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The Constitutional Court and conscientious objection to military service

HRWF (30.11.2015) - After holding a public hearing on the constitutional complaint of three objectors to military service on 9th July, South Korea's Constitutional Court is expected to render a final decision on the issue of conscientious objection before the end of this year.

Currently, 555 Jehovah's Witnesses are in prison in South Korea for their neutrality stand. However, rather than convicting conscientious objectors, seven Korean district court judges referred cases to the Constitutional Court. The Constitutional Court held an open hearing on 9 July 2015 (see the Web video on <http://goo.gl/2x0jt6>) and will thus soon render its final decision.

In 2011, the Court ruled that punishing conscientious objectors under South Korea's Military Service Act does not violate the constitution. It held the same view in a 2004 judgment.

Mounting International Scrutiny

The UN Human Rights Committee has called for change in South Korea. Since 2006, this committee has issued five decisions involving over 500 conscientious objectors and has ruled that South Korea must adopt legislative measures guaranteeing the right to conscientious objection.

Amnesty International, a human rights organization based in London, marked the International Day of Conscientious Objectors by drawing attention to South Korea's treatment of conscientious objectors in an article dated May 13, 2015. The article focused mainly on young Witnesses of military age and their plight under the current law in South Korea. That same week, various international media outlets, such as CNN and *The Washington Post*, carried articles featuring conscientious objection and young Witnesses who take this position.

The Challenge Facing Judges

When one of Jehovah's Witnesses refuses military induction in South Korea, judges as a rule find him guilty of draft evasion. However, judges are increasingly uncomfortable sentencing a nonviolent young man whose only "crime" is adherence to his sincere religious beliefs. In one instance, the presiding judge of the Suwon District Court wept while sentencing a Witness because she had no other legal option than to find him guilty.

On May 12, 2015, "not guilty" was the verdict issued by a judge of the Gwangju District Court. This judge went against established case law in response to the moral dilemma he felt in the case of three of Jehovah's Witnesses. Intending to spur action for change, he

told them: "All that I can do for you is to light a small match and hope that you can make a big flame out of it." The prosecutor has appealed the ruling.

Rather than convict conscientious objectors, seven district court judges have referred cases to the Constitutional Court, despite the Court's 2004 and 2011 rulings on the issue. These judges refuse to sentence a young man to prison simply because he is following the dictates of his conscience. In one of those cases, Judge Young-hoon Kang of the Seoul North District Court stated that punishing conscientious objectors "would amount to denying their rights and their identity. Surely it violates human dignity."

Judges Urged to "Exert Pressure on the Courts"

In December 2014, the Korean Bar Association held a conference on the topic of conscientious objection. During the keynote address, former Supreme Court Justice Susan Cheon called the decisions of the UN Human Rights Committee and the resolutions of the UN Human Rights Council against South Korea "a national embarrassment." She stated that "sending hundreds of young men to prison cannot be justified" and urged the judges and lawyers present to "exert pressure on the courts" to decide cases in harmony with international standards.

Ms. Cheon concluded her address by stating: "We should adopt an alternative service as soon as possible. . . . The adoption of alternative service would be a milestone in Korean history, and a prominent achievement in the field of human rights under the leadership of the first female president. Only by doing so can we wipe out the reproach of being a backward country with regard to human rights issues."

For decades, thousands of Jehovah's Witnesses in South Korea have endured imprisonment for their conscientiously held beliefs.

South Korean Jehovah's Witnesses face stigma of not serving in army

New York Times (03.10.2015) - SEOUL, South Korea — Since he was a teenager, Kim Min-hwan knew he would have to make a choice: abandon his religious convictions or go to prison.

Mr. Kim is a member of the Jehovah's Witnesses, who for decades have faced jail terms as conscientious objectors under South Korea's Military Service Act. Since his release from prison in 2013, Mr. Kim has found the stigma too great to find a meaningful job, though he was a chemical engineering major. He spends his days volunteering at the Jehovah's Witnesses headquarters south of Seoul.

"I was predestined to become a convict because I believed in the creator," Mr. Kim, 31, said in an interview. "I want South Korea to recognize that there are other, nonmilitary ways for us to serve the community."

Over the years, Jehovah's Witnesses have filed a series of appeals asking the Constitutional Court to rule that the Military Service Act violates the constitutional right to freedom of conscience and religion. Hopes for an end to their travails rose in July, when the court held a public hearing on multiple appeals only four years after it had rejected similar petitions. The court is likely to rule on the matter before the end of the year.

Jehovah's Witnesses were once dragged into military boot camps and stockades, where they were vilified as "commies" and "traitors" and even tortured and killed. Few spoke out for them in South Korea, where mainstream churches viewed them as a cult and people obsessed over threats from the North.

In democratic South Korea today, young male Jehovah's Witnesses no longer suffer brutal beatings. But 600 to 700 conscientious objectors are still sent to prison on average each year — nearly all of them Jehovah's Witnesses. They account for more than 90 percent of all imprisoned conscientious objectors in the world, according to Jehovah's Witnesses, the United Nations Human Rights Council and rights groups.

The two Koreas are technically still at war after a truce ended the Korean War in 1953, and tensions have increased under the new North Korean leader, Kim Jong-un. Many here argue that not punishing conscientious objectors would compromise South Korea's ability to deter North Korea's 1.1 million-strong military.

"North Korea remains a direct and present military threat," Seo Kyu-young, a Defense Ministry legal counsel, said at a recent hearing at the Constitutional Court. "If we introduce alternative services, we would see a sharp rise in the number of people evading the draft under the pretext of conscience," he said.

Acting on suggestions from both the Constitutional Court and the country's National Human Rights Commission, the government announced plans in 2007 to introduce alternative service for conscientious objectors. But the conservative government of President Lee Myung-bak, who took office the following year, rejected them, citing a lack of national consensus.

For decades, the idea of alternatives to military training — serving as firefighters or in homeless shelters, for example — has been unspeakable in South Korea. The typical 21-month stint in the 650,000-member military has been billed as a "sacred duty" for all able-bodied men — and the price of freedom. When cabinet appointees face confirmation hearings, the first thing lawmakers investigate is whether they or their sons avoided military service.

Yet maintaining a conscript army has become more of a challenge. Postwar generations considered universal conscription an irritating interruption in their careers. They also grew disenchanted with recurring corruption, abuse and disciplinary problems in the military.

"South Korean men don't want to serve in the military if they have a choice, so they get angry if others don't while they have to," said Park Yu-ho, 27, who refused to join the military partly as a protest against recent beating deaths in military camps and shooting rampages by abused soldiers.

Today, conscientious objectors are tried in civilian court and are usually given 18 months in prison. This year, they began to get some support from lower courts, where six of them were found not guilty even though their acquittals were appealed by prosecutors.

The abuse of conscientious objectors was one of the worst and most ignored human rights violations under the military dictatorship of the 1970s. Conscript officials raided Jehovah's Witness churches to haul away draft-age men. When they refused to take up arms, they were beaten "like punching bags," according to the presidential commission on suspicious deaths in the military.

In its reports in 2008, the commission attributed the deaths of five Jehovah's Witnesses between 1975 and 1985 to beatings and torture that were "routine" among boot camp instructors and military policemen handling conscientious objectors.

The reports, the first of their kind, described “barbarian acts that should never have happened in a civilized society” — including starvation, water torture, and solitary cells smaller than a telephone booth where Jehovah’s Witnesses were forced to stand for days without sleep.

An officer threatened to tie a Jehovah’s Witness to a pole and force him to have a blood infusion, the commission said. One Jehovah’s Witness, Jung Chun-guk, was drafted two more times after his release from prison and each time chose a prison term, serving a total of seven years and 10 months beginning in 1969.

Hong Young-il, 49, who served two years in prison from 1990 to 1992, said a military interrogator once put a pistol to his forehead and pretended to execute him.

Much of the abuse took place in full view of other trainees at boot camps, a scene familiar to many who passed through them in the 1970s and ’80s. Even though corporal punishment was a common disciplinary tool in the army then, widespread bias against Jehovah’s Witnesses bolstered society’s silence about their persecution.

“A cellmate convicted of sexually molesting a 5-year-old child liked hectoring me over the importance of defending the country,” said Ryu Yong-beom, 60, a Jehovah’s Witness who served three years in prison in the 1970s.

The denigration of objectors as “commies” or “jongbuk” — North Korea followers — continues today. In a letter sent to a local newspaper in January, Kim Kyung-muk, a filmmaker and imprisoned conscientious objector, said that other convicts chastised him for “not being qualified to be a South Korean citizen.”

After prison, conscientious objectors see their job opportunities seriously limited, as the government and big companies discriminate against ex-convicts, especially those who avoided the draft.

The United Nations Human Rights Committee and Amnesty International have repeatedly urged South Korea to allow alternative service for conscientious objectors. The committee called their imprisonment a violation of the International Covenant on Civil and Political Rights, to which South Korea is a signatory.

South Korea interprets the covenant differently. Its Parliament has never acted on calls for alternative service from its National Human Rights Commission, citing, as President Lee’s government had, a lack of national consensus.

“This debate is a luxury we can’t afford as long as North Korea is there,” said Cho Myung-sik, 36, a veteran. “Besides, how are you going to tell genuine conscientious objectors from fakers if we introduce alternative services? How are you going to ensure fairness between them and those serving in the military?”

Some Jehovah’s Witnesses have emigrated to the United States to save their sons from imprisonment. Several South Korean conscientious objectors have recently won refugee status in Canada, France and Australia.

For Mr. Ryu and his wife, Jung Seon-hee, change has been too slow. She said her two brothers were beaten “half dead” in military jail in the 1980s. Her son was released last year after serving 15 months. In July, another son, Ryu Heung-sun, was sentenced to one and a half years.

“I had hoped that our suffering would end by my sons’ generation,” Ms. Jung said. “I am sad that this country remains so primitive, unable to show lenience to a minority like us.”

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<http://www.nytimes.com/2015/10/04/world/south-korean-jehovahs-witnesses-face-stigma-of-not-serving-in-army.html? r=0>

Court rulings over conscientious objections differ

Korea Times (27.08.2015) – https://www.koreatimes.co.kr/www/news/nation/2015/08/116_185691.html - Courts are making different decisions on conscientious objectors, reflecting mixed public opinion about people who refuse mandatory military service due to religious or other reasons.

The Supreme Court upheld an appeals court's guilty verdict against a Jehovah's Witness, surnamed Ahn, Thursday, who was sentenced to 18 months' jail for refusing to serve in the military.

All men in Korea are required to serve in the military, and those who resist can face a jail term of up to three years. Most conscientious objectors here are Jehovah's Witnesses, who are against bearing firearms.

The top court said the Constitutional Court had ruled that punishing those who refuse military service was not against the Constitution. "Also, conscientious objectors cannot be an exception to the law on military service," it added.

It said international human rights bodies have recommended Korea accept conscientious objections, but such a recommendation is not legally binding.

This was the second time the highest court has ruled against conscientious objectors, following one in 2004. The Constitutional Court also made similar rulings in 2004 and 2011, but is again reviewing the issue following another petition.

Contrary to the top court decision, several district courts have ruled in favor of conscientious objectors this year.

On Aug. 13, the Suwon District Court in Gyeonggi Province found two Jehovah's Witnesses not guilty, saying their decision must be respected because the Constitution guarantees religious freedom.

A day earlier, the Gwangju District Court ruled in favor of a conscientious objector, based on a similar argument.

Amnesty International Korea said the top court's ruling was disappointing.

"Recent rulings by the lower courts gave us the impression that significant improvements in human rights have been made in Korea," group director Kim Hee-jin said. "But we were wrong."

According to statistics, every year almost 600 men serve jail time for their faith instead of doing military service. The number is the highest in the world.

Calls are mounting from activists and international organizations for the Korean government to find alternatives so conscientious objectors can serve the country while respecting their faith. The National Human Rights Commission also recommended in 2005 that the government come up with alternative military service.

Military authorities are opposed to the idea, saying it is hard to verify a person's faith and that it will push up the number of people who lie about their religion to dodge mandatory service.

South Korea judge acquits conscientious objectors of refusing military service

JW.ORG (18.05.2015) - <http://www.jw.org/en/news/legal/by-region/south-korea/conscientious-objectors-acquitted-20150518/> - On May 12, 2015, the Gwangju District Court ruled that three of Jehovah's Witnesses were not guilty of draft evasion. Senior Judge Choi, Chang-seok stated in the decision: "It is necessary to interpret freedom of conscience under the Constitution and the duty of national defense in a harmonious manner." He added: "When the fundamental rights collide with other constitutional interests such as a citizen's duty, it is appropriate to interpret the law in a way that both interests can be realized to the extent possible." The Witnesses expect the prosecutor to appeal the decision within seven days.
