

PUNITIVE FAIRNESS AND THE FREEDOM OF CONSCIENCE:
KOREA'S CONSTITUTIONAL COURT AND THE 2024
ALTERNATIVE SERVICE DECISIONS IN LIGHT OF ICCPR
ARTICLE 18

I. INTRODUCTION

Conscientious objection to military service occupies a contested space at the intersection of individual rights and collective security. For decades, the Republic of Korea maintained one of the harshest stances among democratic nations: individuals who refused compulsory service, often on religious or moral grounds, were sentenced to prison terms and stained with criminal records. At its height, Korea accounted for more than 90 percent of the world's imprisoned conscientious objectors. Since the Korean War, nearly 19,000 South Koreans have been convicted and incarcerated for refusal to serve.¹

In 2018, Korea's Constitutional Court shifted course. In a landmark decision, the Court held that the Military Service Act's failure to provide an alternative to armed service was unconstitutional, thereby mandating legislative reform.² Korean National Assembly responded by adopting the Act on the Assignment and Service of Alternative Service Personnel (the "Alternative Service Act"), which introduced a thirty-six-month program of correctional-facility work, twice the length of ordinary active-duty service.³ This regime took effect in 2020, and conscientious objectors, almost all of them Jehovah's Witnesses, were reassigned to correctional institutions to perform cooking, sanitation, and logistical duties under strict communal living conditions.

In May 2024, the Constitutional Court upheld the core features of this program against challenges that they violated the freedom of conscience guaranteed by Article 19 of the Constitution. In *2022 헌마 1146* and consolidated cases, the Court, by a narrow 5–4 vote, rejected claims that the thirty-six-month term, mandatory dormitory living, and

¹ See *South Korea: Supreme Court Finds Conscientious Objection to Military Service Justifiable*, LIBR. OF CONG. (Nov. 16, 2018), <https://www.loc.gov/item/global-legal-monitor/2018-11-16/south-korea-supreme-court-finds-conscientious-objection-to-military-service-justifiable/> (noting about 19,000 convictions since the 1950s); *South Korea's Conscientious Objectors Are Getting an Alternative to Military Service*, DIPLOMAT (July 2020), <https://thediplomat.com/2020/07/south-koreas-conscientious-objectors-are-getting-an-alternative-to-military-service/>.

² Constitutional Court [Const. Ct.], 2011Hun-Ba379, June 28, 2018 (S. Kor.).

³ Act on the Assignment and Service of Alternative Service Personnel, Act No. 16851, Dec. 27, 2019 (S. Kor.).

restriction to correctional facilities were unconstitutional.⁴ While the Court acknowledged the burdens imposed, it accepted the government's argument that these measures were necessary to maintain equitable burden-sharing among all draftees and to preserve the integrity of national defense. The majority reasoned that a shorter or more flexible scheme could undermine public confidence in the fairness of conscription and invite abuse by individuals seeking to evade active duty. It also emphasized that assignment to correctional facilities was designed to provide public service within an existing administrative structure rather than to punish objectors.

Dissenting justices, by contrast, argued that the regime imposed a disproportionate burden and effectively nullified the recognition of conscientious objection.

This Note argues that Korea's new model, though representing undeniable progress compared to decades of imprisonment, remains misaligned with international human-rights standards. Article 18 of the International Covenant on Civil and Political Rights (ICCPR), to which Korea is a party, protects the right to freedom of thought, conscience, and religion. The UN Human Rights Committee has repeatedly found Korea in violation of Article 18 for criminally punishing conscientious objectors and has emphasized that any alternative service must be genuinely civilian and non-punitive.⁵ General Comment No. 22 (1993) explicitly affirms that conscientious objection falls within the scope of Article 18.⁶

Comparative jurisprudence supports this conclusion. In *Bayatyan v. Armenia* (2011), the European Court of Human Rights (ECHR) held that punishing a Jehovah's Witness for refusing military service violated Article 9 of the European Convention on Human Rights, which parallels ICCPR Article 18.⁷ Following *Bayatyan*, most Council of Europe member states revised their laws to ensure that alternative service is not disproportionately long or conducted in military-like settings. By contrast, Korea's insistence on a thirty-six-month correctional-facility placement—double the active-duty term and lacking civilian character—falls short of these global standards.

The purpose of this Note is to situate Korea's Constitutional Court decisions within a comparative and international-law framework. Part II reviews the history of conscientious objection in Korea and the legal battles culminating in the 2018 Constitutional Court ruling. Part III

⁴ Constitutional Court [Const. Ct.], 2022Hun-Ma1146 (consol.), May 30, 2024 (S. Kor.); see also 2023Hun-Ma32 (S. Kor.).

⁵ See Yoon & Choi v. Republic of Korea, U.N. Hum. Rts. Comm., Commc'n Nos. 1321–22/2004, U.N. Doc. CCPR/C/88/D/1321–22/2004 (2006); U.N. Hum. Rts. Comm., Concluding Observations: Republic of Korea, U.N. Doc. CCPR/C/KOR/CO/3 (2015).

⁶ U.N. Hum. Rts. Comm., General Comment No. 22, CCPR/C/21/Rev.1/Add.4 (1993).

⁷ *Bayatyan v. Armenia*, App. No. 23459/03, 2011-I Eur. Ct. H.R. 1.

analyzes the Alternative Service Act and the Court's subsequent decisions upholding its provisions. Part IV surveys international human-rights law, with emphasis on ICCPR Article 18, the UN Human Rights Committee's views, and General Comment No. 22. Part V compares Korea's approach to other jurisdictions, highlighting the *Bayatyan* precedent. Part VI assesses whether Korea's model complies with international standards and proposes reforms, including shortening the term and diversifying service placements.

Ultimately, this Note contends that Korea's recognition of conscientious objection, while symbolically significant, has been undermined by the punitive structure of its implementation. By maintaining a model that burdens objectors with twice the length of active duty and confines them to correctional institutions, Korea risks perpetuating the very rights violations that international law seeks to prevent.

II. BACKGROUND

A. *Early History of Conscientious Objection in Korea*

The Republic of Korea has maintained a universal conscription system since the Korean War. The Military Service Act of 1949 initially authorized both voluntary and compulsory service, but after hostilities broke out in 1950, Korea permanently shifted to a draft system.⁸ From the outset, individuals who refused service were subject to imprisonment, typically under Article 88 of the Act.⁹

Most conscientious objectors during the twentieth century were members of Jehovah's Witnesses, whose doctrine prohibits participation in war and the bearing of arms.¹⁰ For decades, courts consistently imposed prison terms on objectors, usually ranging from eighteen months to three years, without considering alternatives.¹¹ By the early 2000s, Korea had accumulated more than 10,000 convictions of Jehovah's Witnesses, giving it the highest number of imprisoned objectors in the democratic world.¹²

⁸ Military Service Act, Act No. 293, May 1, 1949 (S. Kor.).

⁹ *Id.* at art. 88.

¹⁰ A Life Sentence From Birth – Story of a South Korean Conscientious Objector, Amnesty Int'l (May 13, 2015), <https://www.amnesty.org/en/latest/campaigns/2015/05/a-life-sentence-from-birth-story-of-a-south-korean-conscientious-objector/> (“In South Korea, a majority of conscientious objectors are Jehovah's Witnesses. The country imprisons more people for their conscientious objection to military service than the rest of the world put together – with at least 600 men mostly aged between 20 and 24 currently in jail.”).

¹¹ *South Korea Overview*, JEHOVAH'S WITNESSES, <https://www.jw.org/en/news/region/south-korea/jehovah-witness-facts/> (last visited June 22, 2026).

¹² See Sayuri Umeda, *South Korea: Supreme Court Finds Conscientious Objection to Military Service Justifiable*, LIBR. OF CONG. (Nov. 16, 2018), <https://www.loc.gov/item/global-legal-monitor/2018-11-16/south-korea-supreme-court-finds-conscientious-objection-to-military-service-justifiable/> (noting about 19,000 imprisoned since the 1950s).

During the authoritarian period of the 1970s and 1980s, treatment of objectors was particularly severe.¹³ Reports indicate that some young men were forcibly taken to military training centers, beaten for refusing to handle weapons, and subjected to repeated prosecutions after release.¹⁴ Although imprisonment terms were eventually standardized at eighteen months in the 1990s and 2000s, these convictions carried permanent criminal records and significant social stigma, limiting employment and professional opportunities.¹⁵

B. Constitutional Litigation Prior to 2018

Objectors repeatedly challenged the constitutionality of the Military Service Act's lack of alternatives, but the Constitutional Court consistently upheld the statute. In 2004, the Court ruled 7–2 that punishing conscientious objectors did not violate the freedom of conscience guaranteed by Article 19 of the Constitution, reasoning that national security interests outweighed individual beliefs.¹⁶ The Court reaffirmed this position in later cases through the 2000s and early 2010s.

At the same time, the Supreme Court rejected defenses by objectors, holding that refusal of service did not constitute a “justifiable reason” under Article 88.¹⁷ By the mid-2010s, Korean jurisprudence remained firmly opposed to recognizing conscientious objection, despite growing domestic and international criticism.

C. International Pressure and Emerging Change

International human-rights bodies played a pivotal role in shifting Korea's approach. In *Yoon and Choi v. Republic of Korea* (2006), the UN Human Rights Committee found that Korea's imprisonment of objectors violated Article 18 of the ICCPR and called for alternative service.¹⁸ The

¹³ *Assessing Reform in South Korea: A Supplement to the Asia Watch Report on Legal Process and Human Rights*, HUM. RTS. WATCH: ASIA WATCH COMM. (Oct. 1988), https://www.hrw.org/sites/default/files/supporting_resources/assessing_reform_in_south_korea.pdf (documenting cases from the 1970s–80s in which conscientious objectors were forcibly taken to military training centers, beaten for refusing to handle weapons, and repeatedly prosecuted after release).

¹⁴ *Id.*

¹⁵ Mun Soo-hyun, *An Analysis of the Debate Over Conscientious Objection in Korea*, 25 no. 2 SEoul J. KOR. STUD. 243, 264–65 (2012); *South Korea: Authorities Wrecking Lives by Jailing Conscientious Objectors*, AMNESTY INT'L (May 13, 2015), <https://www.amnesty.org/en/latest/news/2015/05/south-korea-authorities-wrecking-lives-by-jailing-conscientious-objectors/>.

¹⁶ Constitutional Court [Const. Ct.], 2004Hun-Ma554, Aug. 26, 2004 (S. Kor.).

¹⁷ Supreme Court [S. Ct.], 2004Do934, Dec. 2004 (S. Kor.).

¹⁸ *Yoon & Choi v. Republic of Korea*, U.N. Hum. Rts. Comm., Commc'n Nos. 1321-22/2004, CCPR/C/88/D/1321-22/2004 (2006).

Committee reiterated this in 2010 and 2015, emphasizing that any alternative must be non-punitive and civilian.¹⁹

These findings placed Korea in increasing tension with its treaty obligations. By 2018, Korea was one of the last democracies still imposing criminal penalties on all conscientious objectors, despite having acceded to the ICCPR in 1990.²⁰ Civil-society groups, including Amnesty International and domestic NGOs, amplified calls for reform, arguing that the existing system constituted systematic rights violations.²¹

D. The 2018 Constitutional Court Turning Point

On June 28, 2018, the Constitutional Court issued a landmark ruling (2011 헌바 379 and consolidated cases), declaring unconstitutional the Military Service Act's failure to provide alternatives.²² While the Court upheld the punishment provisions of Article 88 against facial challenge, it held that Article 5—enumerating only active-duty, reserve, supplementary, and wartime service categories—was unconstitutional insofar as it omitted a civilian alternative.²³ The Court ordered the National Assembly to legislate an alternative service system by December 31, 2019.²⁴

This decision marked a fundamental shift: for the first time, the Court recognized that freedom of conscience required a genuine option other than imprisonment.²⁵ Within months, the Supreme Court overturned precedent, holding that conscientious objectors could not be criminally punished if their refusal was based on sincere beliefs.²⁶

E. The Alternative Service Act of 2019

Responding to the Court's deadline, the National Assembly enacted the Alternative Service Act on December 27, 2019.²⁷ The Act

¹⁹ U.N. Hum. Rts. Comm., Concluding Observations: Republic of Korea, CCPR/C/KOR/CO/3 (2015).

²⁰ Republic of Korea accession to ICCPR, Apr. 10, 1990.

²¹ *South Korea: Sentenced to Life—Conscientious Objectors in South Korea*, AMNESTY INT'L (2015), <https://www.amnesty.org/en/documents/asa25/1512/2015/en/> (calling on the Korean government to end imprisonment of conscientious objectors and establish a genuinely civilian alternative service).

²² Constitutional Court [Const. Ct.], 2011Hun-Ba379, June 28, 2018 (S. Kor.); Ihntaek Hwang, *Fairness or Failure? The Punitive Nature of South Korea's Alternative Service*, BYU L.: INT'L CTR. L. RELIGION STUD. (Nov. 18, 2024), <https://talkabout.iclrs.org/2024/11/18/punitive-nature-of-south-koreas-alternative-service/>.

²³ Opinions Adopted by the Working Group on Arbitrary Detention at Its Eighty-Second Session, U.N. Doc. A/HRC/WGAD/2018/40 (Sept. 17, 2018).

²⁴ Constitutional Court [Const. Ct.], 2011Hun-Ba379, June 28, 2018 (S. Kor.)

²⁵ *Id.*

²⁶ Supreme Court [S. Ct.], 2016Do10912, Nov. 1, 2018 (S. Kor.).

²⁷ Act on the Assignment and Service of Alternative Service Personnel, Act No. 16851, Dec. 27, 2019 (S. Kor.).

created a new category of “alternative service personnel” assigned to correctional facilities for a term of thirty-six months, twice the length of active-duty military service.²⁸ Objectors were required to live communally in dormitories attached to prisons and perform duties such as cooking, cleaning, and medical assistance for inmates.²⁹

From the government’s perspective, this structure was intended to ensure equality of duty between active-duty soldiers and objectors.³⁰ The Ministry of National Defense and the Ministry of Justice explained that the longer term compensated for the relatively lighter physical risks faced by correctional-facility workers.³¹ Officials also emphasized administrative feasibility: correctional institutions already possessed the necessary infrastructure and discipline to accommodate objectors without disrupting military readiness.³²

Critics, including the National Human Rights Commission of Korea, countered that these justifications failed to conceal the system’s punitive nature.³³ They argued that confinement in correctional settings and the doubling of service length stigmatized objectors and contravened international standards calling for civilian alternatives of comparable duration to military service.³⁴

In October 2020, the first class of alternative service personnel entered correctional facilities under the new scheme.³⁵ The law represented a historic step away from imprisonment, but it also raised

²⁸ *Id.*

²⁹ *South Korea: Alternative to Military Service is New Punishment for Conscientious Objectors*, AMNESTY INT’L (Dec. 27, 2019), <https://www.amnesty.org/en/latest/news/2019/12/south-korea-alternative-to-military-service-is-new-punishment-for-conscientious-objectors-2/>.

³⁰ See Hwang, *supra* note 22.

³¹ See Yeo Jun-suk, *Government Considers 36 Months in Correctional Facilities for Alternative Service*, KOREA HERALD (Nov. 15, 2018), <https://www.koreaherald.com/article/1838653>.

³² Ministry of National Defense, Report to the National Assembly Defense Committee on the Introduction of the Alternative Service System (2018) (S. Kor.); Ministry of Justice, Explanation Materials on Administration of Alternative Service Personnel (2020) (S. Kor.) (explaining fairness rationale, risk-compensation logic, and administrative suitability of correctional facilities).

³³ National Human Rights Commission of Korea, Opinion on the Introduction of the Alternative Service System (Dec. 9, 2019) (S. Kor.) (criticizing the 36-month correctional-facility model as punitive, stigmatizing, and inconsistent with ICCPR Article 18 and Human Rights Committee guidance).

³⁴ *Id.*

³⁵ Oh Seok-min, *First Group of Conscientious Objectors Begins 36-Month Alternative Military Service*, YONHAP NEWS AGENCY (Oct. 26, 2020), <https://en.yna.co.kr/view/AEN20201026003500325> (“As the first batch, 63 men gathered at a correction facility in the central city of Daejeon on Monday. After three weeks of education and training, they will be given various assignments at detention facilities in Daejeon or the southwestern city of Mokpo, such as serving and cooking meals and supporting facility management, according to the Military Manpower Administration (MMA).”).

new controversies regarding proportionality, civilian character, and constitutionality—issues that culminated in the Constitutional Court’s 2024 decision upholding its core features.

III. DOMESTIC (KOREAN) LEGAL FRAMEWORK

A. *Statutory Structure and Implementation*

The Alternative Service Act established the legal framework for implementing the new program. The Act authorizes the Ministry of Justice to assign objectors to designated facilities for thirty-six months and requires communal residence under correctional supervision.³⁶ The Ministry of Defense verifies eligibility through the Alternative Service Commission, which reviews the sincerity of an applicant’s beliefs.³⁷

B. *Government Rationale and Majority Reasoning*

The Korean government and the Constitutional Court’s majority defended the correctional-facility model as a constitutionally valid balance between individual conscience and the collective duty of national defense. In 2022 헌마 1146 and related cases, the majority reasoned that equality among conscripts forms part of the constitutional order under Articles 11 and 39, which impose the duty of military service on all citizens.³⁸ Allowing a shorter or less restrictive program for objectors, they argued, could undermine the perceived fairness of conscription and weaken public trust in defense institutions.³⁹

The government also stressed security and administrative practicality. Correctional institutions, already subject to strict management, were considered the only feasible venues to house large numbers of objectors without establishing a new bureaucracy.⁴⁰ The longer term, in the government’s view, compensated for the absence of physical hardship in prison work compared with military training.⁴¹ The majority accepted these rationales, holding that such legislative determinations fell within the legislature’s broad discretion.⁴²

C. *Dissent and Scholarly Critique*

³⁶ Act on the Assignment and Service of Alternative Service Personnel, Act No. 16851, arts. 18(1), 21(2) (Dec. 27, 2019) (S. Kor.).

³⁷ *Id.* arts. 5–8.

³⁸ Constitutional Court [Const. Ct.], 2022Hun-Ma1146, May 30, 2024, majority opinion, ¶¶ 62–70 (S. Kor.).

³⁹ *Id.* ¶¶ 71–78.

⁴⁰ Ministry of Justice & Ministry of National Defense, Joint Press Briefing on the Introduction of the Alternative Service System (Dec. 2019) (S. Kor.).

⁴¹ National Assembly Defense Committee, Legislative Review Report on the Act on the Assignment and Service of Alternative Service Personnel, at 12–15 (2019) (S. Kor.).

⁴² 2022Hun-Ma1146, majority opinion, ¶¶ 80–87.

Four justices dissented, contending that fairness among draftees must be understood substantively rather than mechanically.⁴³ They argued that imposing a term twice as long as active duty violates the proportionality principle and undermines Article 19's protection of conscience.⁴⁴ The dissent also criticized the government's reliance on correctional settings, stating that the prison environment stigmatizes objectors and negates the civilian nature required of alternative service.⁴⁵

Korean scholars and human-rights advocates have similarly questioned the government's conception of fairness, warning that it constitutionalizes punitive equivalence rather than equality before the law.⁴⁶ These critiques highlight the gap between Korea's domestic jurisprudence and international norms requiring that alternative service be comparable, not harsher, than military service.⁴⁷

IV. INTERNATIONAL HUMAN RIGHTS STANDARDS

A. ICCPR Article 18 and the Principle of Freedom of Conscience

The International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Korea in 1990, guarantees the right to freedom of thought, conscience, and religion under Article 18.⁴⁸ The provision protects both internal belief and external manifestation, and explicitly prohibits coercion that would impair an individual's freedom to adopt or exercise a religion or belief.⁴⁹ The Human Rights Committee, the treaty body interpreting the ICCPR, has consistently affirmed that conscientious objection to military service falls within the scope of Article 18.⁵⁰

Article 18 is considered non-derogable, even in times of national emergency.⁵¹ Thus, states may not justify restrictions on freedom of conscience solely by invoking public order or national security. Any limitation on the manifestation of conscience must satisfy the requirements of necessity and proportionality, meaning that the

⁴³ 2022Hun-Ma1146, dissenting opinion of Justices Lee Mi-sun, Kim Ki-young, Moon Hyung-bae & Lee Jong-seok, ¶¶ 12–25.

⁴⁴ *Id.*

⁴⁵ *Id.* ¶¶ 28–35 (dissent).

⁴⁶ National Human Rights Commission of Korea, Policy Recommendation on the Alternative Service System, at 4–6 (June 2020) (S. Kor.).

⁴⁷ *Id.* at 7–8.

⁴⁸ Suk T. Lee, *South Korea: Implementation and Application of Human Rights Covenants*, 14 MICH. J. INT'L L. 705, 730 (1993).

⁴⁹ *Id.*; International Covenant on Civil and Political Rights (ICCPR) art. 18, Dec. 16, 1966, 999 U.N.T.S. 171.

⁵⁰ U.N. Hum. Rts. Comm., General Comment No. 22, ¶ 11, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993).

⁵¹ ICCPR art. 4(2).

restriction pursues a legitimate aim and represents the least restrictive means available.⁵²

B. UN Human Rights Committee Jurisprudence on Korea

The UN Human Rights Committee first addressed Korea's approach to conscientious objection in *Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea* (2006).⁵³ The Committee held that imprisoning individuals for refusal of military service based on sincere religious belief violated Article 18(1) of the ICCPR.⁵⁴ The decision emphasized that freedom of conscience encompasses the right to refuse military service when it conflicts with deeply held moral or religious convictions.⁵⁵ The Committee urged Korea to release imprisoned objectors and establish a civilian alternative service.⁵⁶

Despite this finding, the Korean government maintained criminal penalties for all objectors for more than a decade. The Committee reiterated its criticism in subsequent Concluding Observations (2010 and 2015), noting that the absence of an alternative service and the continued imprisonment of objectors were incompatible with Article 18.⁵⁷ In its 2015 report, the Committee explicitly warned that "alternative service must be of a genuinely civilian nature, outside military control, and not punitive in length or conditions."⁵⁸

These repeated findings placed Korea among the few democratic states persistently in violation of ICCPR Article 18 obligations.⁵⁹ The Committee's language, consistent over several cycles, established clear parameters: punishment of objectors, or the imposition of an excessively burdensome or militarized alternative, amounts to a breach of the Covenant.

C. General Comment No. 22 (1993): Conscientious Objection as Protected Right

In General Comment No. 22, adopted in 1993, the Human Rights Committee affirmed that conscientious objection is a legitimate exercise

⁵² U.N. Hum. Rts. Comm., *Kovalenko v. Belarus*, Commc'n No. 1808/2008, U.N. Doc. CCPR/C/102/D/1808/2008 (2011).

⁵³ *Yeo-Bum Yoon & Myung-Jin Choi v. Republic of Korea*, Commc'ns Nos. 1321–22/2004, U.N. Doc. CCPR/C/88/D/1321–22/2004 (Jan. 23, 2006).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ U.N. Human Rights Committee, *Concluding Observations: Republic of Korea*, U.N. Doc. CCPR/C/KOR/CO/3 (Dec. 3, 2015).

⁵⁸ *Id.* ¶ 45.

⁵⁹ See *Constitutional Court Ruling Runs Counter to South Korea's Obligations Under International Human Rights Law*, AMNESTY INT'L (Sept. 2, 2011), <https://www.amnesty.org/fr/wp-content/uploads/2021/07/asa250102011en.pdf>.

of the freedom of thought, conscience, and religion protected under Article 18.⁶⁰ The Comment clarified that states must accommodate individuals who object to military service on grounds of conscience and must provide non-discriminatory alternative service options. It further underscored that penalties for refusal must not be punitive or coercive.

General Comment No. 22 has become the interpretive cornerstone for assessing compliance with Article 18.⁶¹ The Committee has since applied its reasoning uniformly in cases from Armenia, Azerbaijan, Turkmenistan, and the Republic of Korea, finding violations wherever alternative service systems were punitive or operated under military authority.⁶²

D. Emerging International Consensus

Beyond the ICCPR framework, the UN Special Rapporteur on Freedom of Religion or Belief and the UN Working Group on Arbitrary Detention have repeatedly affirmed that imprisonment or punitive alternative service for conscientious objectors constitutes arbitrary detention and violates freedom of conscience.⁶³ The Council of Europe and the Organization for Security and Co-operation in Europe (OSCE) likewise recommend that alternative service should not exceed one and a half times the duration of military service and must be performed in civilian institutions.⁶⁴

Together, these international standards establish a coherent baseline: alternative service regimes must be civilian, proportionate, and non-punitive. Korea's thirty-six-month correctional-facility system—administered under the Ministry of Justice and double the active-duty term—departs from this consensus and continues to draw scrutiny from international human-rights monitors.

V. COMPARATIVE PERSPECTIVES

A. Europe and the Bayatyan Precedent

The most influential comparative development regarding conscientious objection arose from the European Court of Human Rights'

⁶⁰ U.N. Hum. Rts. Comm., *supra* note 50, ¶ 11.

⁶¹ Massimo Introvigne, *Freedom of Religion or Belief, the General Comment No. 22, and Taiwan*, BITTER WINTER (July 24, 2025), <https://bitterwinter.org/freedom-of-religion-or-belief-the-general-comment-no-22-and-taiwan/>.

⁶² *Bayatyan v. Armenia*, App. No. 23459/03 (Eur. Ct. H.R. 2011); U.N. Human Rights Committee, *Atasoy & Sarkut v. Turkey*, Commc'ns Nos. 1853–54/2008, U.N. Doc. CCPR/C/104/D/1853–54/2008 (2012).

⁶³ U.N. Special Rapporteur on Freedom of Religion or Belief, Report on Conscientious Objection, U.N. Doc. A/HRC/31/18 (2016).

⁶⁴ OSCE Office for Democratic Institutions & Human Rights, *Guidelines on Conscientious Objection to Military Service* § 4.2 (2019).

decision in *Bayatyan v. Armenia* (2011).⁶⁵ The Court held that convicting a Jehovah's Witness for refusing military service violated Article 9 of the European Convention on Human Rights, which protects freedom of thought, conscience, and religion. This judgment marked a turning point in European jurisprudence, establishing that conscientious objection is not merely a policy choice for states but a protected manifestation of individual conscience.

Following *Bayatyan*, nearly all Council of Europe member states recognized the right to alternative civilian service.⁶⁶ The Court emphasized that such service must meet two essential conditions: it must be civilian in nature and proportionate in length relative to military service. Armenia, which had imposed a thirty-six-month term for objectors similar to Korea's model, amended its law to reduce the duration to eighteen months and to remove military oversight.⁶⁷

The European Court further clarified this principle in subsequent cases such as *Papavasilakis v. Greece* and *Enver Aydemir v. Turkey*, reiterating that alternative service must not carry punitive or stigmatizing features.⁶⁸ These decisions collectively form a consistent European standard that alternative service should be neither deterrent nor retributive.⁶⁹

B. Comparative National Practices

The contrast between Korea's model and those of other democratic states underscores the exceptional restrictiveness of Korea's current regime.

Germany. After reinstating alternative service in the postwar constitution, Germany limited its duration to a maximum of 1.5 times that of military service and placed administration under the Federal Office for Family and Civil Society Functions, not the Ministry of Defense.⁷⁰ Conscientious objectors serve in hospitals, elderly-care facilities, or social-welfare organizations. This system reflects the principle of equivalence

⁶⁵ *Bayatyan v. Armenia*, App. No. 23459/03, ¶¶ 108–12 (Eur. Ct. H.R. 2011).

⁶⁶ Council of Europe, Committee of Ministers, Resolution CM/ResDH(2015)232, *Execution of the Judgment of the European Court of Human Rights: Bayatyan v. Armenia* (Dec. 9, 2015).

⁶⁷ *Id.* ¶ 42 (noting Armenia's legislative amendments reducing duration of alternative service and transferring administration to civilian authorities).

⁶⁸ *Papavasilakis v. Greece*, App. No. 66899/14, ¶¶ 49–55 (Eur. Ct. H.R. 2016); *Enver Aydemir v. Turkey*, App. No. 26012/11, ¶¶ 80–84 (Eur. Ct. H.R. 2016).

⁶⁹ Gentian Zyberi & Eduardo Sánchez Madriral, *The Practice of Judicial and Quasi-Judicial Human Rights Bodies on Conscientious Objection to Military Service*, in A MISSING PIECE FOR PEACE 121, 126–28 (Michael Wiener and David Fernández Puyana eds. 2022).

⁷⁰ *Grundgesetz* [GG] [Basic Law], art. 12a (Ger.); Federal Office for Family and Civil Society Functions (Bundesamt für Familie und zivilgesellschaftliche Aufgaben), *Annual Report* (2022).

without punishment and has been praised as a model of balance between public duty and individual conscience.

Finland. Finland's Non-Military Service Act likewise provides civilian alternatives, including work in public institutions or NGOs. Although slightly longer than active service, the term was reduced from thirteen months to twelve after a 2008 European human-rights review found that excessive duration could have a "discouraging effect."⁷¹

Taiwan. A more regionally relevant example is Taiwan, which maintained punitive terms for objectors until its ratification of the ICCPR in 2009. Afterward, Taiwan restructured its system to offer social and community service placements under civilian ministries, ensuring that duration does not exceed 1.3 times that of active duty.⁷²

Across these jurisdictions, the trend is consistent: alternative service is recognized as a rights-based institution rather than a penalty. Systems that once mirrored Korea's punitive structure have progressively reformed to comply with proportionality and civilian oversight principles.

C. Lessons for Korea

Korea's 2024 Constitutional Court decisions reveal a sharp divergence from these comparative norms. By framing fairness as parity of hardship rather than equality of treatment, the Court departed from the proportionality approach applied by international and regional human-rights bodies. The result is a system that treats conscientious objection as a lesser form of compliance rather than as a constitutionally protected expression of belief.

From a comparative perspective, Korea's insistence on correctional-facility assignments and a thirty-six-month term stands closer to outdated models that international jurisprudence has already rejected. Aligning with prevailing global standards would require redefining fairness not through equivalence in burden but through equivalence in civic contribution—a shift from punitive fairness to substantive equality.

VI. CRITICAL ANALYSIS

A. *The Constitutional Court's Deference to Legislative Discretion*

The 2024 Constitutional Court decisions reflect a persistent tendency toward deference in matters touching national defense and conscription. By accepting the legislature's rationale of maintaining "equitable burden-sharing," the Court effectively subordinated the

⁷¹ Finnish Ministry of Defence, *Non-Military Service Act Review*, Gov't Report No. 27/2008 (finding overly long terms to have a "discouraging effect").

⁷² Taiwan Ministry of the Interior, *Alternative Civilian Service Regulations* (2020 rev.).

freedom of conscience under Article 19 to the collective duty of military service under Articles 11 and 39.⁷³ While judicial restraint is often justified in areas of policy, the Court's reasoning blurred the distinction between administrative convenience and constitutional proportionality.

The majority emphasized that the thirty-six-month term and correctional-facility placement were products of policy compromise and therefore within the National Assembly's discretion.⁷⁴ Yet under both domestic constitutional principles and the ICCPR's proportionality requirement, judicial review demands more than acknowledgment of legislative intent. The Court failed to scrutinize whether the legislative means chosen were necessary and least restrictive in achieving equality among conscripts. A system that doubles the service term for one class of citizens cannot be presumed proportional merely because it originated in legislative consensus.

B. Redefining "Fairness" as Punitive Equivalence

The government and majority opinions grounded their reasoning in the principle of fairness among draftees. However, the version of fairness applied—measured by parity of hardship rather than equality of treatment—recasts constitutional equality as punitive equivalence.⁷⁵ This logic assumes that conscientious objectors must bear extra burdens to offset the presumed leniency of their service environment.

Such reasoning contradicts both constitutional equality under Article 11 and the interpretive guidance of the Human Rights Committee, which holds that alternative service must be comparable in burden, not greater.⁷⁶ Fairness cannot be achieved by inflicting additional hardship on a minority exercising a protected right. Instead, fairness should be understood as ensuring that all citizens contribute meaningfully to the public good according to their convictions, not as imposing symmetrical suffering across service types.

C. The Problem of Correctional-Facility Assignments

Assignment to correctional facilities raises distinct constitutional and human-rights concerns. Although the government characterizes these placements as "administratively efficient," the prison setting inevitably

⁷³ Constitutional Court [Const. Ct.], 2022Hun-Ma1146, majority opinion ¶¶ 71–76 (May 30, 2024) (S. Kor.).

⁷⁴ *Id.*

⁷⁵ *Id.* ¶ 82 (explaining reliance on "public perception of equity among service types").

⁷⁶ U.N. Hum. Rts. Comm., Concluding Observations: Republic of Korea, ¶ 45, U.N. Doc. CCPR/C/KOR/CO/3 (Dec. 3, 2015).

carries punitive connotations.⁷⁷ Objectors live under surveillance, restricted movement, and correctional supervision identical in form to that of inmates. The physical and psychological environment of confinement undermines the civilian character required by Article 18 of the ICCPR.

International practice demonstrates that the location and supervision of service are critical indicators of civilian status.⁷⁸ Where the Ministry of Justice rather than a civilian ministry controls personnel, and where service takes place within penal institutions, the distinction between alternative service and punishment collapses. This structure risks violating the proportionality and civilian-character tests articulated by both the Human Rights Committee and the European Court of Human Rights.

D. Disproportionate Duration and the Principle of Necessity

The thirty-six-month term—twice that of active duty—constitutes the most overt disproportionality in Korea’s scheme. The government defends the longer term as compensatory, arguing that correctional service entails lower physical risk. Yet this justification fails to satisfy the necessity principle because no empirical evidence demonstrates that doubling the duration is required to ensure fairness or maintain military morale.⁷⁹

By contrast, most comparative systems limit alternative service to no more than 1.5 times the active-duty term.⁸⁰ Korea’s duration therefore exceeds even the upper range considered acceptable by international bodies. The result is a chilling effect on the exercise of conscience: potential objectors may forgo their beliefs to avoid a longer term, rendering the statutory “alternative” illusory in practice.

E. Political and Civil Rights Restrictions

The prohibition on political-party membership for alternative-service personnel, upheld in 2022 헌마 1146, further erodes the civilian status of objectors.⁸¹ The Court accepted the restriction as necessary to

⁷⁷ National Human Rights Commission of Korea, *Statement on the Civilian Nature of Alternative Service* (2021) (criticizing correctional-facility assignments as punitive and incompatible with Article 18 civilian-character requirement).

⁷⁸ *Bayatyan v. Armenia*, App. No. 23459/03, ¶¶ 108–12 (Eur. Ct. H.R. 2011).

⁷⁹ Ministry of Justice, *Press Briefing on Alternative Service Implementation* (2020) (asserting but not evidencing the necessity of a 36-month term).

⁸⁰ OSCE Office for Democratic Institutions & Human Rights, *Guidelines on Conscientious Objection to Military Service* § 4.2 (2019).

⁸¹ Constitutional Court [Const. Ct.], 2022Hun-Ma1146, dissenting opinion of Justices Kim Ki-young & Lee Mi-sun.

preserve neutrality and discipline, but this rationale conflates administrative order with ideological control. International standards permit temporary restrictions on political activity only where the function itself requires strict neutrality, such as judicial or military roles.⁸² Objectors performing civilian correctional labor do not occupy such positions. The restriction therefore imposes an unnecessary constraint on freedom of association under Article 21 of the Korean Constitution and Articles 19 and 22 of the ICCPR.

F. Toward a Substantive Understanding of Conscience

The cumulative effect of these measures—extended term, correctional confinement, and political restrictions—is to transform recognition of conscience into a conditional privilege. A substantive approach would view conscientious objection not as a deviation from the norm but as an expression of individual autonomy integral to democratic constitutionalism. Recognizing conscience as a positive civic contribution, rather than a tolerated exception, would align Korea’s jurisprudence with the human-rights principle that diversity of belief strengthens, rather than weakens, collective security.

Ultimately, the Court’s 2024 decisions illustrate the tension between formal equality and substantive liberty. Upholding punitive equivalence under the guise of fairness perpetuates stigma and discourages sincere objectors from exercising protected rights. A proportional and civilian alternative service, grounded in genuine respect for conscience, would better harmonize constitutional and international obligations.

VII. POLICY IMPLICATIONS AND RECOMMENDATIONS

A. Recalibrating Duration to Ensure Proportionality

The thirty-six-month term for alternative service is the principal source of disproportionality in Korea’s current framework. Both international human-rights standards and comparative practice converge on a clear norm: the duration of alternative service should not exceed one and one-half times the length of active military service.⁸³ Korea’s two-to-one ratio fails this test and operates as a deterrent to the exercise of conscience.

Reducing the term to a period comparable to or only moderately longer than active duty would satisfy proportionality while maintaining fairness among draftees. Empirical data from Germany and Finland

⁸² U.N. Hum. Rts. Comm., General Comment No. 25, ¶ 25, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).

⁸³ OSCE Office for Democratic Institutions & Human Rights, *Guidelines on Conscientious Objection to Military Service* § 4.2 (2019) (recommending alternative-service duration not exceed 1.5 times military service).

demonstrate that moderate reductions in duration do not undermine public support for conscription or create significant increases in applications for alternative service.⁸⁴ A recalibrated term would therefore achieve parity in contribution rather than parity in punishment, realigning Korea's system with both Article 19 of the Constitution and Article 18 of the ICCPR.

B. Diversifying Service Institutions Beyond Correctional Facilities

Civilian character is central to the legitimacy of any alternative service regime. The current concentration of all alternative-service personnel within correctional facilities, administered by the Ministry of Justice, blurs the distinction between public service and penal labor.⁸⁵

Korea could expand placements to hospitals, welfare centers, elder-care facilities, and emergency-response agencies, following the German and Taiwanese models.⁸⁶ Diversifying institutions would reduce the stigmatization of objectors, distribute workloads more equitably, and highlight the civic value of conscience-based service. To preserve administrative coherence, a dedicated civilian agency could be established under the Prime Minister's Office or the Ministry of Interior rather than the Ministry of Justice.

C. Removing Unnecessary Political and Civil Restrictions

The prohibition on political-party membership for alternative-service personnel is inconsistent with Korea's constitutional guarantees of freedom of association and international norms protecting political rights.⁸⁷ Removing this restriction would affirm that objectors are citizens performing a form of public duty, not quasi-inmates under state discipline. The government can preserve neutrality in workplace conduct through existing public-service regulations without imposing a categorical ban on political affiliation.

Additionally, restrictions on movement and communication within correctional dormitories should be replaced by ordinary administrative rules applicable to civilian public workers. These adjustments would bring the program into closer alignment with the

⁸⁴ Bundesamt für Familie und zivilgesellschaftliche Aufgaben, *Annual Report* (2022); Finnish Ministry of Defence, *Non-Military Service Act Review*, Gov't Report No. 27/2008.

⁸⁵ Constitutional Court [Const. Ct.], 2022Hun-Ma1146, majority opinion (May 30, 2024) (S. Kor.) (upholding correctional-facility placement).

⁸⁶ Taiwan Ministry of the Interior, *Alternative Civilian Service Regulations* (2020 rev.); Bundesamt für Familie und zivilgesellschaftliche Aufgaben, *Annual Report* (2022).

⁸⁷ Constitutional Court [Const. Ct.], 2022Hun-Ma1146, dissenting opinion of Justices Kim Ki-young & Lee Mi-sun (arguing political-party ban unconstitutionally restricts civil rights).

Human Rights Committee's guidance that alternative service must be "civilian in nature, under civilian control, and free from punitive conditions."⁸⁸

D. Institutional Reform and Oversight Mechanisms

Reform efforts should also focus on institutional oversight. Independent monitoring by the National Human Rights Commission of Korea and civil-society organizations could ensure compliance with human-rights obligations.⁸⁹ Regular reporting to the UN Human Rights Committee under the periodic-review process would reinforce accountability and promote incremental alignment with global standards.

The creation of an Alternative Service Review Board composed of representatives from civilian ministries, human-rights experts, and religious organizations could further depoliticize the administration of the program and reduce the risk of arbitrary decisions in eligibility reviews.

E. Framing Conscientious Objection as Civic Contribution

Finally, Korea's policy discourse should reframe conscientious objection from an act of avoidance to an act of civic engagement. Objectors contribute to the nation by upholding moral integrity and performing socially valuable labor. Recognizing this contribution can transform public perception of alternative service from tolerated deviation to legitimate public duty.

By redefining fairness in terms of contribution rather than punishment, Korea can move beyond formal compliance and toward genuine realization of freedom of conscience. This shift would not only fulfill constitutional and treaty obligations but also strengthen the democratic legitimacy of conscription itself.

VIII. CONCLUSION

Korea's recognition of conscientious objection in 2018 marked an important constitutional milestone, but its subsequent implementation has exposed a deeper tension between collective security and individual conscience. By upholding a thirty-six-month correctional-facility system in 2024, the Constitutional Court endorsed a model that equates fairness with hardship rather than equality of civic duty. This approach preserves the form of reform while weakening its substance.

International law, particularly Article 18 of the ICCPR and the jurisprudence of the UN Human Rights Committee and the European

⁸⁸ U.N. Hum. Rts. Comm., Concluding Observations: Republic of Korea, ¶ 45, U.N. Doc. CCPR/C/KOR/CO/3 (Dec. 3, 2015).

⁸⁹ National Human Rights Commission of Korea, *Statement on Alternative Service Monitoring* (2023).

Court of Human Rights, offers a clear benchmark. Alternative service must be civilian, proportionate, and non-punitive. Korea's current structure fails each of these tests. A system that confines objectors under correctional supervision for twice the duration of active service cannot be reconciled with the principle of freedom of conscience.

Meaningful reform will require redefining fairness in terms of contribution to society rather than equivalence in suffering. Shortening the service term, expanding placements to genuinely civilian institutions, and removing unnecessary restrictions would demonstrate constitutional maturity and compliance with international norms. Such changes would not only strengthen Korea's human-rights reputation but also reaffirm the democratic principle that conscience, freely exercised, is a source of civic strength rather than a threat to national security.

-- Seung Yeun Oh