuse particular orders or postings has been widespread. The issue of whether these selective refusals fall within the conscientious objection framework is still highly debated in Israel.\textsuperscript{61} Actually, very few countries recognize selective conscientious objection.\textsuperscript{62}

Outside the military forces, the rhetoric of ‘conscientious objection’ has also developed with respect to the still highly debated topic of abortion.\textsuperscript{63} With few exceptions, a refusal clause, most commonly known as a conscience clause in Europe, is enshrined in European legal systems, although it takes different forms (statutory law, medical policies or code of ethics).\textsuperscript{64} Today, human rights defenders are denouncing the worrying trend against abortion rights worldwide which puts women’s rights and gender


\textsuperscript{59} Conscientious objectors had unsuccessfully appealed several times to the Supreme Court of South Korea since 1969. They also lost at least two cases before the Constitutional Court on 26 August 2004 and 30 August 2011. For more details and legal references, see ‘South Korea: Constitutional Court again denies right to conscientious objection’, blog posted on War Resister’s International, 5 September 2011 https://www.wri-irg.org/en/story/2011/south-korea-constitutional-court-again-denies-right-conscientious-objection

\textsuperscript{60} KIM HYUNG-BIN, ‘Decision on objectors near, says Constitutional Court’, The Korea Times, 18 March 2018 https://www.koreatimes.co.kr/www/nation/2018/03/205_245790.html


\textsuperscript{62} UNITED NATIONS, supra note 6, at 58–59. This report mentions Australia, Germany and Norway.

\textsuperscript{63} On this debate, see BIBOSIA & RORIVE, supra note 13, at 392–413. Note that the next two paragraphs are based on this paper (at 394–395).

\textsuperscript{64} In EU Member States, conscientious objection to performing abortion is granted by law, except in countries such as Sweden, Finland, Bulgaria and the Czech Republic. Within the Council of Europe, the same applies with a few exceptions such as Norway, Switzerland or Iceland. The lack of express regulation does not mean that there is no use of conscientious objection in practice. See ANNA HEINO, MIKA GISSLER, DAN APTER & CHRISTIAN FIALA, Conscientious objection and induced abortion in Europe, 18(4) Eur J Contracept Reproductive Health Care (2013), 231–33.
equality at risk. Conscientious objection in reproductive healthcare can create structural obstacles to effective access to sexual and reproductive rights. Numerous issues stem from the fact that the use of conscientious objection is highly unregulated in a great number of jurisdictions. Doubts persist regarding its scope, especially as to who is entitled to object and with respect to what kind of activity. This is particularly salient in a context in which hospitals and corporations are also claiming a right to conscientious objection.

Then again, military service is the only area in which conscientious objection has been recognized as a human right. As the European Court of Human Rights put it, freedom of religion does not protect every act motivated or inspired by a religion or belief and medical doctors cannot rely on their faith to escape from professional duties. In other words, ’States are obliged to organize their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation’. And since a 2016 decision of the European Committee of Social Rights, it is clear that States Parties to the European Social Charter are under no positive obligation to provide a right to conscientious objection for healthcare workers under the right to health.

65 Nils Mužniks, ‘Women’s rights and gender equality in Europe’ (2016) Human Rights Comment - CoE Commissioner for Human Rights’ Blog, § 48-53; Nils Mužniks, ‘Protect women’s health’. At the global level, see the retrogressive measures denounced by the UN Committee for Economic, Social and Cultural Rights in its General comment No. 22 on the right to sexual and reproductive health (article 12 of the CESCR), 2 May 2016, E/C.12/GC/22, para. 2. In the US, see, for instance, House Bill 2 enacted in 2013 in Texas and struck down by the Constitutional Court in Whole Woman’s Health v Hellerstedt, 579 US (2016).

66 See, the seminal case of International Planned Parenthood Federation European Network (IPPF-EN) v Italy, Complaint no. 87/2012 (ECHR, decision adopted on 10 September 2013 and delivered on 10 March 2014). On this case, see Emmanuelle Bribosia, Ivana Isailovic & Isabelle Rorive, in Rewriting Integrated Human Rights (Eva Brems ed., 2017), 261–85.


71 R.R. v Poland App no 27617/04 (ECHR, 26 May 2011), para. 206. See also P. and S. v Poland App no 57375/08, (ECHR, 30 October 2012), para. 106.

With the development of equality and anti-discrimination law based on religion and belief,\(^{73}\) it is striking to note the extent to which the use of conscientious objection is inflating as it is somehow muddled with the use of reasonable accommodation. ‘Reasonable accommodation is based on a fundamental observation: some individuals, because of an inherent characteristic they have, such as disability or religion, are prevented from performing a task or from accessing certain spaces in conventional ways. Since society is organised primarily on the basis of people who do not share those traits, the former may be unable to access employment, services, or other activities’.\(^{74}\)

As the wording clearly indicates, a duty to accommodate has a limit: it has to be ‘reasonable’, meaning it cannot impose a disproportionate burden on the person having to bear it and on the rights of others.\(^{75}\) So far, the European Court of Human Rights has upheld the legitimacy of a public policy that requires employees to act in a non-discriminatory way despite their religious belief. Such a policy falls within the wide margin of appreciation national authorities deserve when they strike a balance between competing rights.\(^{76}\) There was no obligation for the UK to accommodate the religious belief of a civil servant (Mrs Ladele) who was fired from the London Borough of Islington after repeated refusals to register same-sex civil partnerships based on her religious view of marriage. On the other hand, there is an obligation for the state ‘to introduce appropriate exceptions to the rule barring persons convicted of a serious crime from the profession of chartered accountants’.\(^{77}\) This case concerned Mr Thlimmenos, a Jehovah’s Witness, who, despite having successfully passed the relevant exam, was refused appointment as a chartered accountant’s post in Greece, on the ground that he had been convicted five years earlier for having refused to do military service due to religious reasons.

Beyond the issue of civil servants who raise conscience claims so as not to participate in the celebration of same-sex unions, a real concern is the detrimental effect that accommodation policies could have on the overall operation of non-discrimination law.\(^{78}\) In the past few years, an emblematic line of cases in the UK, the US and Canada relates to for-profit companies with no religious corporate object, refusing to provide services to LGBT customers on the basis of the Christian beliefs of their managers.\(^{79}\) So far, most national courts have held that those denials of services based on sexual

\(^{76}\) Eweida and others v United-Kingdom App nos 48420/10, 59842/10, 51671/10 and 36516/10, (ECHR, 15 January 2013), para. 104–06.
\(^{77}\) Thlimmenos v Greece App no 34369/97 (ECHR, 6 April 2000), para. 48 (our emphasis).
\(^{78}\) This point was already made in Bribosia & Rorive, supra note 13.
\(^{79}\) Many cases are discussed in Emmanuelle Bribosia & Isabelle Rorive, Why a Global Approach to Non-discrimination Law Matters? Struggling with the ‘Conscience’ of Companies, in Human Rights Tectonics: Global Dynamics of Integration and Fragmentation (Emmanuelle Bribosia, Isabelle Rorive & Ana Maria Corrêa eds., 2018).
orientation were discriminatory, but there are still pending issues related to free speech. Unequal treatment occurred even if customers could get the same service elsewhere without additional cost. The crucial aspect of these cases is the injury to dignity and the humiliation suffered by a minority who has experienced structural prejudice for many years.

There are major difficulties in trying to transpose the debate surrounding conscientious objection beyond the participation in the military forces. In this process, the specific features of the military field are key to keep in mind. First, the issue takes place with respect to a military service which is mandatory by law. Second, the conscientious objector refusing to perform his legal duty as a militiaman is in a particularly vulnerable situation as he often faces criminal charges. Third, there is hardly any impact on the rights of others when conscientious objection is raised in the military service. These aspects are worth keeping in mind when the rhetoric of conscientious objection is used toward groups which have been fighting against structural discrimination for years. Otherwise there is a great risk to see the long human rights fight of military conscientious objector to take a troubled path and to unravel equality law.