

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 Su-an 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.