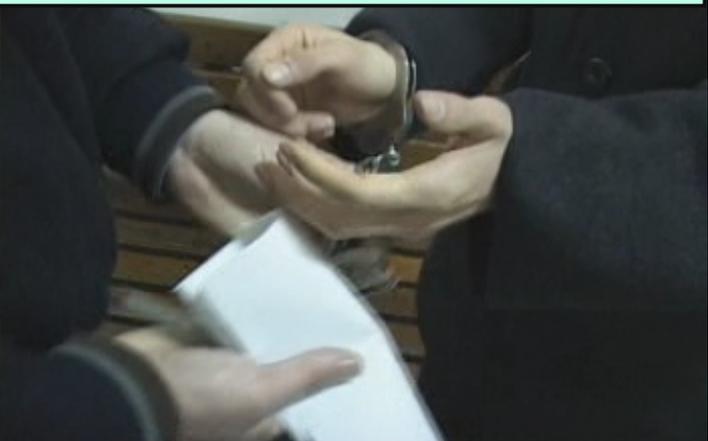




War Resisters' International



Conscientious Objection in South Korea



Published by:
War Resisters' International and Korea Solidarity for Conscientious Objection

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Editorial

Andreas Speck

The extremely difficult situation of conscientious objectors in South Korea has so far not been known to a broader public. Until only a few years ago, it has not even been known to those working on conscientious objection internationally, including War Resisters' International. And even in South Korea itself it was only in 2001 that conscientious objection became known to the public, despite the fact the Jehovah's Witnesses went to prison in their thousands since 1939 for their conscientious objection to military service (see *The Broken Rifle No 59*, November 2003). Also War Resisters' International's own global survey on conscientious objection from 1998, "Refusing to bear arms", only states:

"The right to conscientious objection is not legally recognized and there are no provisions for substitute service.

In 1997 the government clearly stated: "there exists no procedure for obtaining the status of conscientious objector (...) no substitutionary service exists".

In the 80s and 90s there have been some reports of Jehovah's Witnesses getting sentenced to three years' imprisonment for refusing to perform military service, but no further details are known about this."

We now know that while this was written, probably hundreds of Jehovah's Witnesses were serving three year prison sentences for their conscientious objection.

War Resisters' International was first contacted by Karin Lee, the representative of the American Friends Services Committee (AFSC) in North-East Asia, in 1999 with questions about conscientious objection. Even then, the situation of conscientious objectors in South Korea was very much unknown. I remember being asked if it will be possible for South Korea to achieve the right to conscientious objection without people going to prison – a question which showed that those investigating this question did not know that hundreds were serving prison sentences.

As Jungmin Choi wrote in *The Broken Rifle* in November 2003, only in early 2001 South Korean peace and human rights organisations became aware of the fact that hundreds and thousands of Jehovah's Witnesses went to prison for their conscientious objection since 1939. She writes: "Since the formation of the Korean army, over 10,000 objectors (mostly Jehovah's Witnesses) have spent time behind bars. The public has treated them as nonexistent."

In December 2001, with the public declaration of the first non-Jehovah's Witness conscientious objector, the pacifist and buddhist Oh Tae-yang, the South Korean conscientious objection movement was born. Although it has not yet achieved the legal recognition of the right to conscientious objection, it has come a long way since.

I remember the first time representatives from South Korea participated in a WRI meeting, in Turkey in September 2001. Back then, the political agenda of those working on conscientious objection was very much shaped by human rights issues. Since then, the movement has embraced issues of antimilitarism, nonviolence and feminism, and has broadened its political perspective. The war on Iraq, and South Korea's participation in this war,

highlighted by the conscientious objection of Cheol-min Kang on 21 November 2003 (see co-alert, 21 November 2003, <http://wri-irg.org/news/htdocs/21112003c.html>). Kang had enlisted as a conscript in August 2003, and declared his conscientious objection in protest against the war in Iraq.

All this was very visible when War Resisters' International went to South Korea in 2005, for its international seminar "Peace in North-East Asia" and its Council meeting, co-organised with a coalition of South Korean peace organisations (see <http://wri-irg.org/news/2005/reportseminar-en.htm>).

On the political and legal side, some of the achievements of the South Korean CO movement are:

- a ground breaking decision of the United Nations Human Rights Committee on the right to conscientious objection to military service, clearly stating that not to provide for conscientious objection is a violation of the right to freedom of thought, conscience and religion;
- a recommendation of the South Korean National Human Rights Commission to recognise the right to conscientious objection;
- even an announcement of the South Korean Ministry of Defence that they would introduce a right to conscientious objection, although after a change of government they renounced this earlier statement.

Now, after the administration of President Myungbak Lee took office on 25 February 2008, the conscientious objection movement is in a difficult situation. The conservative backlash threatens the achievements of the movement, in spite of several hundreds more individual complaints having been submitted to the United Nations Human Rights Committee. While, according to international law, South Korea is under a clear obligation to recognise the right to conscientious objection, the conservative government and a strong militarist current in society lead a strong opposition to recognising this right, and fulfilling South Korea's obligation under international law.

With this documentation, and with International Conscientious Objection Day 2009 – 15 May – focusing on South Korea, War Resisters' International wants to support the South Korean movement at a time when international solidarity is urgently needed.

This documents includes a range of article and documents which provide a comprehensive overview of the situation of conscientious objectors in South Korea. It gives an introduction to the CO movement, provides moving stories of individual conscientious objectors, and documents the most important decisions of South Korean and international bodies on the right to conscientious objection in relation to South Korea.

We hope that you will join us in our support for conscientious objectors in South Korea.

Andreas Speck
 War Resisters' International
 Conscientious Objection Campaigning Worker

Articles

Conscientious Objection Movements in South Korea

Hyunji Oh

Conscientious objection in South Korea has a long history. The total amount of time during which Korean COs, mostly Jehovah's witnesses, have spent in prison for the past 50 years far exceeds ten thousand hours. Some people died while suffering from violence and torture during the military regime, and some people had to spend more than 7 years in prison. It was, however, only in early 2001 that conscientious objection became known to the Korean public. After that, it caused controversies in Korean society and became a big issue. At first, COs had to counter numerous criticisms and rebukes, feeling even bigger psychological frustrations than before. [1]

Not too long after conscientious objection became a social issue in South Korea, considerable social changes began to occur. In 2004, Seoul Southern District Court acquitted several COs, thereby forcing administrative institutions to pay attention to the issue. Also, a more active social discussions of the issue helped more people understand it. Due to the District Court's judgment, the Supreme Court and the Constitutional Court had to pass judgment on this matter as well. While both these courts found COs guilty based on the current military laws, the judges mentioned that there needed to be an administrative measure to rescue address the issue.. [2]

COs with diverse agendas

As the discussion for alternative service for COs continued, new series of COs continuously appeared. It is interesting to note that, while COs from the early 2000's mainly questioned the militarism of Korean society, later COs cited diverse reasons for their objection to the military. Reflections on the unilateral and uniform state institution and on the relationship between sexual minorities and the military began to surface at this period, and COs and activists began to consider different democratic values, such as disobedience to unjust orders, beyond a mere opposition to militarism.

Diverse reflections on conscientious objection has provided opportunities to unite with different groups of people in Korean society. A group called Q&A (Queer & the Army) was formed by a number of CO and non-CO members of World Without War to address issues regarding queer theory and militarism. In addition, the conscientious objection of Lee Gil-jun, a conscripted policeman whose unit was mobilised against candlelight protests 3) opposing U.S. beef imports in 2008, helped many civilians who were previously opposed to or not interested in conscientious objection understand better. Many people were moved by the fact that he decided to refuse unjust orders and had to endure a long time of pain and agony.



EUN-GOOK HELD A PRESS CONFERENCE AND DECLARED HIS CONSCIENTIOUS OBJECTION, ON 19 FEB 2009.
PHOTO : WORLD WITHOUT WAR

A moment of happiness, and back to the starting point..

Following the not-guilty sentence in 2004, the National Human Rights Commission of Korea recommended the Ministry of National Defence to allow substitute services for conscientious objectors in 2005. In 2006, the U.N. Human Rights Committee examined South Korea's periodical report under the International Covenant on Civil and Political Rights (ICCPR), and concluded that the South Korean government should take all necessary measures to recognise the right of conscientious objectors. In September 2007, along with changes in social awareness of the issue, the Korean government announced the plans for substitute services for conscientious objectors. It was the moment when the Korean CO movement finally could see clear achievements.

Unfortunately, the regime changed at the end of 2007, causing the substitute service plan to be revoked along with many other socially progressive plans. In December 2008, the Ministry of National Defence announced that it would no longer consider the substitute service plan for COs, which was scheduled to be implemented in January 2009. One ministry staff said, "while it is important to respect an individual's freedom of belief and protect minority rights, the plan is meaningless if the majority does not agree with it", and explained why they reversed the decision saying "the fact that the substitute service could be used as a means of avoiding the military was considered". [4]

Still, conscientious objection will go on..

The biggest achievement of the ten-year-old CO

movement would perhaps be the fact that the public's awareness of conscientious objection has turned much less negative. In addition, the CO movement has challenged the militarism and authoritarianism deeply rooted in Korea well beyond the issue of the substitute service, posing new possibilities to the society. That the national defence ministry reversed its initial decision to implement the substitute service might prove their fear of such changes. Respecting the diversity of people's beliefs can be the biggest obstacle to maintaining the one-sided and violent nature of power. The national defence ministry deems CO's as 'draft dodgers' and does not allow conscientious objection. Despite the government's stubbornness, people who live by their beliefs and do not fear going to prison will continue their path.

Note

[1] The early history of the Korean C.O. movement can be found in the following URL: <http://www.wri-irg.org/pubs/br59-en.htm> (Broken Rifle No. 59, 2003, South Korea, English Edition)

[2] For further information on the legal process of conscientious objection, see the WRI country report on conscientious objection in Korea. http://wri-irg.org/programmes/world_survey/reports/Korea%2C%20South

[3] In 2008, the Korean government agreed to relax restrictions on beef imports from the US without hearing the public's opinion. The case sparked candlelight protests which lasted for several months. Throughout the protests, there were moments when civilians realised the reality of state violence, followed by controversies about nonviolence. Some Korean academics consider the protests as opportunities to observe the public's collective intelligence and ability to congregate through the Internet.

[4] The related contents can be found in the following URL: <http://www.wri-irg.org/node/6309>

The meaning of the military in South Korea

Jungmin Choi

It would be impossible to introduce the whole history of militarism in South Korea in this short article — 35 years under the Japanese colonial rule, divided occupation by the United States and the Soviet Union right after the liberation from Japan, division of the Korean peninsula, the Korean War, military dictatorship, "red complex" against communism and the recently heightened possibility of a military conflict with North Korea due to the fatal shooting of a South Korean tourist in Mt. Geumgang Tourism Area and the virtual scraping of agreements for easing military tensions between the two countries. Although the history of modern South Korea is short, its remnants are still lingering in many parts of society. It's true that anti-communism is not as strong as it was in the past, since the country's democracy has been in progress and the competition for legitimacy with the North is now virtually over. Still, new forms of militarism have been created in the interaction between the present and remnants of the past, and they entrenched themselves in the corners of society.

Taking a close look at the conscription system is not a

sufficient but necessary way to study militarism in South Korean society. The issues of the military and national defense have a complicated historical and ideological background. Confrontation with the North made people believe that the military and defense are of absolute importance, directly related to survival. Most regimes knew that very well, and made use of the situation to stay in power. The military became an off-limits area, unchecked by the civil society under the pretext of national security. Deaths of unknown causes, illegality and corruptions were pervasive, and the conscription system has now become an issue of public outrage since the military is regarded as a place where only poor, powerless people are taken to. It is indeed one of the most powerful issues that decide elections.

Although it's not keeping up with the democratic progress in society, the military has steadily improved in terms of human rights. The term of service has been shortened with a plan to reduce it to one and a half years by 2014, and now virtually no one in the privileged class can avoid enlistment. However, current social discourse on the military shows another aspect of the militarist culture of South Korea. Introduction of cutting-edge



A CYCLING RALLY ON THE PRISONERS FOR PEACE DAY IN 2008, IN SEOUL. PHOTO : WORLD WITHOUT WAR

weapons are proposed in order to reduce the number of soldiers, alternative services are being discussed in the perspective of the government's human resource management, not in the perspective of peace and arms reductions. Emphasis on equality only argues for making no exception to conscription.

Moreover, those discussions are often linked to the concept of "independent defense", which argues that U.S. military should be pulled out of South Korea, and the country's army should be reinforced. As a U.S. military pullout or relocation became an issue after the inauguration of Roh Moo-hyun in 2003, who pledged to be different from past presidents who have always given in to the U.S., arguments for an increase in the defense budget and reinforcement of the military have gained grounds. Now with a more pro-American government, the tendency is yet to be curbed. It seems to be way different from our views of genuine peace, but it has considerable appeal to those who yearn for a stronger and powerful Korea.

The way I see South Korea these days, a frenzy of nationalism and patriotism, the basis of "independent defense", is almost sweeping the country. It's not only the Right that have a yearning for a country exercising full sovereignty, free from pressures from the powers of the world. The Left have also used nationalist rhetorics and arguments, which discourage diversity in society and transform an issue of violence against humanity to an issue of national pride, to mobilize as many people as possible. It is well demonstrated in the slogan, "We've got to be stronger in order to protect our innocent daughters." In these circumstances, it is natural that people think of serving in the military as an essential step to become a "real man". It's often seen in the media these days that young male celebrities joining the army are praised to encourage patriotism, and those who evaded enlistment

are stigmatized and virtually ousted from society. Now celebrities themselves think that going to army is no longer a damage to their career but a substantial help to build a positive image of a real man, who protects women and his family.

South Korea is dominated by a tide of excessive nationalism. The Memorial Day of June 6th is thought to be more important than any other holidays. Oath and salute to the national flag were made compulsory with the enactment of The National Flag Act in 2007. The scope of the conscription system was extended to include social services, which is still closed to COs, who have had to serve one and a half years in prison. Meanwhile, women, people of mixed race and orphans who had been denied any duty to the state are now allowed to join the military.

Militarism in South Korea was aggravated by the division of the Korean peninsula and military dictatorship, and has been patronized and encouraged by the U.S. government. Now it has entrenched itself in the whole society and our daily lives, which means that we are all part of the structure of militarism as agents and victims of it, in both visible and invisible ways. The CO movement is the first social movement that shed light on this, and resisted state violence with reflections on the meaning of life. Despite of the small number of its participants, the message of the movement has resonated with a considerable number of people, sparking debates and gaining supports across the country. After 8 years of campaigning, CO movement groups are recognized as a new force in the peace movement of South Korea with the principle of nonviolence. Now we are seeking an extension of the scope of campaign, mainly with a new group called "Good Weapons Project".

Significance of conscientious objection movement in Korea as a way of nonviolent direct action

Yongsuk Lee

It is only recently that the term "nonviolent direct action" appeared in Korean society. Still, there are many misunderstandings about nonviolence and many people find direct action as a way of protest bizarre. Conservative media suggest that while nonviolent direct action had its place during the dictatorship, it is not legitimate in a democracy. However, after last year's candlelight rallies against the government decision to import US beef, the call for nonviolence is now better known in Korean society.

There are several historical and complicated reasons which can explain why it has been difficult to accept the concept of nonviolence in Korean society. First of all, militarised and standardised culture has been working well with nationalism in people's everyday life. With the experience of living in the colonised country in the beginning of 20th century followed by the Korean War in



A PROTEST AGAINST THE KOREAN GOVERNMENT'S DECISION TO HOLD BACK IMPLEMENTING SUBSTITUTE SERVICE, IN JULY 2009.

PHOTO : WORLD WITHOUT WAR

1950s, the state has become a dominant body with complete authority which cannot be criticised or restrained by civil society. Among Koreans, a major fear - originating from the longing to have a modern nation state - is of being recolonised as a result of war. The target against which people raged and which they feared has switched from Japanese imperialism to North Korea. 'The Republic of Korea' now poses as a defender of free democracy against North Korea.

From the protests against Japanese colonial rule to the protests against the Korean military dictatorship, 'counter violence' has been taken as a main method of protest against huge violence being done by the state authority. Nonviolence, in contrast, has been regarded as not taking a critical stance against a state authority or even as accepting the state's authority. The supposed inevitability of 'counter violence' gains momentum from the fact that some bourgeois nationalist groups preferred to

compromise with rather than challenge Japanese colonial rule, or from the opportunism of some "moderates" who insist that their protest against the state be unarmed. Against this social and historical background, misconceptions have arisen that nonviolence is weak or passive.

These misunderstandings of nonviolence resulted in a lack of reflection on the violence that exists within people themselves. While criticising the violence of the state, other forms of violence caused by campaign groups for democratization were ignored. A typical image of the democratization movement was of physically fit men fighting against the police in streets, which just looked like a parade of armed forces. Different types of violence occurring within movement groups, which were actually jeopardising democracy, could not be mentioned allegedly as they would harm the bigger cause of resisting state violence.

In the past, several kinds of nonviolent resistance did take place, such as university students' protests of refusing to be sent to a frontline army in 1980s and declarations of conscience made by some active duty soldiers and riot police who were mobilised to suppress demonstrations in the 1980s and 1990s. It was not until 2000 that it became possible to discuss nonviolence publicly as a life principle. The movement for the right of conscientious objection paved the way for nonviolence and pacifism to be openly discussed. People, for the first time, began to question the armed forces in different ways and realise every human being has the right to refuse unjust orders and rules based on one's own conscience. Many young people who would be conscripted started thinking about the role and meaning of the military. Among them were some people who couldn't avoid their inner voice of conscience and decided to object to their military service.

Of course, the initiation of conscientious objection movement was merely one step for undermining the stable foundation of militarism and nationalism. Still, South Korean society seemed to be the same as before in terms of infringing the rights of minority groups, and the state's authority would keep working against the rights of the poor in more sophisticated ways. Campaign groups also didn't get rid of their own habits such as physical violence in protests and authoritarian way of decision making. Nonetheless, with the advent of feminism and ecology combined with pacifism, we noticed some slow but positive changes. People became aware of the links between violence and democracy or between war and the military. These small but noticeable changes have been disseminated, giving people a deep inspiration.

As a result, quite a few different nonviolent actions have come out. During the protest against the US base expansion, many activists felt that the whole atmosphere of protest had changed. Furthermore, nonviolent direct action was getting more popular in the candlelight rallies

against the government's decision to import US beef. A slogan of nonviolence was the most popular among the people in the candlelight demonstrations. At that time, people would tease the police by making fun of them with their creative actions, which actually made a sharp contrast with the police's intimidation and violence. In a similar vein, people have become more independent from the conservative media and the politicians.

Yet, nonviolent direct actions in Korea are still developing with a lot of trial and error. Nonviolence is often considered simply to be not more than anti-violence or sometimes is trapped in a malicious frame designed by the government and conservative media. The lack of understanding and ground work for a nonviolent direct action more often than not leads to a risky situation. And nonviolence is sometimes accepted only as a strategy for

an action, which enables another authoritarian way of making decision such as people getting ordered from above to just take a certain nonviolent action.

Many different opinions on nonviolent direct action are just beginning to arise in the Korean society, and there is no doubt that experiments will continue. Nevertheless, already nonviolent direct action including conscientious objection campaign is slowly and constantly gaining people's sympathy, as are 'peace' and 'nonviolence', and the number of people who, based on their own life, commit themselves to protest against social injustice in a nonviolent way is increasing.

Intensified Social Control and Injustice after Lee Myung-bak's inauguration

Yeo-ock Yang

It has been a year since Lee, Myungbak and the new wave of government came to power on February 25th 2008, advocating practicalism. Suffering from the deteriorating economic crisis, people voted for neo-liberal government in the hope of a better living. Lee, Myungbak was the rich and wealth president and people believed he would make them rich as well. Morality and all the other problems were replaced with the strong belief that his government will revive the economy. Backed by the confidence of the people, the regime proclaimed the market fundamentalism with competition and efficiency. In the name of economic development, they are carrying out plutocratic policies and the rest mass of the people are becoming nothing but poorer.

National organizations seemed controllable by civil society at first, but in line with the new president and his government the situation has been changed. All Government ministries are doing nothing but delivering the president's order. We realized that all the achievement we have made through social consensus and the democratization movement can be easily turned upside down by political power. Throughout the last year, we were woken up to the danger of disregarding this for the procedure and mutual understanding to make the cut.

People started to strive against power. Regardless of the age or gender, everybody paraded through the streets with candles in their hand, discussing and criticizing the limit of democracy all night long. This Candlelight Rally started last spring with the issue of mad-cow-disease, and it has been expanded into wider agendas on education, public weal, irregular workers, The Grand Korean Waterway, etc. New internet media producing alternative information were emerged to cope with the government and the conservative press which emphasize the violence of the resistance force. Despite the gag upon freedom of speech, netizens(internet citizen) were smart enough to use the internet as a public sphere to share ideas and come up with a public consensus. Against the political



A CANDLELIT DEMONSTRATION WHICH TOOK PLACE IN THE VERY CENTRE OF SEOUL, IN THE SUMMER OF 2008. PHOTO: HANKYOREH

power smothering the public, Korean civil society was mature enough to advocate for 'non-violence.'

Still the government has no intention to promote mutual understandings within its people. Instead, it is giving its best effort to block the drift of public opinion in advance. Korea is leading the world's high-speed Internet penetration rate, and it is based on the world's best internet infrastructure. Internet is now essential in our daily lives as a public gateway where we can share information, have debates and bring out public consensus. Millions and millions of postings are uploaded everyday and it exerted its power with the Candlelight Rally. The time, place and other information were posted on the internet, and people discussed and put the result in action via internet. The internet enabled people to carry everything live through their own videos and pictures, not relying on distorted information of the major media. It made a far-reaching influence.

People were well aware of the fact that 3 major conservative medias (Chosun, Jungang, Dongah) were spreading falsification and prejudicial news stories of the rally. Thereby they called to companies who are publishing their advertisement on the big three newspapers asking

for suspension, and posted notes of protest on the newspaper websites. So many people participated in this campaign and they actually succeeded to persuade some companies to halt their advertisement. It caused the cut down in ad-profit for the big 3, and they accused the netizens for interference in a business. Korea Communications Standards Commission found those posting illegal information and ordered to delete them. The prosecutor demanded a real punishment to the netizens and the trial is still in progress. It is an obvious warning that tells us what is going to happen when we are against the government and capital surplus. Now the government is under the process to enforce the control over the internet by operating Real-name –systems on internet and revising the telecommunication law. This sequence of events led up to the sense of self-censorship and chilling effects for people.

Not the police but the prosecution conducts an investigation directly at producers of government-critical programs. They even relieved the president of public broadcasting station at discretion and appointed their adherent to the post. Their next goal is to approve the revision bill to the Broadcasting Law and the Newspaper Law that will enable the plutocracy and few conservative media groups to seize power over the press.

Law on Assembly and Demonstration already restricts

the Freedom of Assembly and Demonstration. But to make matters worse, the upcoming revised bill allows no one to mask their identity. Also, noise must be kept to a minimal or an unreasonable amount of volume, and the bill entails a vague description of what can be considered damage (meaning anything can be considered damage, whether its vocal or physical.) All of these simply block any assembly trying to voice their opinion. Punishment regulation also became harsher and assesses an exorbitant fine or detains ralliers in custody. It means the government has more and more control over its people. The Freedom of Expression! has a direct relation to democracy, and this government is leading a retrogression of democracy in this country in the name of social reformation.

Most of people are cut off from the community, while powerful few are gaining more and more of it. The polarization of wealth and poverty is getting worse, and the social safety net is breaking apart in an economic crisis. The oppression on the people who are critical to the government are becoming more deft and balder. And still, we have 30% of the people and conservative media groups who care for nothing but the increase of their own income, supporting this government. As a result, the resistance against injustice is getting harder and requires more preposterous determination.

Changes in Korea's treatment of conscientious objectors

Jung-min Choi

It has now been 1 year and 8 months since an adjudication on the constitutionality of the current Military Service Act was filed in January, 2002. There has been no judgement made so far. President Roh Moo-Hyun responded positively on the revision of acts related to alternative service when he was a candidate for presidential election. However, his new government has not taken any concrete steps. In the South Korean National Assembly, several lawmakers had initiated to legislate an act for alternative service in early 2001, only to fail due to the strong opposition by conservative Christian groups. Since then, there have been no activities. The current situation for the revision of the Act for conscientious objectors in the areas of legislation, judicature and administration is at a standstill.

In the past Korean society, the punishment had been arbitrarily imposed on the objectors whenever a new administration took office. However, as the conscientious objection issue grows and develops to a serious movement, many changes are being made. The most obvious change has come in the area of punishment. The objectors had been sentenced to the full penalty of the law, with no exceptions (The full penalty for conscientious objection varied under each administration. The term had been 3 years since 1994). Presently, judges sentence to 1 year and 6 months. This can be regarded as the least penalty within the law because one is redrafted when he is sentenced with less than 1 year and 6 months according

to the current military service act.

Another big change is that from July this year the objectors were allowed to have religious services inside the correctional facilities. Most South Korean objectors have a religious background and it is their main reason for objection. The Seoul government firmly stuck to the position that no religious services should be allowed in the correctional facilities because the reason for their crime lay in their religion.

These days, more and more cases of discharged servicemen refusing reserve military drills have been reported. However, their situation is worse than those of conscientious objectors. After discharge from service, one belongs to the reserve forces. If a reserve soldier refuses to be mustered for reserve drills, he either pays a fine of 5 million won (about 4,000 USD) or less, or gets sentenced to up to 3 years in jail, according to Article 15, Clause 4 of the Establishment of Homeland Reserve Forces Act. Even after this punishment, the duty of serving in the reserve forces is imposed repeatedly until the reserve service ends. It is a serious problem because of the repetition of punishment for the same case. The accumulated amount of fines can be too much for an objector to pay and thus it can threaten his life. Recently, there was a case of a reserve service objector who finished his two sentences, one 10 months and the other 8 months, but later was remustered for reserve drill because he did the two times separately, which is a repeating vicious cycle.

Constitutional Court decides against right to conscientious objection

The South Korean Constitutional Court ruled against conscientious objectors on 26 August 2004. This ruling is in line with an earlier ruling of the Supreme Court from 15 July, in which the court stated that "individual freedom of conscience can't be more important than accepting calls of duty for the defense of their own country". The court said seeking freedom of conscience as a member of society can only be admitted when the person follows the rules that others follow. All Korean men have their duty to defend this nation, but conscientious objectors refuse to fulfill the obligation, it added.

With this two rulings, the legal avenue is now closed.

While there is still the option to present a CO case as individual complaint to the UN Human Rights Committee, the Korean CO activists are now preparing for a long political struggle to achieve the right to conscientious objection. Every year about 800 conscientious objectors - the majority Jehovah's Witnesses - receive prison sentences of 18 months for refusing to serve.

Sources: Korea Times, 26 August 2004, Korea Herald, 16 July 2004; Korea Times, 16 July 2004

Published in CO-Update, September 2004, No. 1

National Human Rights Commission recommends recognition of the right to conscientious objection

On 15 December 2005, the National Human Rights Commission of Korea released its recommendation on the national human rights action plan of Korea. The 130 pages document deals with a variety of issues, but among others it recommends "that conscientious objection to military service should be allowed to ensure individual rights to religion and freedom, and that the alternatives to military service should be adopted". The recommendation came as a small surprise, as both the Constitutional Court and the Supreme Court rejected the right to conscientious objection as recently as summer 2004 (see co-update No 1, September 2004). Consequently, the Ministry of Defence responded negatively to the recommendation: "The ministry cannot accept the decision even if the commission finally decides to acknowledge conscientious objection."

"The ministry might be able to consider approval when

tension between North and South Korea eases and if military human resources are plentiful, and the general public agrees to the idea", so a Ministry of Defence official according to the Korean newspaper JoongAng Daily on 15 December 2005.

According to the website of Korea Solidarity for Conscientious Objection, there are presently 1186 conscientious objectors in Korean prisons, mostly serving prison sentences of 18 month. Two cases of Korean conscientious objectors are presently pending in front of the United Nations Human Rights Committee.

Sources: www.corights.net, The Korea Times, 27 December 2005, JoongAng Daily, 15 December 2005

Published in CO-Update, February 2006, No. 17

South Korea to legalise conscientious objection

An important step for the South Korean conscientious objection movement

With the announcement of the South Korean Ministry of Defence on 18 September 2007 that it is to allow conscientious objectors to do substitute services in a turnaround from its previous stance four months ago, the South Korean conscientious objection movement achieved an important victory.

While conscientious objection itself has a long history in South Korea, going back to 1939, for a long time it had been completely hidden from the public. Until 2001, almost nobody had been aware that more than 10,000 Jehovah's Witness conscientious objectors had spent time in prison for their refusal to perform military service, and even that the Constitutional Court for the first time denied that there is a right to conscientious objection in 1969.

With the emergence of the first non-Jehovah's Witness objectors in 2002, and the formation of Korea Solidarity for Conscientious Objection (KSCO), things began to change slowly. The movement focused on raising public awareness about the issue - and especially about the large number of imprisoned conscientious objectors, often around 1,000 - and a legal strategy, involving domestic and international channels.

On the domestic level, the legal strategy first seemed to fail, after some initial success, which cut down the time of imprisonment from 3 years to 18 months. In 2004, first the Supreme Court and shortly afterwards the Constitutional Court ruled against the right to conscientious objection (see co-update No 1, September

2004). In response to this defeat, two cases of conscientious objectors were taken as individual complaints to the UN Human Rights Committee.

However, on 15 December 2005, the National Human Rights Commission of Korea released its recommendation on human rights issues to the Korean government, also recommending the recognition of the right to conscientious objection. Back then, the Ministry of Defence responded: "The ministry cannot accept the decision even if the commission finally decides to acknowledge conscientious objection."

"The ministry might be able to consider approval when tension between North and South Korea eases and if military human resources are plentiful, and the general public agrees to the idea" (see co-update No 17, February 2006).

In November 2006, the UN Human Rights Committee examined South Korea's periodical report under the International Covenant on Civil and Political Rights (ICCPR). It concluded: "The State party should take all necessary measures to recognize the right of conscientious objectors to be exempted from military service. It is encouraged to bring legislation into line with article 18 of the Covenant. In this regard, the Committee draws the attention of the State party to the paragraph 11 of its general comment No. 22 (1993) on article 18 (freedom of thought, conscience and religion)" (CCPR/C/KOR/CO/3, 28 November 2006).



A PICTURE TAKEN DURING THE MILITARY IN THE CITY FASHION SHOW WHICH TOOK PLACE ON PRISONERS FOR PEACE DAY IN 2007, SEOUL. PHOTO : WORLD WITHOUT WAR

In a landmark decision, the Human Rights Committee also decided on the two individual complaints from South Korea. The Committee concluded "that the facts as found by the Committee reveal, in respect of each author violations by the Republic of Korea of article 18, paragraph 1, of the Covenant" (CCPR/C/88/D/1321-1322/2004, 23 January 2007).

The recent announcement of the Ministry of Defence caused a debate in the country. The Defence Ministry plans to hold public hearings and opinion polls before revising laws governing military service for conscientious objectors by the end of next year. The revision is subject to legislative approval.

The move — expected to take effect as early as January 2009 if approved — "is not to recognize the right to refuse the military duty but, to permit an alternative service as part of social service on the premise of public consensus," the ministry said, according to a report by Associated Press.

However, the opposition party announced that it would boycott the move. This leaves the prospects for the new policy in doubt, with President Roh Moo-hyun's term set to expire in February. The related legislation may not even be pursued as planned next year if the conservative Grand National Party (GNP)'s candidate, Lee Myung-bak, wins December's presidential election as strongly suggested by current polls, reports Yonhap News agency.

However, according to government surveys, the recognition of the right to conscientious objection now has majority public support. Those who support the move stood at 23.3 percent in 2005 but the figure jumped to 39.9 percent last year. Right after the announcement on July 10 to introduce the social service system, the support rate surged to 50.2 percent, according to a report by The Hankyoreh on 19 September 2007.

Under the government plan, conscientious objectors would be assigned to do the most intensive jobs at social service workplaces. The Sorok Island Hansen's disease facilities, a tuberculosis hospital in South Gyeongsang Province, and around 200 special medical centers are among the candidate workplaces. Currently, there are 19,500 patients are being treated [at these hospitals], and the government is planning to assign a total of 750 such conscientious objectors to care for patients around the clock. Their service term will likely be 36 months, twice as long as those fulfilling their ordinary military service term.

Unlike ordinary social service providers, conscientious objectors will not have to do the one week of basic military training. And after their service term ends, they will also have to do social service during the same time others spend doing reserve force training.

In addition, conscientious objectors will need to be thoroughly screened to be eligible for the substitute services. Their character and any criminal record will also be under consideration regarding whether they can enter the program.

On the same day the Ministry of Defence announced its plan to legalise conscientious objection, the South Korean Cabinet approved a proposal by the Defence Ministry to reduce the compulsory service term for ordinary conscripts by six months by 2014. Under the current law, all physically fit South Korean men ages 18 to 30 must serve at least two years in the military.

Sources: Young-il Hong: Jehovah's Witnesses and conscientious objection in Korea, *The Broken Rifle* No 59, November 2003; Associated Press: S.Korea may allow alternative service, 18 September 2007, Yonhap News Agency, News Summary 19 September 2007, *The Hankyoreh*, 19 September 2007

Published in CO-Update, October 2007, No. 33

South Korea: No rights for conscientious objectors

According to a survey of 2,000 adults commissioned by the South Korean Ministry of Defence, 68.1 percent, or 1,365 of respondents, objected to allowing conscientious objectors to perform a substitute service. Some 28.9 percent, or 580 of them, said they supported the idea. The outcome of the survey runs counter to the results of an October survey, officials of the Military Manpower Administration said. The previous survey of 554 people, including lawmakers, lawyers, professors, journalists and religious leaders, said 85.5 percent supported the idea.

"The ministry's position that allowing alternative services for conscientious objectors based on a national consensus remains unchanged," Ministry spokesman Won Tae-jae told reporters. "At the moment, the ministry believes implementing the alternative system is premature."

Hundreds of conscripts are jailed annually for their refusal to serve in the armed forces, according to the

Military Manpower Administration (MMA). There were about 570 conscientious objectors last year.

The previous, center-left Roh Moo-hyun administration accepted a recommendation by the National Human Rights Commission in December 2005 to allow substitute service for objectors, such as working at public welfare facilities for a longer period of time than active service members.

The human rights watchdog recommended the government recognise the individual right to refuse compulsory military service because of religious beliefs.

Korea Solidarity for Conscientious Objection (KSCO) released a statement on the same day, titled "Stop Making Excuses, Keep the promise!". In this statement, KSCO writes:

"Although this last survey conducted by the MMA showed many opposing opinions on alternative service, it is important to point out that there have been many other surveys that yielded just the opposite results. MMA's public hearing held last

October showed that over 80% of community leaders were in favor of alternative service system, and in the public opinion survey held last September by the Realmeter & 961Sample, the number of people who were in favor of alternative service exceeded the other group (Realmeter: 44.3% in favor, 38.7% against; 961 Sample: 55.9% in favor, 38.9% against). Thus, survey results tend to vary by the time it's being conducted and the type of questions, the government cannot base its decision based on one opinion survey."

"On top of that, attempting to solve human rights issue of the minority group using opinion survey is definitely a dangerous idea. By definition, members of the minority group hold different ideas to what's generally accepted in their society. Judging the minority based on conventional standards, and forcing them to agree with them is a serious threat to the diversity in democracy and an act of violence to them. The MMA should never forget that a survey of public opinion is nothing more than an effective tool to understand public's consensus, and not an absolute criterion."

While South Korea's Supreme Court and Constitutional Court both ruled in 2004 that the right to conscientious

objection is not guaranteed by the Korean constitution, the United Nations Human Rights Committee ruled on two individual complaints from South Korea in January 2007 that not to provide for conscientious objection is a violation of the right to freedom of thought, conscience and religion (Article 18 of the International Covenant on Civil and Political Rights) (see co-update No 27, February 2007). The South Korean National Human Rights Commission recommended to introduce the right to conscientious objection and a substitute service for conscientious objectors in December 2005 (see co-update No 17, February 2006).

Consequently, the South Korean Ministry of Defence announced in September 2007 that it would introduce the right to conscientious objection (see co-update No 33, October 2007). However, since then the government changed, and the conservative government in power now is looking at the right to conscientious objection much less favourably.

Sources: The Korea Times: 68% Oppose Alternative for Conscientious Objectors, 24 December 2008, Korea Solidarity for Conscientious Objection: Stop Making Excuses, Keep the promise!, 24 December 2008.

Published in CO-Update, January 2009, No. 44



"FLOWERS NOT GUNS", AN PEACE EVENT HELD ON 2008 INTERNATIONAL CONSCIENTIOUS OBJECTORS' DAY IN INSA-DONG, SEOUL. PHOTO : WORLD WITHOUT WAR

CO essays

Conscientious objection helped me to encounter myself

Changgeun Yeom

I participated in student movements during my college years. That experience influenced me even after I graduated, and I felt very uncomfortable with the idea of becoming a soldier loyal to his country. I not only found it difficult to follow orders from any superior without questioning, but was most afraid of the forceful and violent nature of the military culture that builds up the sense of hierarchy. Also, I did not want to accept the fact that, once in the army, I must repeatedly receive trainings in destruction which have nothing to do with my dreams. In South Korea, a country which still maintains conscription, there was and still is no way for men to avoid military service, so I just had to keep postponing my enlistment date, feeling uncertain of my future.

In the meantime, in early 2002, I came to learn about conscientious objection. It was only then that the term 'conscientious objection' became well known to the public, even though there had been numerous conscientious objectors for the past sixty years in South Korea. This change can be credited to a small number of peace activists who strongly felt the need to address this issue to Korean society. As I watched the history of conscientious objection unravel from sixty years of forced silence, I felt surrounded by some kind of shock. Even though I knew all along that all sorts of violence and hierarchy were created by the military, I had never had a single thought about refusing military service. So the fact that there had been about ten thousand young men who refused to go the army based on their beliefs surprised me quite a lot. That there can be a different choice and that many young men had been making this decision for a long time made me feel ashamed, because I was just trying to sidestep the problem, making an excuse that it would be impossible for an individual to make any change to such a huge and rigid system as the military or wars in general. I thought that I just had to endure military service despite my opposition to it. As I heard more and more about stories of resisting the military and wars, however, I seriously began to think about making such a decision. Thanks to encouragement and support from friends and colleagues, I came to the conclusion that I should refuse the military service and also decided to do something to promote peace. I finally decided to get rid of militarism in my life.

Soon afterwards, I started looking for peace-related activities. At that time I was considering working for the Afghan people who were suffering from the US invasion. In the winter of 2002, I heard the Bush administration announce war against Iraq, saw 9/11 victim families oppose the war, and watched people in the Middle East protest against the US invasion, all of which made me decide to participate in the Iraq anti-war movement. Along with friends and colleagues, I co-organised anti-war activities and also went to Iraq to stay with people for quite



CHANGGEUN YEOM.

PHOTO : WORLD WITHOUT WAR

some time. In Iraq, I could hear what was on the mind of the people who were living day by day suffering from the war. Meanwhile, the South Korean government and parliament passed the Korean troop deployment plans for the Iraq war.

On 13 November 2003, the day I was supposed to enlist in the army, I did not answer the order from the Korean military and instead had a dinner with my activist friends. A few days later, the police called saying that they wanted to investigate me since I did not enlist on my enlistment date. After several interrogations, I went on trial. The judge decided to detain me without asking me a single question, and I was imprisoned on the same day. About one and a half months later, the court allowed me out on bail, but one year later I faced a trial and got imprisoned again. During the next seven months, I faced the second and third trials while in jail, and the court found me guilty and sentenced me to 1 year and 6 months in jail.

The dark building called prison, which looked just about to sink, revealed its old and heavy concrete body on my first day in jail. The shabby-looking cell, which was barely enough for two adults to lie down, accommodated five or six inmates. The small toilet was built in a way that you could be seen completely from outside while you are inside it, and you also had to use it to wash the dishes as well as yourself. The solid walls of the cell suffocated my consciousness, though a handful of light and wind coming through bars on the small window gave me a sense of what the outer world was still like. The inmate clothing supplied, rubber shoes, small corridors, numerous steel gates and steel bars continuously made me tense. I remained heavy and anxious and felt depressed by the fact that I had to endure 545 days and nights here.

Unlike in the past, there is no longer torture or physical violence in South Korean prisons. Instead of putting bodies to death, the modern prison restricts time and space, which are two of the foundations of a human's life. Taking time and space away is a way of suspending life.

The human within the prison becomes desperately obsessed with time and space as if trying to refuse death. In a way, prison was a quasi-death experience for me. A sense of frustration with your life. A lack of sympathy for others. A soul which shrinks just like the tiny cell that I was in. An encounter with your own superficiality and hypocrisy. It was a painful sense of loneliness which struck the same chord as words like loss or death. Just as a scenery becomes shadowed by the darkness of night, my inner self soon began to erode within the grey prison. The prison not only restrains your physical body but also

darkens your inner body. It always seemed to give me an order that I must endure all these things.

In prison you get forced to do things you don't want. But now that I think about it, conscientious objection helps you talk to yourself, meet your inner side, and encounter clashes with yourself. You get to realise that peace starts when you start looking at the otherness within yourself. Only then the sympathy with others can continuously be maintained. While I regret having had no chance to make such efforts and preparations before going to prison, it is clear that I will pursue it as my future agenda.

Memories of imprisonment, to which I would not like to come back

Yongsuk Lee

On 1 December 1 2005, I called a press conference to declare my conscientious objection to military service, with two other conscientious objectors. One was Taehoon Kim, a friend who I had known for ages, and the other was Youngjin Kim. We decided to have the press conference together in order to make stronger impact since, by that time, the Korean media was no longer interested in the declaration of an individual conscientious objector. In fact, my enlistment date to join the army was on 21 December, 20 days after the press conference, but I joined the other two conscientious objectors to make our voices louder. Since I became active in a university student movement, I had been thinking of becoming a conscientious objector, not as a pacifist but as a radical statement of resistance to the State. It was more or less my group, who at that time were focusing on the movement for the rights of conscientious objection, that inspired me to become a conscientious objector. Interestingly enough, only after my decision to become a conscientious objector did I begin to try to live as a pacifist.

Unlike other conscientious objectors, who are usually arrested around three or four months after their enlistment date, I was not arrested until August 2006, later than I had expected. In those days, it was becoming common for conscientious objectors to be tried without first being detained, and this could have happened in my case except unfortunately the prosecutor challenged the court's decision to let me stay free until I was sentenced, so causing repeated trials in which he demanded my confinement. Nevertheless I was still able to participate in many actions against the expansion of US base, which particularly happened in Pyeong-taek. Looking back, those experiences made it possible to enlarge my interest in the peace movement and nonviolence.

Generally, conscientious objectors are sent to a jail from a detention centre once when their trial has finished (unless they are given work to do in the detention centre). As usual with conscientious objectors, I was sentenced to 18 months imprisonment, which I spent in four jails in the end. Actually, before being imprisoned, I was arrested for protesting against the US base mentioned above. Because of this, during my imprisonment I was moved to Suwon detention centre near to the district court where I



YONGSUK LEE. PHOTO : WORLD WITHOUT WAR

would be tried. Of all the prisons I experienced, I had the worst time in Suwon detention house.

Aside from other difficulties in prison, a major problem for all prisoners - not only conscientious objectors - is over-crowding. Usually, one person is allocated around 1.65 square meters of space. While I was detained in Cheongju, following an incident in which two cellmates died after fighting each other, the Ministry of Justice issued an order to all detention centres never to have two people in a cell, but either one or three. As a result, I had to share a cell of 3.3 square metres with two others prisoners, meaning that nobody could lie down straight.

These physical difficulties were easier to cope with because I had been warned about them. The emotional problems were harder. The feeling of being isolated. The more I received letters of support from my friends, the more I felt loneliness. There used to be a flowerpot in my tiny solitary cell in Suwon detention centre. And one day it started to wither. It was bitterly painful to acknowledge the fact that I was the only living thing in the cold cement-surrounded cell. The world outside seemed to keep going well without me. I was still so self-obsessed that I didn't regard myself as just a mere human being with no other special meaning. The people in Pyeongtaek were forcibly evicted for the US base, and the US and South Korea concluded a free trade agreement against people's will, so what choices did we have? Well, it would have been the same even had I not been detained. The problem was I didn't have any clue where I was supposed to be, whether I was in the prison or in the outside. For me, normally an

optimistic and positive person, these were the most severe feelings of loneliness and helplessness that I have ever experienced.

Another agony that I had to cope with was realising that I kept finding somebody to hate. It happened during my time in Suwon detention centre. I hated one person in my cell so much that I wished he had been sent to another prison or released. One day, my wish came true but not long after that, again I began to dislike someone else who I hadn't hated before. It was when I came across one passage in *Demian* by Hermann Hesse that I realised the way my feelings were made: "If you hate a person, you hate something in him that is part of yourself. What isn't part of ourselves doesn't disturb us." The hatred originated in myself not others! I can't say how much suffering it cost me to admit the truth of this.

Without question, were I to face call-up again, I would again object to military service. However, at the same time, I don't ever want to be put to prison again. Despite the fact that one might be able to have some meaningful experience in prison, as happens in other communities, there is far more to lose through imprisonment than to gain. For me, it was a process of pain rather than a useful experience in any sense to get to know the limits of my tolerance for others. Without glorifying my experience in prison or exaggerating the adversity, I am sure that I don't want to return to prison for whatever reason, including as a result of my nonviolent direct action or civil disobedience. This is not an excuse for not committing myself, but - although prison may be unavoidable - I genuinely do not want to spend any more of my life there.

Life after my release from prison

Dongjoo Ko

On 11 October 2005, I called the Military Manpower Administration and told them that I would not be enlisting. Instead a few days later, on 19 October, I announced my conscientious objection to the military through a press conference. My grounds for refusing the military were based on my conscience, Catholic faith and a firm belief that the military do not bring peace.

At university I joined the Catholic students movement which enabled me to take a step beyond my ordinary religious life of simply attending the mass once a week. Through the movement I learned that to truly follow the footsteps of Jesus, we need to reveal the hardship of the oppressed and the marginalised, and also be with them. I promised to myself that this is the way to live my life. It also taught me to view the society from Jesus perspective and put into practice what I have learned.

As the date for enlistment was coming up, I personally really did not want to go. I look young for my age and a bit fragile, so when one of my friends told me, "people like you have to pretend to be a woman and senior officers will touch you and stuff", it really freaked me out. Then in 2001 I heard about the Jehovah's Witness refusing to go to the military. Their refusal is based on their faith, so I also decided to do the same. I began to look at the problem of conscription from the point of view of my faith. "If someone strikes you on one cheek, offer the other", and "love your enemies" were the teaching from Jesus. Could I imagine Jesus carrying a gun to defend peace? The answer was very clear. I made my decision to become a conscientious objector.

Once my mind was clear, I had to go through police and prosecution investigation. I was arrested on 24 January 2006. Many of my friends signed petitions asking the authorities not to detain me but because my actual residence did not match the residence on paper, I was put in the prison. I think they just wanted me to feel the state power for refusing the sacred duty to serve the military and not following the rules of the society.

From the moment I was confined to being released was probably the time of my life when I suffered most. Inside the prison, Jehovah's Witnesses were at least

recognised as conscientious objectors whereas I was just someone who was selling the name of Jesus to avoid mandatory service. This accusation was indeed very hurtful because all I wanted to do was live as a true Christian.



DONGJOO KO. PHOTO : WORLD WITHOUT WAR

Life in the prison was almost like the army except that we did not have a rifle. It was a class society like I have never felt before. From waking up in the morning until night, everything had an order and most of the work inside the prison cell was up to me because I was the youngest in the room. I never realised that a month could go so fast and on 14 March I was finally released on bail. While my appeal was proceeding I was able to stay outside.

Not surprisingly, the government did not change its position and the court ruled that I had broken the law. I appealed again to the Supreme Court. Then my bail was canceled on 21 September so I had to return to the prison. If I wanted to be paroled I was required to do work to show that I had been "corrected". I was not inclined to do this but had little choice and so I signed up for jail work.

I was put in the community kitchen where the main task was to prepare meals for 1700 inmates. From the first day I was totally lost and rushed off my feet. I could only sit down during the meal time which was for less than 10 minutes. I was taught nothing but got screamed at if I did not do something properly. It was totally up to you to figure

out what and how to do things. While I was lost in hard labour, I could not help but think that all this stress and pain was actually coming from the value placed on speed, on hurrying things.. Because we were so busy and had to rush, nobody could even think of taking a bit of time off to teach things step by step. That moment I really thought about the importance of slowing down life. Looking back now at why we were so caught up in speed, I think it is because of greed; the greed of wanting more than others and the greed of wanting to control.

After spending a year and two months locked up in prison, I was released on 28 September 2007. I did not know what would happen next. I was simply happy that I did not have to go back to prison. It seemed unreal that I was able to meet groups of people together and take

pictures with them.

Now, after more than a year since my release, I feel that a simpler life that does not exploit anyone is a way to diminish violence and it has become my dream to live this way. To me, cultivating land and living in a sustainable manner comes close to the life that I dream. At the moment I am working in an organisation that supports people who want to return to farming. Sooner or later I plan to do the same. Plans for alternative military service have been set back recently and the people objecting the military are still sent to jail. In these circumstances I owe a great deal to the conscientious objection movement and am sorry I am not directly involved with it.. However, there is no doubt that I will always feel concerned about this issue and will try to do my best in any help.

A Probe for Peace Study

Jaesung Lim

I first found about Conscientious Objection as a university student partaking as an activist. "South Korea is a very militarized country which has been punishing Conscientious Objectors (hereafter COs) for the past 60 years and more. However, it has been considered by our society that this problem is something only specific religions (Jehovah's Witnesses) face and deal with. It is only recently that the actual movement for their human



JAESUNG LIM. PHOTO : WORLD WITHOUT WAR

rights and chance for alternative service was started. I have been participating in the movement since 2002, from human rights standpoint claiming the alternative service for COs, instead of jail. Within the process of meeting COs and peace activists, I ended up questioning myself of my own belief I live by, as a Korean man who was about to be conscripted into the army.

Despite the fact I have always been critical to capitalism and war, matters of army or conscription did not appeal as a big deal to me since I have never truly doubted it. Participating in CO movement, I finally realized what it means to be a soldier, of the fact that Military discipline is nothing but a murder discipline, and everybody has the right to object. I also became aware how many pacifists have been objected to the military service throughout the history of time. After realizing all these, there was no way for me to grab a gun even in the

strong opposition of my parents and the fact that I will have to be imprisoned for one and a half years.

This realization was not only for me. People have barely brought up the questions to conscription or military in Korea. However, through the CO movement, people started to make fundamental accusations against military and violence, and come to think about it in different ways. That's why many people value the CO movement as a starting point of peace movement in Korea.

I proclaimed Conscientious Objection and went to prison on December thirteenth, 2004, the day of my enrollment. I consistently pleaded not guilty. As I received my bachelor's degree in law, and I thought I was well aware of the process, I did not take legal advice from a lawyer. I presented statements and petitions by myself instead, but in spite of all my efforts, I was still convicted from all the original, appellate and supreme court. Especially in the appellate court, the judge told me aside from the verdict that military is necessary considering the fact that there have always been wars throughout history. The prosecutor even blamed me, saying who would protect the country if nobody would join the army like me.

To have a belief is one thing, but to translate it into an action is totally another. I realized this during the process of my trial. The experience of being an 'offender' and stating my belief at the court has inspired me to study peace. By that time, alls I had was my determination on refusing guns, and I had no clue how this society could be changed. I wanted to figure out the answer to the questions of how to stop the war and how to maintain the community without the military. The books on peace studies I read during my imprisonment also helped me to understand how much we are in need of it in Korea as well.

There are up to 2 million soldiers in confrontation in Korea right now. Korea has been a war-torn country throughout the 20th century. For all that, there have been no studies on peace. It is so ironic that alls we had was admiration for militarism, in the country that needs peace study the most. That's why I decided to work on a peace study after I was released. I also had desire to share my understanding on militarism, military, violence and war I acquired throughout my experience with as many people

as I possibly can.

I decided to pursue my graduate studies through the department of sociology since there was no other academic place for peace studies in Korea. There were some ideas of studying abroad, such as an actual peace-related department in Japan or Europe, but I chose Korea because I wanted to keep participating in the movement as well. My experience as a CO helped me a lot for my study in the graduate school. Living as a CO, person who has a record, enabled me to have a perspective of social minorities. It helped me to deal with matters of militarism and social minorities more carefully and delicately. In my masters I studied the concepts of violence, conscription, and the overall peace movement. In my thesis, you can see the analysis and estimation on CO movement in Korea, in the perspective of peace movement. At present I am working on more expertise peace studies in the doctor's course of the same school.

Conscientious Objection is not only the practical action

to change the world, but also to change the individual who made the choice to do it. If it was not for the Conscientious Objection, I never would have chosen to study peace (which is non-mainstream and totally new to me.) But now it has become what I live for. The aim of my life now is to academically probe deeper into my belief and diffuse it all over the society. To me, Conscientious Objection is not just a one time imprisoned memory but an actual experience that directs me when I map out my future.

The value of nonviolence has now started to be discussed in Korean society. Various critical actions on military and its service also have started and are now in fruition. During the process, CO movement and COs have been playing active roles. As myself being a Conscientious Objector, I am willing to continue studying peace which is now taking its baby step, in the hope that these efforts will contribute to the peace movement in Korea.

Answering Conscientious Objection to Military Service

- For another invisible Lee Gil-jun

Kyoung Soo, Park-jeong

I have given a lot of thought about conscientious objection since I was 21 years old. That was when I first heard the word "conscientious objection to military service", and learned that some Koreans were indeed preparing to publicly declare themselves as COs. Oh Tae Yang's objection to the military did not shock me but showed me a world I'd never seen before, and brought endless questions to me. Although I couldn't find any clear-cut answer to those questions, I couldn't escape them. The only thing I could do about it was just go to college so that I can postpone the enlistment.

The next year, a US Army armoured car ran over two Korean middle school girls. While the dead girls were not able to speak for themselves, the rest of us couldn't remain silent. We had to do something about the tragedy, and people started taking the streets with candles one after another. Finally, tens of thousands of people gathered at Seoul Square to rally for the dead.

The year 2003 saw the war in Iraq. But we already knew that Iraq was not the only war zone; that thousands of people are dying everyday in many corners of the world, and we can actually hear them, here in South Korea, screaming in pain. Why do they have to die? With a lot of questions in mind, I just joined rallies against the war. These thoughts first made my heart sore, and then I chanted myself hoarse.

While questions posed by conscientious objection to military service didn't have any definite answers, they had to be answered within a definite time limit. I couldn't put off making a choice forever. My acquaintances chose to declare objection one after another, and the writings of

one of them convinced me that I couldn't sidestep any longer. I came to think that I have to make efforts to prevent a war, not to win it; that I have to take the path of nonviolent direct action, just like Jesus Christ did. I was not entirely sure whether it was the best answer to my questions, but I couldn't come up with a better one.

Prison life was full of challenges. I struggled with the daily labour, strained relationships among inmates and mental violence. The hustle and bustle in the small space forced me to develop general scepticism about human decency, because all I could see on the faces of inmates were anger and frustration.

It is funny that the first thing I had to do after release was go to see a dentist. In prison I had once had a severe toothache which didn't allow me to sleep for two weeks. But I couldn't have my tooth pulled out. Whenever I went to the medical service department almost crying with pain, the same answer was given. In prison, the basic medical care of pulling out one's tooth was a dangerous thing to do. To this day I can't forget the department employee who menacingly said "Don't blame us even if something goes wrong pulling out your wisdom tooth".

Going to the dentist's office, I felt like I was turning back time. I think I wanted to remove lingering memories of prison life as I was having my tooth removed. Even memories of the most trifling matters in prison brought about awful pain like a decayed tooth. While I knew what I wanted to forget, I didn't know what I wanted to do. I still had some fundamental questions unanswered. Conscientious objection to military service wasn't enough for me.

"Would I be free, or live a restrained life?"

I was always anxious to know how my life was going to be after serving prison time. Although I felt my mind unburdened when I declared objection after many years of

affliction, I had some fear of constraints that would be placed on me for the rest of my life. Since I was released from prison, I am always introduced as a CO. Sometimes it is too much to handle. In fact, it is uncomfortable to be labelled based on a choice I made several years ago. We always have to lead a life answering questions of the present, but I don't seem to be doing so. I'm sticking to the past when I'm saying "I declared my conscientious objection". It makes a favourable impressions on some people, but not on others. Asking myself if my life is free or rather restrained, I may have to choose the latter.

I was released in the year 2008, and the world was somewhat unfamiliar to me. There was a change in the



KYOUNGSOO PARK-JEONG

PHOTO : WORLD WITHOUT WAR

government, and every aspects of society seemed to be going backwards. In a few months, however, the streets were flooded with people again, who were protesting against the government's decision to lift the ban US beef imports. They didn't like the way the government keeps justifying its position while neglecting people's health and safety. But it was the president's high-handed approach to public dissent, including police crackdowns, that really outraged them. He stuck to his initial position to the end of the crisis.

During those months of protests, I felt rather helpless. I was exhausted with prison life, and I couldn't really brace

up myself. When people took to the streets, I often said to myself "I'm released on parole". I thought there was nothing I can do. Although it was all right to join them as long as I kept myself away from the riot police in order not to be arrested, I just tried to find an excuse. Then came Lee Gil-jun [1] who empowered me. Or, to be more accurate, those who were helping him empowered me. Although it was very impressive that Lee refused to follow orders, I was more embarrassed to see people protecting him on sit-in strike day and night. I don't know what I wanted to avoid at that time.

These days I help those who live near US military bases and are suffering damages. There are about 27,000 US soldiers in South Korea, and many people living around their bases suffer from crime, damage from military exercise and noise. As I began working on this issue, I felt like I was at the starting line again - thinking back to the two middle school girls killed by a US armoured car whose deaths set me thinking about conscientious objection. Until my time in prison I have thought that I didn't really understand people saying that South Korea was still at war. I briefly agreed to it only when I see some news about North Korea. But still there are people suffering damages caused by the military. The very existence of the military means that some forms of war is constantly going on in society, and those living around bases and suffering damages are actually the victims of war.

People looking at Lee Gil-jun might have thought so. They might have wanted to encourage him, and protect him as someone who in struggling against injustice had put his very life at risk. That's what I'm thinking about those who have no choice but to live around US bases. There's nothing amazing about there daily lives. But they had to cope with the invisible shadows of war. I thought that I should live a life helping and encouraging them, and taking a step closer rather than turning my back against them - for another Lee Gil-jun out there, although they are not so visible now.

Notes:

[1] Lee Gil-jun is a member of the riot police who refused orders to disperse the candlelight protests that began in May 2008.

I Resist!

Lee Gil-jun

I, a conscripted policeman on active service, declare a conscientious objection to the military, and refuse to rejoin my unit. It was definitely not an easy decision. It was difficult for me to imagine all the pain and suffering it would bring, especially what my parents would have to go through. But here I am, still screaming resistance. It all sounds quite serious. But I'm not doing this to serve a greater cause. I'm just going through a process of finding myself, and trying to have a voice in my own life.

Yes. Resistance, to me, is a way to lead my life with my own subjectivity. Listening to your inner voice, having

the values you believe to be right, adding colors to enrich your life and co-existing with others in harmony are all things that would be meaningful to just about anyone. And in the process, if something should suppress your life, you face it and resist it. That, I believe, is the way to live your life with passion. So now, I shed my old self, the one who has adapted to the ways of suppression, and move on to find myself through resistance.

This past February, I enrolled in the army as a conscripted policeman. I understand the many criticisms about this decision, especially regarding the actions I'm taking now. Although I oppose the idea of compulsory military service, if I had to serve my own society, I wanted

to do something that is truly meaningful to society and myself. After giving it much thought, the path I chose was to join the conscripted police. But it turned out to be far different from what I had expected. Some people might criticize me and say I'm not being responsible for my own decision, but I don't think that takes away my right to object to unjust orders.

During my service as a riot police officer, I realized that we can be put into unwanted situations by the authorities at any time. Over the last few months, I saw the candlelight protests in the eyes of a policeman, and these thoughts ran through my head. The things people were saying with candles in their hands — "Renegotiate the terms of US beef import!!!s", "No privatization of state-owned corporations and public health insurance", "No more education system that drives fierce competition in schools." — all sounded to me like one voice. As if they were saying that the authorities can threaten our lives at any given moment, and they want to stand up to it.

At the candlelight protests, various voices came together for a common goal. There were many different sights, but the overall atmosphere was not one of grave strife but more like a festival of people. It was a festival for themselves and for the good of society. But the life-threatening authorities showed no efforts to communicate. Instead they forced young men in police uniforms into a situation where they would have to fight against fellow citizens. Should we have quelled the citizens as if they were our enemy because we're such evil people? All of us just wanted to serve our society and our families for 2 years. None of us came into this to attack ordinary people demonstrating in the streets. The authorities would tell us to keep in mind that the protesters are not our enemies, but it was in complete hypocrisy. In reality, they wanted us to treat them as our enemies and always be ready for a violent crackdown at any moment.

When faced with an unseen force, such as orders given by the system, an individual becomes completely powerless. As I confronted the citizens with my shield, as I committed acts of violence or helped continue the violence, I couldn't dare think to go against the orders. All I could do was to take in all the pain I was faced with. This goes for all the riot policemen out there. We take out our anger on the protesters, our so-called "enemies", and we justify our actions and hide our hurt while those in power that got us here in the first place is nowhere to be seen.

As days went by, I felt my sense of humanity burning to ashes. As I was brought into repression operations, as I guarded the streets indefinitely, and even when I heard people's complaints and ridicules, it was awful accepting the fact that I had to follow orders without being able to say anything. I could bear the straining working hours and the physical pain, but it got worse when I thought about what I was doing, questioning what exactly it was that I was trying to protect. No one actually speaks of such matters, but is it okay for barely 20 year old young men to act as tools of violent repression if it's for the sake of social "order" and "safety"? Who is to guarantee its legitimacy?

During this difficult time, I tried to escape from reality in any possible way, but at some point it hit me that running away was no longer the answer. As long as I stayed on that side of the protests, I would always be contributing to suppression, and that would just be an act of abandoning

all the things I had seen. It was especially important for me to listen to my inner voice and to express a definite resistance to what was oppressing me in order to live out what's left of my life with my own subjectivity. I was also apprehensive that I would become a shallow hypocrite if I continue to conform to orders that I felt were unjust and neglect all my hurt feelings.

The only way to heal my wounds, as an offender and a victim, and to get my life back on track, was resistance. Looking back, I feel that I have lived a life of compromise, never resisting the things that suppressed my life. I saw this opportunity as a turning point in my life. This path might be painful and difficult, but it's also somewhat fun discovering the person I want to be.

I don't consider myself to be a scapegoat or a martyr in this troubled political situation, as many around me have feared. Nor do I want to be the hero of my time. I don't want any part in political games or take advantage of this situation in any way. I'm just staying true to my desires to lead an ordinary life of peace and harmony with others, and I want to be able to live with myself.

I don't want to declare my struggle to be one of so much seriousness. I believe the process of resistance should be fun. With suppression come many harsh conditions, but confronting them and finding your own voice in the process shouldn't necessarily be taken so seriously. I will continue with my efforts, but I have a small wish that more people will begin to resist any form of suppression that may be in their lives.

Through my actions, I feel that I am beginning to take control of my life and I hope that the current system of forced, repeated violence can come to an end. Isn't it time to put an end to thousands of young men having to stay up another tormenting night, who could be getting hurt just as I've been?

Finally, I want to thank all those who have listened to my story, who supported me and are still with me now. I especially want to thank my parents who made a difficult choice in supporting me and withstanding pain for this unworthy son, who understand me and are always on my side. I just want to say that I love you.



A PICTURE OF LEE GIL-JUN'S DECLARATION OF HIS CONSCIENTIOUS OBJECTION AT A PRESS CONFERENCE, IN JULY, 2008.

PHOTO : [HTTP://CAFE.DAUM.NET/RESISTJUN](http://cafe.daum.net/resistjun)

Declaration of conscientious objection

The armed Forces are War-Making Machines

Jungmin Oh

To be liberated or to be incarcerated? It is an unavoidably acute question. The world we live in, at the global level, is constantly at war. Not surprisingly, as of the beginning of January 2009, we can see the war currently continuing in Gaza. The 20th century is remembered as an age of wars and presumably so will be the 21st. The US government started the 'war on terror' against Iraq after the 11 September attacks. The Iraq war was nothing but another dreadful war. Not only were the nation state of Iraq and the terrorists deemed to be enemies of the US, but the US clearly declared this was a war against evil. Clarifying who is evil requires great care. Nonetheless, we have observed that any person or group, especially anti-war groups and Muslims, can be regarded as 'evil'. The fact that the concept of 'evil' is too abstract to be defined may lead to a situation where, at one time or another, citizens of a country as well as people outside it are considered to be enemies. An enemy can now exist anywhere regardless of the borders among nation states. When we ourselves at any time can be labelled as an enemy, it can possibly be said that at that moment we live in the age of wars.

The South Korean government have been taking part in the war in Iraq. In 2003, it decided to send troops there despite the lack of proof that Iraq had weapons of mass destruction. Despite the daily demonstration against this decision, and the kidnapping and beheading by Iraqi militants of a South Korean, Kim Sun-il, the government didn't cancel the deployment plan. Instead, it introduced an Anti-Terrorism Act, based on their view that the people are potential terrorists. This was exactly the same as what happened in the US.

I was among the crowd protesting against the war in Iraq and the deployment of Korean troops. Despite our efforts, South Korean troops were sent. In the end, it was revealed that Iraq didn't have any weapons of mass destruction, which meant the US government was wrong. Notwithstanding, the South Korean government and the people who supported the government's decision neither apologised for their lie nor took any responsibility for the result - an absolutely intolerable reaction.

Democracy is constituent power

Democracy in Korea was again set back in July and August 2004. The Korean Supreme Court, on 15 July 2004, found conscientious objectors guilty, while the South Korean Constitutional Court, on 26 August 2004, rejected a constitutional challenge to article 88 of the Military Service Act. I am against these nationalistic decisions which state that the 'duty of national defence' is more important than 'individual's freedom of conscience'. As long as such decisions continue to be made, the right to freedom will remain infringed by nationalistic reasoning.

Underlying a written constitution is the practice of the people. Article 1, Section 2 of the South Korean constitution states that 'the sovereignty of the Republic of Korea resides in the people, and all state authority emanates from the people'. This means the source of power to establish a constitution, constituent power, originates from the people. A constitutional code is temporary: it can be amended by constituent power whenever needed. A duty of national defence and a nation itself cannot exist unless a member of a nation exists. Therefore, it is the people's will, not nation's one, which should be respected. This is what I think democracy is.

This is the reason for my objection to military service. I feel guilt towards my parents. This pain may be the same as what other conscientious objectors, their family, lovers, friends and their supporters have gone through up until now. I would really like to apologise to my parents for my decision to object military service while I also would like to console other conscientious objectors. I hope the step we take today will lead to another pleasurable step on our way to democracy.

On Tuesday, January 6, 2009,

uGonG (Jungmin Oh)



JUNGMIN OH
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Documents

Supreme Court Full Bench Decision

2004Do2965 Delivered on July 15, 2004*

Violation of the Military Service Act

Main Issues

- [1] The meaning of a "justifiable cause" under Article 88(1) of the Military Service Act, a punishment provision for evasion of enlistment
- [2] The scope of protection and the nature of the freedom of conscience under Article 19 of the Constitution
- [3] Whether the freedom of conscience under Article 19 of the Constitution is a relative one which can be restricted by law pursuant to Article 37(2) of the Constitution (affirmative)
- [4] Whether the freedom of conscience of a conscientious objector outweighs the constitutional duty of national defense (negative)
- [5] Whether Article 88(1) of the Military Service Act, which does not provide a special rule creating an alternative military service system for a conscientious or religious objectors, violates the principle prohibiting excessiveness (negative)
- [6] Whether a lawful act opposing one's own decision, based on conscience, can be expected from a conscientious objector (affirmative)

Summary of Decision

[1] The "justifiable cause" of Article 88(1) of the Military Service Act, a punishment provision for those evading enlistment, is in principle premised on the existence of an abstract military duty and affirmation of performance thereof, but shall be limited to conditions which could justify nonperformance of military duty materialized by the decision of the Commissioner of the Military Manpower Administration etc, such as diseases which cannot be attributed to actions of the non performer. On the other hand, in case where the right upon which a non performer based his decision to evade enlistment is guaranteed by the Constitution and furthermore that right is acknowledged to have a superior constitutional value surpassing the legislative purpose of the above article, if a punishment is imposed under Article 88(1) of the Military Service Act, then it will unduly infringe upon his constitutional right and to avoid such a result, it should be viewed that the non performer has a justifiable cause to refuse enlistment, exceptionally, in order to avoid the aforesaid unconstitutional situation.

[2] The conscience that the Constitution intends to protect is "an acute and concrete conscience that is the powerful and earnest voice of one's heart, the failure to realize which in action upon judging right and wrong of a matter would destroy one's existential value as a person" The freedom of conscience consists of not only the internal realm of formation and decision of one's conscience, but also the external realm of expressing and realizing one's decision of conscience by means of passive nonperformance, that is to say, a freedom of not being forced to act against one's decision of conscience. Accordingly, the freedom of conscience has the nature of a passive defensive right, in principal, requesting the state not to exert unjust legal compulsion effecting the process of formation and realization of individual conscience.

[3] Since the exercise of basic rights, including the

freedom of conscience has the general limitation in so far as constitutional basic rights should be exercised within the extent that they enable a communal life with others, within a state community, and should be realized within the limit of not endangering other constitutional values and the legal order of the state, the realization of the freedom of conscience is ultimately a relative freedom which can be limited by law under Article 37(2) of the Constitution if constitutional benefits exist which justify the restriction.

[4] Article 88(1) of the Military Service Act is contrived to materialize the citizen's duty of national defense. Since it is obvious that military duty is not fulfilled and national security is not ensured, the dignity and value of citizens, as human beings, would not be guaranteed, military duty is ultimately for guaranteeing the dignity and value of the whole citizens as human beings. Because the freedom of a conscientious objector does not outweigh the above benefit of the Constitution in its value, the limitation of the freedom of conscience of the defendant, in favor of the above legal benefit, under Article 37(2) of the Constitution is constitutionally justified.

[5] Legislators have extensive discretion whether punishment shall be imposed on objectors or alternate military service shall be allowed in order to secure military duty compliance. Although a Military Service Act provision stipulates an exemption from military duty for those who cannot serve because of diseases or mental handicaps as well as provides a special military service system by allowing those qualified to serve as personnel for public interests service, personnel for special research personnel, personnel for industrial technique etc., and although it stipulates only punishment without any special treatment by a system of alternative military service for objectors who refuse active duty military service based on conscientious and religion, it cannot be viewed that the principle prohibiting excessiveness, the proportionality principle, or the principle of non-discrimination based on

religion are breached.

[6] In order to decide whether the defendant can be expected to act contrary to his decision based on his conscience, a socially average person, instead of the actor in the concrete situation, at the time of such an act should be postulated and a decision should be made on the possibility of expecting the lawful act from the perspective of the average person. Although it seems that the conscientious objector's decision may discourage him from forming motives that may lead to lawful conduct, proceeding to a lawful conduct is not at all impossible. The legal norms require, in principle, an individual to abstain from acting according to one's conscience in exceptional case where the realization of conscience is opposed to law that complies with the Constitution.

Dissenting Opinion by Justice Lee Kang-kook

Granted we cannot say that the binding power of the punishment provisions of the Military Service Act does not reach the defendant if a penalty, the states most powerful measure to sanction, is imposed on the defendant who is a conscientious objector. The dignity of the defendant as a human being would be severely violated and it would result in an excessive measure that breaks from the balanced proportionate relationship with the offender's responsibility as the main ground for an imposition of punishment. It is also evident that the punishment for the defendant, without regard to degree, cannot meet, from any perspectives, the original goal of punishment such as retribution, prevention of crime, and reformation of the defendant, etc. Especially, the defendant, who followed the unconditional imperative of religious conscience, under pressure of the conflict between the duty to bear arms reflecting a general value system and the imperative of religious conscience, is hardly expected to lawfully act in conformity with the positive law of the Military Service Act. Since in the case of the defendant, an individual's freedom of conscience should be protected and respected prior to the state's right of punishment, the element of responsibility, among the elements of a crime, cannot be acknowledged and in this respect the defendant has a "justifiable cause," excluding the application of Article 88(1) of the Military Service Act.

Supplementary Opinion to the Majority Opinion by Justices You Ji-dam, Yoon Jae-sik, Bae Ki-won, Kim Yong-dam

While the introduction of the alternative military service system is desirable from the perspective of legislative policy, it can hardly be deemed as constitutional duty. As the Majority Opinion above has pointed out, legal formation on the duty of national defense, as a citizen's basic duty, is in purpose directly connected to national security and is an area which needs to be oriented purposefully toward forming the national armed forces with the best defense capacity reflecting national and international security circumstances, and for this reason comprehensive legislative power is granted to legislators. The Military Service Act cannot be regarded as

unconstitutional, as a result of impairing the freedom of conscience and religion and violating the principle of equality, only because it imposes the duty of military service, in its concrete form, without providing any alternatives that can contribute to lessening conflicts of conscience arising from religious reasons etc. to part of citizens confronted with such conflicts. Also, the interpretation that there exist "justifiable causes" excluding the application of Article 88(1) of the Military Service Act on the premise that the state did not accomplish the constitutional duty to coordinate the freedom of conscience and military duty cannot be accepted. For this reason, the application of Article 88(1) of the Military Service Act to the defendant is unavoidable.

Supplementary Opinion to the Majority Opinion by Justice Cho Moo-jeh

Granted that the military duty to bear arms, among other military duty acts, contradicts faith according to the defendant's religious conscience, the act of enlistment performed by the defendant, as a concrete obligatory act, is in fact a stage before military arms drill training (the refusal of which is regulated not by the Military Service Act but by the Military Criminal Law) which instructs on how to kill people and inflict pain upon people, and the enlistment itself is neither military arms drill training, nor any similar act. Therefore, enlistment should not be definitely concluded as being unexpected since it is contradictory to the faith of the defendant's religious conscience.

Reference Provisions

[1] Article 88(1) of the Military Service Act / [2] Article 19 of the Constitution / [3] Article 19, 37(2) of the Constitution / [4] Article 88(1) of the Military Service Act, Article 37(2) and 39(1) of the Constitution / [5] Article 88(1) of the Military Service Act, Article 37(2) the Constitution / [6] Article 19 of the Constitution, Article 88(1) of the Military Service Act

Reference Cases

[1] Supreme Court Decision 67Do677 delivered on June 13, 1967 (Zip15-2, Hyung018), Supreme Court Decision 88Do2285 delivered on Feb. 27, 1990(Gong1990, 830), Supreme Court Decision 2003Do5365 delivered on Dec. 26, 2003 / [2] Constitutional Court Full Panel Decision 96Hunga11 delivered on March 27, 1997 (HunGong21, 314), Constitutional Court Full Panel Decision 96Hunba35 delivered on July 16, 1998(Hungong29, 634) / [3] Supreme Court Decision 82Do1219 delivered on July 13, 1982(Gong1982, 772)

Notes

*The original document, provided by the Korean Supreme Court, of this summarized decision is available at <http://eng.scourt.go.kr/eng/crtcdcsns/NewDecisionsView.work?seq=134¤tPage=0&mode=6&searchWord=military>

Decision of the Constitutional Court of Korea on Conscientious Objection*

Background of the Case

The Military Service Act provides that a person who is drafted for military service yet fails to enroll or report, with no justifiable cause, shall be punished by imprisonment for up to six(6) months or fine of up to two million(2,000,000) Korean Won. The requesting petitioner is accused of violating the Military Service Act for failure to enroll for military service, while served with the notice of enlistment for active military service from the Commissioner of the Military Manpower Administration obligating him to enroll for active military service. The requesting party petitioned the court to request constitutional review, claiming that the Military Service Act applicable to the accused facts of the underlying case infringed the freedom of conscience of those who objected to military service on the ground of their religious conscience. The court thereupon accepted the petition and filed a request for constitutional review with the Constitutional Court.

Summary of the Decision

The Constitutional Court, in a 7:2 opinion, held the Military Service Act not unconstitutional. The summary of the reasoning is as follows:

1. Majority Opinion

The public interest to be achieved by the legal provisions at issue in this case is the very important one of 'national security,' which is the prerequisite for the existence of a nation and for all liberty and freedoms. When such an important public interest is at issue, an immoderate legislative experiment that might harm national security may not be demanded in order for a maximum guarantee of individual liberty and freedom. Considering the security situation of Korea, the social demand concerning the equity of conscription, and the various restrictive elements that might accompany the adoption of the alternative military service system, the current situation does not assure that the adoption of the alternative military service system will not harm the important constitutional legal interest of national security. In order to adopt the alternative military service system, peaceful coexistence should be stabilized between South Korea and North Korea, and the incentives to evade military service should be eliminated through the improvement of the conditions of military service. Furthermore, a consensus among the members of the community that allowing alternative service still serves toward realizing the equality of the burdens in performing military duty and does not impair social unity should be formed, through the wide spread understanding and tolerance of the conscientious objectors within our society. The judgment of the legislators that the adoption of the alternative military service is presently a difficult task, where such prerequisites are yet to be satisfied, may not be deemed as conspicuously unreasonable or clearly wrong.

However, the legislators should seriously assess the

possibility of eliminating the conflicting relationship between the legal interests of the freedom of conscience and the national security, and also the possibility of the coexistence of these two legal interests. Even if the legislators determine not to adopt the alternative military service system, the legislators should carefully deliberate whether to supplement the legislation so that the institution that implements the law may take measures to protect conscience through the application of law in a way favorable to conscience.

2. Dissenting Opinion of Two Justices

It is undeniable that the conscientious objection to military service is based upon the earnest hope and resolution with respect to the peaceful coexistence of the human race. The ideal toward peace is something that the human race has pursued and respected over a long period of time. In this sense, the objection to military service by the conscientious objectors should not be viewed as the avoidance of hardship of military service or the demand of protection as free-riders while failing to perform the basic obligation to the state. They have been sincerely pleading for alternative ways to service as they can in no way perform military duty to bear arms. The disadvantages they have to endure due to the criminal punishment for evasion of military service is immense. Also, in light of the gross number of our armed forces, the impact upon the national defense power of the military service by the conscientious objectors on active duty to bear arms is not of the degree that merits a discussion of the decrease in combat capabilities thereby. The duty of national defense is not limited to the obligation to directly form a military force to bear arms by, for example, serving the military pursuant to the Military Service Act. Therefore, by imposing upon the conscientious objectors an obligation that is similar or higher thereto upon considering the time period and the burden of the military service on active duty, the equity in performing the duty of national defense may be restored.

3. Separate Concurring Opinion of One Justice

The faith of the petitioner is a religious one, thus the freedom of religion as well as the freedom of conscience is at issue. The Constitutional Court may not judge the legitimacy of the religious tenets, but it may only determine whether their effect upon society is acceptable in reality. Here, the objection to bear arms, which guarantees national security and the protection of national territory, is impermissible under our constitutional order. On the other hand, the external expression of the freedom of conscience that is not based upon religion is subject to restrictions, and the permissibility of the restriction depends upon whether the conscience has universal validity. Here, the objection to bear arms, which is to defend against unanticipated aggressions may hardly be deemed as conscience with universal validity. In addition, the recommendation of the majority opinion to assess alternative civilian service is inappropriate under the

principle of separation of powers.

4. Separate Concurring Opinion of One Justice

It may hardly be deemed that the conscientious objectors have also given up the protection of themselves by free-riding on others' obligation to serve the military. Then, whether the conscience of those who object to the military service on the ground of conscience may fall within the meaning of conscience that is the object of constitutional protection is itself questionable, as such conscience is no more than a hope that is an antinomy, which lacks consistency and universality. Therefore, punishing those who object to military service on the ground of conscience is not beyond the external limit of justice. The recommendation for the legislators upon

legislative matters with respect to the alternative military service system, which is irrelevant to the subject matter of review of this case, is not appropriate as it is beyond the limit of judicial review.

Notes

An extract from the original decision, extracted by the Korean Constitutional Court.
http://english.court.go.kr/home/view2/xml_content_view02.jsp?seq=10078&cname=&eventNo=2002Hun-Ka1&pubflag=0&eventnum=&sch_keyword=&cid=01040002 Date accessed February 16, 2009.

NHRCK Voices Opinion on Unconstitutionality of Reserve Forces Act

17/12/2007

The National Human Rights Commission of Korea to submit an official opinion on the unconstitutionality of the Reserve Forces Act to the Constitutional Court.

The National Human Rights Commission of Korea (NHRCK) will submit an official opinion on the Ulsan District Court's appeal to the Constitutional Court, which declared Article 15, Paragraph 8 of the Establishment of Homeland Reserve Forces Act as unconstitutional on April 30, 2007. This opinion will reaffirm the Commission's position that the right to conscientious objection should be recognized, a selective service system should be introduced, and conscientious objectors should not be prosecuted.

A request was made to deliberate the constitutionality of the clause in question, which states that any person who does not participate in mandatory reserve forces training may be imprisoned up to one year and fined up to two million Korean won.

The Ulsan District Court contended that the introduction of a selective service system on conscientious objection to service in the reserves would involve soft restrictions and have only a slight impact on national security compared to that of conscientious objection to active military service. The district court went on to argue that the Constitutional Court should not simply expect the legislature to make more efforts to improve the situation or urge lawmakers to do so; rather, the Constitutional Court should boldly declare the unconstitutionality of the clause.

The Commission's opinion is aligned with the opinion of the Ulsan District Court., believing that forcing contentious objectors (COs) into reserve forces and denying alternative service opportunities is tantamount to denying social minorities human dignity and freedom of conscience. Additionally, repeatedly calling COs to reserve duty is arbitrary, as they will continue to refuse due to their religious beliefs, and casts serious doubts on the effectiveness of the current penalties stipulated in the clause.

In South Korea, those who have successfully completed conscription must report to the reserves for approximately eight years after active duty, or for 148 hours. If a reservist refuses to comply with duty or participate in a training session, the person is brought to a summary trial and sentenced a fine of hundreds of thousands of Korean won. The reservist must then fulfill the delinquent time during the following quarter, or even the following year. Refusing to make up delinquent time results in heavier penalties.

Currently, there are over 100 COs in South Korea. Many of the COs in Korea have suffered infringement of their freedom of conscience, due to the repeated and excessive penalties for refusing to fulfill compulsory reserve forces service requirements.

The Commission notes that Article 19 of the Constitution of the Republic of Korea states, "All citizens shall enjoy freedom of conscience." This freedom of conscience must include the freedom to abstain from forced compliance, including the right to conscientious objection. The right to conscientious objection resides in the protection of the freedom of conscience. The Commission will restate its opinion that mental anguish and conflicts that COs suffer should not be overlooked, and that a selective service system should be instituted to create a compromise between the freedom of conscience and mandatory military service.

Concluding Observations of the Human Rights Committee: Republic of Korea

Human Rights Committee, Eighty-eighth session, Geneva, 16 October - 3 November 2006

(...)

17. The Committee is concerned that: (a) under the Military Service Act of 2003 the penalty for refusal of active military service is imprisonment for a maximum of three years and that there is no legislative limit on the number of times they may be recalled and subjected to fresh penalties; (b) those who have not satisfied military service requirements are excluded from employment in government or public organisations and that (c) convicted conscientious objectors bear the stigma of a criminal record (art.18).

The State party should take all necessary measures to recognize the right of conscientious objectors to be exempted from military service. It is encouraged to bring legislation into line with article 18 of the Covenant. In this regard, the Committee draws the attention of the State party to the paragraph 11 of its general comment No. 22 (1993) on article 18 (freedom of thought, conscience and religion).

(...)

Source:
<http://daccessdds.un.org/doc/UNDOC/GEN/G06/458/14/PDF/G0645814.pdf?OpenElement>

Mr. Yeo-Bum Yoon and Mr. Myung-jin Choi v. Republic of Korea

International Covenant on Civil and Political Rights

Distr.

RESTRICTED [1]

CCPR/C/88/D/1321-1322/2004

23 January 2007

Original: ENGLISH

Human Rights Committee

Eighty-eighth session

16 October – 3 November 2006

Subject matter: Conscientious objection on the basis of genuinely-held religious beliefs to enlistment in compulsory military service

Procedural issues: Joinder of communications

Substantive issues: Freedom to manifest religion or belief – permissible limitations on manifestation

Articles of the Optional Protocol: None

Articles of the Covenant: 18, paragraphs 1 and 3

Views

Communications Nos. 1321/2004 and 1322/2004

Submitted by: Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi (represented by counsel, Mr. Suk-Tae Lee)

Alleged victims: The authors

State Party: Republic of Korea

Date of communications: 18 October 2004 (initial submissions)

Document references: Special Rapporteur's rule 97 decision, transmitted to the State party on 25 of October 2004 (not issued in document form)

Date of adoption of Views: 3 November 2006

On 3 November 2006, the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communications Nos. 1321/2004 and 1322/2004.

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights Eighty-eighth session

Concerning

Communications Nos. 1321/2004 and 1322/2004 [2]

Submitted by: Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi (represented by counsel, Mr. Suk-Tae Lee)

Alleged victims: The authors

State Party: Republic of Korea

Date of communications: 18 October 2004 (initial submissions)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 3 November 2006,

Having concluded its consideration of communications Nos. 1321/2004 and 1322/2004, submitted to the Human Rights Committee on behalf of Yeo-Bum Yoon and Myung-Jin Choi under the Optional Protocol to the International Covenant on Civil and Political Rights, Having taken into account all written information made available to it by the authors of the communication and the State party. Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communications, both initially dated 18 October 2004, are Mr. Myung-Jin Choi and Mr. Yeo-Bum Yoon, nationals of the Republic of Korea, born on 27 May 1981 and 3 May 1980, respectively. The authors claim to be victims of a breach by the Republic of Korea of article 18, paragraph 1, of the Covenant. The authors are represented by counsel, Mr. Suk-Tae Lee.

1.2 Pursuant to Rule 94, paragraph 2, of the Committee's Rules of Procedure, the two communications are joined for decision in view of the substantial factual and legal similarity of the communications.

The facts as presented by the authors

Mr. Yoon's case

2.1 Mr. Yoon is a Jehovah's Witness. On 11 February 2001, the State party's Military Power Administration sent Mr. Yoon a notice of draft for military service. On account of his religious belief and conscience, Mr. Yoon refused to be drafted within the prescribed period of time, whereupon he was arrested and charged under article 88 (section 1) of the Military Service Act. [3] In February 2002, Mr. Yoon was bailed.

2.2 On 13 February 2004, the Eastern Seoul District Court convicted Mr. Yoon as charged and sentenced him to one and a half years of imprisonment. On 28 April 2004, the First Criminal Division of the Eastern Seoul District Court

upheld the conviction and sentence, reasoning inter alia:

"...it cannot be said that an internal duty of acting according to one's conscience motivated by an individual belief is greater in value than the duty of national defence, which is essential to protect the nation's political independence and its territories, the people's life, body, freedom and property.

Furthermore, since whether there is an expectancy for compliance or not must be determined based on specific actors but on the average person in society, so-called "conscientious decisions", where one objects to the duty of military service set by the law on grounds of religious doctrine, cannot justify acts of objection to military service in violation of established law."

2.3 On 22 July 2004, a majority of the Supreme Court in turn upheld both the conviction and sentence, reasoning, inter alia:

"if [Mr. Yoon's] freedom of conscience is restricted when necessary for national security, the maintenance of law and order or for public welfare, it would be a constitutionally permitted restriction Article 18 of the [Covenant] appears to provide essentially the same laws and protection as Article 19 (freedom of conscience) and Article 20 (freedom of religion) of the Korean Constitution. Thus, a right to receive an exemption from the concerned clause of the Military Service Act does not arise from Article 18 of the [Covenant]."

2.4 The dissenting opinion, basing itself on resolutions of the (then) UN Commission on Human Rights calling for institution of alternative measures to military service as well as on broader State practice, would have held that genuinely-held conscientious objection amounted to "justifiable reasons", within the meaning of Article 88(1) of the Military Services Act, allowing for exemption from military service.

Mr. Choi's case

2.5 Mr. Choi is also a Jehovah's Witness. On 15 November 2001, the State party's Military Power Administration sent Mr. Choi a notice of draft. On account of his religious belief and conscience, Mr. Choi refused to be drafted within the prescribed period of time, whereupon he was arrested and charged under article 88 (section 1) of the Military Service Act. [3]

2.6 On 13 February 2002, the Eastern Seoul District Court convicted Mr. Choi as charged and sentenced him to one and a half years of imprisonment. On 28 February 2002, Mr. Yoon was bailed. On 28 April 2004 and on 15 July 2004, the First Criminal Division of the Eastern Seoul District Court and the Supreme Court, respectively, upheld the conviction and sentence, on the basis of the same reasoning described above with respect to Mr. Yoon.

Subsequent events

2.7 On 26 August 2004, in a case unrelated to Messrs. Yoon or Choi, the Constitutional Court rejected, by a majority, a constitutional challenge to article 88 of the Military Service Act on the grounds of incompatibility with the protection of freedom of conscience protected under the Korean Constitution. The Court reasoned, inter alia:

"the freedom of conscience as expressed in Article 19 of

the Constitution does not grant an individual the right to refuse military service. Freedom of conscience is merely a right to make a request to the State to consider and protect, if possible, an individual's conscience, and therefore is not a right that allows for the refusal of one's military service duties for reasons of conscience nor does it allow one to demand an alternative service arrangement to replace the performance of a legal duty. Therefore the right to request alternative service arrangement cannot be deduced from the freedom of conscience. The Constitution makes no normative expression that grants freedom of expression a position of absolute superiority in relation to military service duty. Conscientious objection to the performance of military service can be recognised as a valid right if and only if the Constitution itself expressly provides for such a right".

2.8 While accordingly upholding the constitutionality of the contested provisions, the majority directed the legislature to study means by which the conflict between freedom of conscience and the public interest of national security could be eased. The dissent, basing itself on the Committee's General Comment No. 22, the absence of a reservation by the State party to article 18 of the Covenant, resolutions of the (then) UN Commission on Human Rights and State practice, would have found the relevant provisions of the Military Services Act unconstitutional, in the absence of legislative effort to properly accommodate conscientious objection.

2.9 Following the decision, the authors state that some 300 conscientious objectors whose trials had been stayed were being rapidly processed. Accordingly, it was anticipated that by the end of 2004, over 1,100 conscientious objectors would be imprisoned.

The complaint

3. The authors complain that the absence in the State party of an alternative to compulsory military service, under pain of criminal prosecution and imprisonment, breaches their rights under article 18, paragraph 1, of the Covenant.

The State party's submissions on admissibility and merits

4.1 By submission of 2 April 2005, the State party submits that neither communication has any merit. It notes that article 18 provides for specified limitations, where necessary, on the right to manifest conscience. Although article 19 of the State party's Constitution protects freedom of conscience, article 37(2) provides that: "The freedoms and rights of citizens may be restricted by Act only when necessary for national security, the maintenance of law and order or for public welfare Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated." Accordingly, the Constitutional Court ruled that "the freedom of conscience prescribed in Article 19 of the Constitution does not grant one the right to object to fulfilling one's military service duty" based on limitations of principle that all basic rights must be exercised within the boundary of enabling pursuit of civic engagement and keeping the nation's 'law order' intact. Hence, the freedom to manifest one's conscience may be restricted by law when it is harmful to public safety and order in pursuing civic engagement or when it threatens a nation's 'law order'.

4.2 The State party argues that in view of its specific circumstances, conscientious objection to military service needs to be restricted as it may incur harm to national security. Unlike the freedom to form or determine inner conscience, the freedom to object to fulfilling military service duty for reasons of religion may be restricted, as recognised in article 18 of the Covenant, for public causes in that it manifests or realizes one's conscience through passive non-performance.

4.3 Under the specific security circumstances facing a hostile Democratic People's Republic of Korea (DPRK), the State party, as the world's sole divided nation, adopted the Universal Conscription System, which recognises all citizens' obligation to military service. Thus, the equality principle of military service duty and responsibility carries more meaning in the State party than in any other country. Considering the strong social demand and anticipation for the equality of the performance of military service duty, allowing exceptions to military service duty may prevent social unification, greatly harming national security by eroding the basis of the national military service system – the Universal Conscription System – especially considering the social tendency of attempting to evade military service duty by using any and every means.

4.4 The State party argues that a nation's military service system is directly linked to issues of national security, and is a matter of legislative discretion vested in the lawmakers for the creation of the national army with the maximum capabilities for national defence, after considering a nation's geopolitical stance, internal and external security conditions, economic and social state and national sentiment, along with several other factors.

4.5 The State party contends that given its security conditions, the demand for equality in military service and various concomitant restricting elements in adopting an alternative service system, it is difficult to argue that it has reached the stage of improved security conditions that would allow for limitations to military service, as well as the formation of national consensus.

4.6 The State party concludes that the prohibition of conscientious objection to military service is justified by its specific security and social conditions, which makes it difficult to conclude that the decision violates the essential meaning of the freedom of conscience set out in paragraph 3 of article 18 of the Covenant. Considering the State party's security conditions, the demand for equality in military service duty, and the absence of any national consensus, along with various other factors, the introduction of any system of alternative service is unlikely.

The authors' comments on the State party's submission

5.1 By letter of 8 August 2005, the authors responded to the State party's submissions. They note that the State party does not identify which of the permissible restrictions in section 3 of article 18 is invoked, though accept that the general import of argument is on "public safety or order". Here, however, the State party has not identified why conscientious objectors can be considered to harm public safety or order. Strictly speaking, as conscientious objection has never been allowed, the State party cannot determine whether or not any such danger in fact exists.

5.2 The authors note a vague fear on the State party's

part that allowing conscientious objection would threaten universal conscription. But such a fear cannot justify the severe punishments meted out under the Military Service Act to thousands of objectors and the discrimination faced by objectors after their release from prison. In any event, the authors question the real value of conscience, if it must be kept internal to oneself and not expressed outwardly. The authors note the long history, dating from the Roman Republic, of conscientious objection and the pacifist rejection of violence of objectors. Referring to the Committee's General Comment No. 22, the authors argue that conscientious objectors, far from threatening public safety or order or others' rights, in fact strengthens the same, being a noble value based on deep and moral reflection.

5.3 On the aspect of the threat posed by the DPRK, the authors note that the State party's population is almost twice as large, its economy thirty times as large and its annual military spending over the last decade nearly ten times as large as that of its northern neighbour. That country is under constant satellite surveillance, and is suffering a humanitarian crisis. By contrast, the State party fields almost 700,000 soldiers, and 350,000 young people perform military service each year. The number of 1,053 imprisoned objectors, as of 11 July 2005, is a very small number incapable of adversely affecting such military power. Against this background, it is unreasonable to argue that the threat posed by the DPRK is sufficient justification for the punishment of conscientious objectors.

5.4 On the issue of equitability, the authors argue that the institution of alternative service arrangements would preserve this, if necessary by extending the term of the latter kind of service. The authors note the positive experience gained from the recent institution of alternative service in Taiwan, facing at least equivalent external threat to its existence as the State party, and in Germany. Such an institution would contribute to social integration and development and respect for human rights in society. The social tendency to avoid military service, for its part, is unrelated to the objection issue and stems from the poor conditions faced by soldiers. Were these improved, the tendency to avoid service would lessen.

5.5 The authors reject the argument that the introduction of alternative service is at the discretion of the legislative branch, noting that such discretion cannot excuse a breach of the Covenant and in any event little if any work in this direction has been done. Moreover, the State party has not observed its duty as a member of the UN Commission on Human Rights, and, whether deliberately or not, has failed to report to the Committee in its periodic reports on the situation of conscientious objectors.

Supplementary submissions of the State party

6.1 By submission of 6 September 2006, the State party responded to the authors' submissions with supplementary observations on the merits of the communications. The State party notes that under article 5 of its Constitution, the National Armed Forces are charged with the sacred mission of national security and defence of the land, while article 39 acknowledges that the obligation of military service is an important, indeed one of the key, means of guaranteeing national security, itself a benefit and protection of law. The State party notes that national security is an indispensable precondition for national

existence, maintaining territorial integrity and protecting the lives and safety of citizens, while constituting a basic requirement for citizen's exercise of freedom.

6.2 The State party notes the freedom to object to compulsory military service is subject to express permission of limitations set out in article 18, paragraph 3, of the Covenant. Allowing exceptions to compulsory service, one of the basic obligations imposed on all citizens at the expense of a number of basic rights to protect life and public property, may damage the basis of the national military service which serves as the main force of national defence, escalate social conflict, threaten public safety and national security and, in turn, infringe on the basic rights and freedoms of citizens. Hence, a restriction on the basis of harm to public safety and order or threat to a nation's legal order when undertaken in a communal setting is permissible.

6.3 The State party argues that while it is true that the situation on the Korean peninsula has changed since the appearance of a new concept of national defence and modern warfare, as well as a military power gap due to the disparities in economic power between North and South, military manpower remains the main form of defence. The prospect of manpower shortages caused by falling birth rates must also be taken into account. Punishing conscientious objectors, despite their small overall number, discourages evasion of military service. The current system may easily crumble if alternative service systems were adopted. In light of past experiences of irregularities and social tendencies to evade military service, it is difficult to assume alternatives would prevent attempts to evade military service. Further, accepting conscientious objection while military manpower remains the main force of national defence may lead to the misuse of conscientious objection as a legal device to evade military service, greatly harming national security by demolishing the conscription basis of the system.

6.4 On the authors' arguments on equality, the State party argues that exempting conscientious objectors or imposing less stringent obligations on them risks violating the principle of equality enshrined in article 11 of the Constitution, breach the general duty of national defence imposed by article 39 of the Constitution and amount to an impermissible awarding of decorations or distinctions to a particular group. Considering the strong social demand and anticipation of equality in performance of military service, allowing exceptions may hinder social unification and greatly harm national capabilities by raising inequalities. If an alternative system is adopted, all must be given a choice between military service and alternative service as a matter of equity, inevitably threatening public safety and order and the protection of basic rights and freedoms. The State party accepts that human rights problems are a major reason for evasion of service and substantially improved barracks conditions. That notwithstanding, the two year length of service – significantly longer than that in other countries – continues to be a reason for evasion unlikely to fade even with improved conditions and the adoption of alternative service.

6.5 On the authors' arguments as to international practice, the State party notes that Germany, Switzerland and Taiwan accept conscientious objection and provide alternative forms of service. It had contacted system

administrators in each country and gathered information on the respective practices through research and seminars, keeping itself updated on an ongoing basis on progress made and reviewing the possibility of its own adoption. The State party notes however that the introduction of alternative arrangements in these countries was adopted under their own particular circumstances. In Europe, for example, alternative service was introduced in a general shift from compulsory to volunteer military service post-Cold War, given a drastic reduction in the direct and grave security threat. Taiwan also approved conscientious objection in 2000 when over-conscription became a problem with the implementation in 1997 of a manpower reduction policy. The State party also points out that in January 2006, its National Human Rights Commission devised a national action plan for conscientious objection, and the Government intends to act on the issue.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 In the absence of objection by the State party to the admissibility to the communication, as well as any reasons suggesting that the Committee should proprio motu, declare the communication inadmissible in whole or in part, the Committee declares the claim under article 18 of the Covenant admissible.

Consideration of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee notes the authors' claim that article 18 of the Covenant guaranteeing the right to freedom of conscience and the right to manifest one's religion or belief requires recognition of their religious belief, genuinely held, that submission to compulsory military service is morally and ethically impermissible for them as individuals. It also notes that article 8, paragraph 3, of the Covenant excludes from the scope of "forced or compulsory labour", which is proscribed, "any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors". It follows that the article 8 of the Covenant itself neither recognizes nor excludes a right of conscientious objection. Thus, the present claim is to be assessed solely in the light of article 18 of the Covenant, the understanding of which evolves as that of any other guarantee of the Covenant over time in view of its text and purpose.

8.3 The Committee recalls its previous jurisprudence on the assessment of a claim of conscientious objection to military service as a protected form of manifestation of religious belief under article 18, paragraph 1 [5]. It observes that while the right to manifest one's religion or belief does not as such imply the right to refuse all

obligations imposed by law, it provides certain protection, consistent with article 18, paragraph 3, against being forced to act against genuinely-held religious belief. The Committee also recalls its general view expressed in General Comment 22 [6] that to compel a person to use lethal force, although such use would seriously conflict with the requirements of his conscience or religious beliefs, falls within the ambit of article 18. The Committee notes, in the instant case, that the authors' refusal to be drafted for compulsory service was a direct expression of their religious beliefs, which it is uncontested were genuinely held. The authors' conviction and sentence, accordingly, amounts to a restriction on their ability to manifest their religion or belief. Such restriction must be justified by the permissible limits described in paragraph 3 of article 18, that is, that any restriction must be prescribed by law and be necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. However, such restriction must not impair the very essence of the right in question.

8.4 The Committee notes that under the laws of the State party there is no procedure for recognition of conscientious objections against military service. The State party argues that this restriction is necessary for public safety, in order to maintain its national defensive capacities and to preserve social cohesion. The Committee takes note of the State party's argument on the particular context of its national security, as well as of its intention to act on the national action plan for conscientious objection devised by the National Human Rights Commission (see paragraph 6.5, supra). The Committee also notes, in relation to relevant State practice, that an increasing number of those States parties to the Covenant which have retained compulsory military service have introduced alternatives to compulsory military service, and considers that the State party has failed to show what special disadvantage would be involved for it if the rights of the authors' under article 18 would be fully respected. As to the issue of social cohesion and equitability, the Committee considers that respect on the part of the State for conscientious beliefs and manifestations thereof is itself an important factor in ensuring cohesive and stable pluralism in society. It likewise 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 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. The Committee, therefore, considers that the State party has not demonstrated that in the present case the restriction in question is necessary, within the meaning of article 18, paragraph 3, of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, concludes that the facts as found by the Committee reveal, in respect of each author violations by the Republic of Korea of article 18, paragraph 1, of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including compensation. The State party is under an obligation to

avoid similar violations of the Covenant in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Appendix

Dissenting opinion by Committee member Mr. Hipólito Solari-Yrigoyen

While I agree with the majority's conclusion in paragraph 9 that the facts before the Committee reveal a violation of article 18, paragraph 1, I disagree with the reasoning of the majority, as will be apparent from the following observations: Consideration of the merits

8.2 The Committee notes the authors' claim that the State party breached article 18, paragraph 1, of the Covenant by prosecuting and sentencing the authors for their refusal to perform compulsory military service on account of their religious beliefs as Jehovah's Witnesses.

The Committee also notes the comment by the State party that article 19 of its Constitution does not grant one the right to object to fulfilling one's military service duty. The State party also argues that conscientious objection may be "restricted" as it may harm national security. The State party concludes that the prohibition of conscientious objection to military service is justified and that, given the wording of article 18, paragraph 3, it does not violate the Covenant. The Constitutional Court (see paragraph 2.7, supra) would limit the right to freedom of conscience to a mere right to request the State to consider and protect the objector's right "if possible".

The fundamental human right to conscientious objection entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion. Given that the State party does not recognize this right, the present communication should be considered under paragraph 1 of article 18, not paragraph 3.

8.3 The right to conscientious objection to military service derives from the right to freedom of thought, conscience and religion. As stated in article 4, paragraph 2, of the Covenant, this right cannot be derogated from even in exceptional circumstances which threaten the life of the nation and justify the declaration of a public emergency. When a right to conscientious objection is recognized, a State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military

sphere and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights.

In General Comment No. 22, the Committee recognized this right "inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief". The same General Comment states that the right to freedom of thought, conscience and religion "is far-reaching and profound", and that "the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief".

Because of their religious beliefs, the authors invoked this right, established in article 18, paragraph 1, to avoid compulsory military service. The prosecution, conviction and prison term imposed on the authors directly violated this right.

The mention of freedom to manifest one's religion or belief in article 18, paragraph 3, is a reference to the freedom to manifest that religion or belief in public, not to recognition of the right itself, which is protected by paragraph 1. Even if it were wrongly supposed that the present communication does not concern recognition of the objector's right, but merely its public manifestation, the statement that public manifestations may be subject only "to such limitations as are prescribed by law" in no way implies that the existence of the right itself is a matter for the discretion of States parties.

The State party's intention to act on the national plan for conscientious objection devised by the National Human Rights Commission (see paragraph 6.5, supra), which the Committee notes in paragraph 8.4, must be considered alongside the statement in paragraph 4.6 that the introduction of any system of alternative service is unlikely. Moreover, intentions must be acted upon, and the mere intention to "act on the issue" does not establish whether, at some point in the future, the right to conscientious objection will be recognized or denied.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, concludes that the Republic of Korea has, in respect of each author, violated the authors' rights under article 18, paragraph 1, of the Covenant.

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Dissenting opinion by Committee member Ms. Ruth Wedgwood

I concur with the Committee that a State party wishing to apply the principles of the International Covenant on Civil and Political Rights with a generous spirit should respect the claims of individuals who object to national military service on grounds of religious belief or other consistent and conscientious beliefs. The sanctity of religious belief, including teachings about a duty of non-violence, is something that a democratic and liberal state should wish to protect.

However, regrettably, I am unable to conclude that the

right to refrain from mandatory military service is strictly required by the terms of the Covenant, as a matter of law. Article 18 paragraph 1, of the Covenant states that “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

Article 18 thus importantly protects the right to worship in public or private, to gather with others for worship, to organize religious schools, and to display outward symbols of religious belief. The proviso of article 18 paragraph 3 – that the “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” – cannot be used by a state party as a backdoor method of burdening religious practice. The Human Rights Committee has appropriately rejected any attempt to limit the protections of article 18 to “traditional” religions or to use forms of administrative regulation to impede or deny practical implementation of the right to worship.

But article 18 does not suggest that a person motivated by religious belief has a protected right to withdraw from the otherwise legitimate requirements of a shared society. For example, citizens cannot refrain from paying taxes, even where they have conscientious objections to state activities. In its present interpretation of article 18, seemingly differentiating military service from other state obligations, the Committee cites no evidence from the Covenant’s negotiating history to suggest that this was contemplated. The practice of States parties may also be relevant, whether at the time the Covenant was concluded or even now. But we do not have any record information before us, most particularly, in regard to the number of parties to the Covenant that still rely upon military conscription without providing *de jure* for a right to conscientious objection.

To be sure, in the “concluding observations” framed upon the examination of country reports, the Human Rights Committee has frequently encouraged states to recognize a right of conscientious objection to military practice. But these concluding observations permissibly may contain suggestions of “best practices” and do not, of themselves, change the terms of the Covenant. It is also true that in 1993, the Committee stated in “General Comment 22”, at paragraph 11, that a right to conscientious objection “can be derived” from article 18. But in the interval of more than a decade since, the Committee has never suggested in its jurisprudence under the Optional Protocol that such a “derivation” is in fact required by the Covenant. [7] The language of article 8, paragraph 3(c)(ii), of the Covenant also presents an obstacle to the Committee’s conclusion.

This does not change the fact that the practice of the state party in this case has apparently tended to be harsh. The “stacking” of criminal sentences for conscientious objection, through repeated re-issuance of notices for military service, can lead to draconian results. The prohibition of employment by public organizations after a refusal to serve also is a severe result.

In a recent decision of the Constitutional Court of Korea,

the national defence minister suggested that “present conditions for life as a serviceman within the military [are] poor” and therefore that “the number of objectors to military service will increase rapidly” if “alternative service is allowed in a country like ours.” [8]. This may suggest the wisdom of seeking to ameliorate the living conditions of service personnel. In any event, many other countries have felt able to discern which applications for conscientious objection are based upon a bona fide moral or religious belief, without impairing the operation of a national service system. Thus, a state party’s democratic legislature would surely wish to examine whether the religious conscience of a minority of its citizens can be accommodated without a prohibitive burden on its ability to organize a national defence.

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]

Notes

[1] Made public by decision of the Human Rights Committee. GE.07-40200

[2] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm, Mr. Rafael Rivas Osada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski. The texts of two individual opinions signed by Committee members Mr. cc Solari- Yrigoyen and Ms. Ruth Wedgwood are appended to the present document.

[3] Article 88 of the Military Service Act provides as follows:

“Evasion of Enlistment

(1) Persons who have received a notice of enlistment or a notice of call (including a notice of enlistment through recruitment) in the active service, and who fails to enlist in the army or to comply with the call, even after the expiration of the following report period from the date of enlistment or call, without any justifiable reason, shall be punished by imprisonment for not more than three years: 1. Five days in cases of enlistment in active service [...].”

[4] *Ibid.*

[5] In *Muhonen v Finland* (Case No. 89/1981), for example, the Committee declined to decide whether article 18 guaranteed a right of conscientious objection. In *L.T.K. v Finland* (Case No. 185/1984), the Committee declined to address the issue fully on the merits, deciding as a preliminary matter of admissibility on the basis of the argument before it that the question fell outside the scope of article 18. *Brinkhof v The Netherlands* (Case No. 402/1990) addressed differentiation between total objectors and Jehovah’s Witnesses, while *Westerman v The Netherlands* (Case No. 682/1996) involved a procedure for recognition of conscientious objection under domestic law itself, rather than the existence of underlying rights as such. Although the statement was not necessary for its final decision, in *J.P. v Canada* (Case No. 446/1991) the Committee noted, without further explanation, that article 18 “certainly protects the right to hold, express and disseminate opinions and convictions, including conscientious objection to military activities and expenditures”.

[6] General Comment No. 22 (1993), para. 11.

[7] In the case of *J.P. v Canada*, Communication No. 446/1991, 7 November 1991, the Committee rejected the claim of a petitioner that she had a right to withhold taxes to protest Canada’s military expenditures. The Committee stated that “Although article 18 of the Covenant certainly protects the right to hold, express and disseminate opinions and convictions, including conscientious objection to military activities and expenditures, the refusal to pay

taxes on grounds of conscientious objection clearly falls outside the scope of protection of this article." In other words, an individual's conscientious objection to taxes for military activities did not require the state to refrain from collecting those taxes.
[8] See 2002 HeonGal, Alleging Unconstitutionality of Article 88, Section 1, Clause 1 of Military Service Act, Constitutional Court of

Korea, in the case of Kyung-Soo Lee.

War Resisters' International country report on Conscientious Objection in South Korea

Issues

- Korea maintains conscription.
- The right to conscientious objection is not recognised.
- Those who refuse to answer a call up for reserve duty are subject to multiple prosecutions and repeated fines or imprisonment.



The peninsula of South Korea.

Military recruitment

Conscription

Conscription is enshrined in art. 39 of the 1987 Constitution, which states:

*"(1) All citizens shall have the duty of national defence under the conditions as prescribed by Act.
(2) No citizen shall be treated unfavourably on account of the fulfilment of his obligation of military service." [1].*

The present legal basis of conscription is the Military Service Act, last amended as Clause 8834 on 31 December 2007. According to Article 3, "men of Korean nationality must fulfil their military service obligation in a satisfactory manner. Women may also accomplish their active duty if they so desire" [2].

All men are automatically registered as conscripts, based on their ID issued by the government at their birth, in the year they turn 18, a status which lasts until they reach the age of 40 [3]. Call up for medical examination (including psychological, physical and general education tests) takes place at the age of 19, followed by the placing of the conscripts concerned in six categories as follows: [4]

- those in categories 1, 2 and 3 are drafted into active military service;
- those in category 4 are assigned to serve in the public service sector;
- those in category 5 can be called up for military service only in wartime;
- those in category 6 are exempt from military service [5].

If a homosexual declares his sexual identity during this examination, he shall be exempt from being eligible for conscription since homosexuality is classified as a psychiatric disorder according to the rules on physical and mental examination for conscripts [6].

The duty to enlist in the Armed Forces lasts until the age of 31, with an exception for draft evaders, for whom it lasts until they reach 36 [7].

The duration of military service is generally 24 months. In the case of supplementary military service – those performing their service in the public welfare sector, in the administration or local government - the duration of service is 26 months. In certain special circumstances, when military service is performed in regional sectors of the economy, sociological and cultural areas and international cooperation, the duration of service is up to 36 months. All supplementary military service includes 4 weeks of basic military training [8].

After military service, conscripts pass on to the reserve forces system, in which those who complete regular military service are obliged to serve approximately 160 hours of military training over an eight-year period after their discharge from regular military service [9].

Military service can be postponed for students and for those with medical reasons up to a certain age limit depending on each case. After reaching the age limit, postponement is no longer possible [10]. Exemption is only possible for medical reasons [11].

Professional soldiers

Currently, the Korean Armed Forces rely heavily on conscripts, who account for around 75% of the 680,000 armed forces, while commissioned officers and non-commissioned officers, both of whom are professional

soldiers, account for the remaining 10% and 15% respectively. According to the “defence reform plan 2020”, proposed by the Korean Ministry of National Defence in 2005, the proportion of professional soldiers is expected to be increased by 40% of the armed forces by 2020 [12].

Women can voluntarily apply for both commissioned officer and non-commissioned officer, however, there are not many positions open to women. Generally, after graduating from a military academy or a four-year degree from a civilian university as a military student in the Reserve Officers' Training Corps (ROTC) or passing certain exams, commissioned officers with long-term contracts have to serve 10 years of military while those with short-term contracts have to serve for three years of military service. People who apply for the post of non-commissioned officer have a first contract of four years of military service, and later they can renew their contract for three more years if they pass certain tests [13].

The Military Manpower Administration maintains a website (http://www.mma.go.kr/kor/s_mobyung/index.html), through which people can access different recruitment websites of the Armed Forces. The service of professional soldiers is regulated by the Military Personnel Law [14].

Conscientious objection

Conscientious objection for conscripts

The right to conscientious objection is not legally recognised and there are no provisions for substitute service. However, article 19 of the Korean constitution states that “*all citizens shall enjoy freedom of conscience*”. While this could be interpreted to include the right to conscientious objection to military service, the Korean courts have so far not done so.

Conscientious objectors cannot be exempt from military service because a genuinely-held conscientious objection is not deemed to amount to “*justifiable reasons*”, within the meaning of Article 88(1) of the Military Services Act, allowing for exemption from military service. In 2004, the Korean Constitutional Court rejected, by a majority, a constitutional challenge to article 88 of the Military Service Act on the grounds of incompatibility with the protection of freedom of conscience protected under the Korean Constitution [15].

On 26 August 2004, the Constitutional Court of the Republic of Korea concluded:

“Freedom of conscience as expressed in Article 19 of the Constitution does not grant an individual the right to refuse military service. Freedom of conscience is merely a right to make a request to the State to consider and protect, if possible, an individual's conscience, and therefore is not a right that allows for the refusal of one's military service duties for reasons of conscience nor does it allow one to demand an alternative service arrangement to replace the performance of a legal duty. Therefore the right to request alternative service arrangement cannot be deduced from the freedom of conscience. ... Our Constitution provides in Article 5 Section 2 that 'the sacred duty of the nation army is the preservation of national security and the defence of national territory while remaining politically neutral. Article 39 Section 1 provides that 'all citizens shall have the duty of national defence as imposed by law.' ... Considering the instability and the unpredictability

of the region created by special security situation concerning North and South Korea, one cannot over-emphasise the importance of the duty of national defence. If national security cannot be ensured due to the failure to perform the duty of military service, it is clear that a citizen's human dignity and self worth cannot be protected. Thus the ultimate purpose of the duty of military service is ensuring the dignity and value of its citizens and thus we cannot say that the value of petitioner's freedom of conscience exceeds these constitutional legal benefits. Consequently even if the petitioner's freedom of conscience is restricted pursuant to Article 37 Section 2 of the Constitution, it would be a constitutionally permitted restriction.” [16]

On 18 October 2004, following the rulings of the Supreme Court and the Constitutional Court denying the right to conscientious objection, two conscientious objectors, Mr. Myung-Jin Choi and Mr. Yeo-Bum Yoon, filed an individual complaint with the UN Human Rights Committee. On 3 November 2006, the UN Human Rights Committee rendered a decision that the Korean government had violated Article 18, paragraph 1, of the Covenant (section 10) and stated: “*The State party is under an obligation to provide the authors with an effective remedy, including compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future.*” [17]

In a separate document dated 31 October 2006, the 88th session of the UN Human Rights Committee adopted the following Concluding Observations to the report submitted by the South Korean government :

“17. The Committee is concerned that: (a) under the Military Service Act of 2003 the penalty for refusal of active military service is imprisonment for a maximum of three years and that there is no legislative limit on the number of times they [objectors] may be recalled and subjected to fresh penalties; (b) those who have not satisfied military service requirements are precluded from employment by government or public organizations and that (c) convicted conscientious objectors bear the stigma of a criminal record (article 18).

The State party should take all necessary measures to recognise the right of conscientious objectors to be exempted from military service. It is encouraged to bring legislation into line with Article 18 of the Covenant. In this regard, the Committee draws the attention of the State party to its General Comment 22, paragraph 11 on the right to freedom of thought, conscience, and religion.” [18]

On 7 January 2008, the director of the National Human Rights Committee submitted an opinion to the Constitutional Court, urging the Korean government not to penalise conscientious objectors to reserve military service and implement a substitute service along with the recognition of the right to conscientiously object to military service [19].

Most recently, the Human Rights Council of the United Nations recommended to the Republic of Korea to introduce the right to conscientious objection. The draft report of the working group on the Universal Periodic

Review from 29 May 2008 states: "17. To recognise the right of conscientious objection by law, to decriminalise refusal of active military service and to remove any current prohibition from employment in Government or public organisations, in line with the recommendation by the Human Rights Committee. (Slovenia) 24. ... That active steps be taken to introduce alternatives to military service for conscientious objectors. (United Kingdom)" [20]

In September 2007, under the administration of former President Roh Moo-hyun, the Ministry of Defence decided to "virtually allow" substitute service to protect the human rights of the minority.²¹ Following the presidential election in December 2007 and subsequent government transition, however, the Ministry had been slow to follow up with public hearings, surveys and other measures. In the end, in a reversal of a position it held just over one year earlier, the Ministry of Defence announced on 24 December 2008 that it is too early to introduce a substitute service programme for conscientious objectors, referring to the result of a survey of 2,000 adults commissioned by the ministry showing 68.1 percent of respondents objected to allowing conscientious objectors to perform a substitute service. [22]

Conscientious objection for professional soldiers

As Korea does not recognise the rights to conscientious objection even for conscripts, it also does not allow its professional soldiers to claim conscientious objector status. The Military Criminal Act makes no reference to conscientious objection for professional soldiers. However, it can be assumed that any professional soldiers claiming a conscientious objection would be charged with disobeying orders according to Article 44 of the Military Criminal Law, prescribing a punishment of up to three years' imprisonment in peace time for mutiny. [23]

No cases of professional soldiers claiming a conscientious objection are known.

Apart from the regulation which says that commissioned officers with long-term contracts of ten years can apply to leave in their fifth working year [24], and that professional soldiers can submit an application to leave at one year's notice [25], the related laws give no clear indication about any *right* to leave before completing the contract or about any provision for soldiers who develop a conscientious objection (either to military service itself or to a particular war).

Draft evasion and desertion

Draft evasion is punishable by up to three years' imprisonment according to Article 88 of the Military Service Act [26]:

"Military Service Act Article 88 (Draft Evasion) 1) If a person who has received a draft notice for active duty or Notice of Summons (including Notice of Summons for voluntary enlistment), without justifiable cause, does not report for service within the period specified in the following clauses or refuses the summons, then he shall be sentenced to a prison term of three years or less. 1. For active duty, within three days of reporting date." [27]

According to Article 30 of the Military Criminal Act, desertion is punishable by two to ten years' imprisonment in peacetime, and at least five years' imprisonment in

wartime. Desertion in the face of the enemy is punishable by death, life imprisonment or at least ten years' imprisonment. [28]

Practice

Since the 1950's, more than 13,000 of conscientious objectors have been imprisoned in South Korea for refusing to perform military service [29]. Every year, 400 to 700 draft-age men, mostly Jehovah's Witnesses, plus some conscientious objectors of other religions and pacifists, are convicted and imprisoned because they refuse to perform military service.

Until 2001, conscientious objectors used to be tried in military courts, according to conscription practices of the Military Manpower Administration, which meant conscientious objectors had had no choice but first to enlist in the army and then to refuse. As they were then considered soldiers, they were tried by military courts. Several conscientious objectors had to go through repeated prosecution, followed by long and repeated prison terms. However, since 2001, when the right to conscientious objection was beginning to be widely discussed in the Korean society, the conscription practice changed and since then conscientious objectors have been tried in civilian courts and have been sentenced to 18 months imprisonment. In practice, 18 months is the minimum term that enables conscientious objectors to be exempt from further military service. [30]

In particular since 2000, the year before the first pacifist conscientious objector publicly declared his conscientious objection, the number of people who have refused military service has reached 5,000, according to the Military Manpower Administration [31]. At the end of 2008, all but 34 of this 5,000 were Jehovah's Witnesses - mainly pacifists, including a few Buddhists, Catholics and other Christians. [32]

In November 2003, Cheol-min Kang, an active duty conscript who opposed the government's decision to dispatch troops to Iraq, refused to return from his holiday to his military service. He was charged with desertion from military service, tried in a military court and sentenced to 18 months imprisonment, which in fact was the same punishment as applied to other conscientious objectors in civilian courts. [33]

Following the successful first two individual complaints to the UN Human Rights Committee, on 15 May 2007 pacifist COs filed 11 new complaints with the Committee. Furthermore, between 21 September 2007 and 6 November 2007, 100 more complaints were filed by imprisoned COs who are Jehovah's Witnesses. On 7 December 2007, these complaints were communicated to the South Korean which was given six months to respond. An additional 388 new complaints were filed by 25 April 2008. On 29 April 2008, the UN Human Rights Committee combined all complaints into one case identified as communication No. 1786/2008 on behalf of Mr. Jong-nam Kim et al. and communicated these to the South Korean government. Again the government was given six months, that is until 30 October 2008, to respond. However, there has still been no response. [34]

On 5 September 2008, a three-judge panel of an appellate division of the Chuncheon District Court decided to combine four separate appeal cases of young conscientious objectors who are Jehovah's Witnesses and to refer these cases to the Constitutional Court. The Constitutional Court was asked to review the

constitutionality of Article 88, Section 1, of the Military Service Act. Thus the Constitutional Court will have the opportunity to revise its 2004 decision refusing to rule that Article 88, Section 1, of the Military Service Act is unconstitutional. [35]

The reserve forces system also leads to problems for conscientious objectors. Conscientious objectors who are called up as reservists face multiple prosecutions and repeated punishments over an eight-year period. In particular, this is a problem for all whose beliefs have changed after they performed their regular military service and who are later assigned to perform reserve force service. They are not exempt from military training, even after they have been convicted, paid fines, or served a prison term [36]. According to Article 15 of the Establishment of Homeland Reserve Forces Act, conscientious objectors as reservists can get fined up to five million won (approx. US\$5,000) or imprisoned for up to three years [37].

On 18 April 2007, judge Song, Seung-yong of the Ulsan District Court suspended the trial of Shin Dong-hyuk, over which he was presiding, and filed a request with the Constitutional Court asking for a determination of constitutionality of sections of the Homeland Army Reserve Act. The judge requested that the Constitutional Court review Articles 6(1) and 15(8) of the Homeland Army Reserve Act, which form the basis for the indictment against Shin Dong-hyuk, in light of Article 19 of the Constitution, which guarantees the right to freedom of conscience [38]. As of October 2008, over 80 Jehovah's Witnesses are caught in the cycle of being accused and sentenced to repeated fines and/or prison terms because of their conscientious objection to reserve forces service. Many of them are not capable of paying the fines, which may amount to thousands of dollars each year. Some have been registered as "wanted" criminals because of their inability to pay the fines. Others have chosen to undertake labour in a "work-house" (lock-up facilities inside a prison) instead of paying the fines. The length of this labour arrangement can vary from one day to three years, in proportion to the unpaid fine (usually calculated at 50,000 won [approx. US\$50] in fines equal to one day's labour) [39].

Annually 300,000-350,000 young men are conscripted, and 30,000 work as public service workers, 55,000 as industrial skilled workers, 15,000 are expert research workers, 4,000 are public health workers, 36,000 are full-time reservists, and 50,000 work as on-duty police, totalling approximately 200,000 people who are working in substitute military services annually. [40]

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