

SOUTH KOREA: Only two Jehovah's Witnesses left in prison as conscientious objectors

JW.ORG (04.03.2019) – <https://bit.ly/2PHJrqw> – On November 30, 2018, authorities in South Korea released nearly all of Jehovah's Witnesses still imprisoned as conscientious objectors. With this historic event, the government has taken a monumental step toward ending its policy of prosecuting and imprisoning Jehovah's Witnesses for conscientious objection.

Since the end of the Korean War, South Korea has criminalized conscientious objectors and sentenced them to prison. However, the government has begun to alter its handling of these cases based on two landmark court decisions rendered in 2018.

On June 28, 2018, the Constitutional Court ruled that a portion of the Military Service Act (MSA) is unconstitutional because it fails to provide for alternative service for conscientious objectors. Then, just two months later, the Supreme Court heard the case of a young Witness convicted by lower courts for refusing military service. On November 1, 2018, the Supreme Court ruled 9 to 4 in his favor, concluding that conscientious objection is not a crime.

Based on these rulings, lower courts in South Korea now have the legal basis to reconsider over 900 pending cases concerning Jehovah's Witnesses who have been prosecuted for

refusing military service. With this legal groundwork in place, young Witness men hope that these courts will render “not guilty” verdicts in their cases.

A Growing Resolve to Reform the MSA

Prior to the ruling in June 2018, the Constitutional Court had ruled twice before, in 2004 and in 2011, that the MSA does *not* violate the constitution, even though the MSA does not recognize the right to conscientious objection. Yet, regardless of those rulings, some lower court judges still believed they were violating the constitution when they sentenced conscientious objectors to prison. Some courageously declared these young men innocent, recognizing they refused to join the military because of their sincere religious beliefs. In time, more judges adopted this view.

By the time the Supreme Court rendered its decision in November 2018, local courts had already delivered 118 not-guilty decisions concerning Witness conscientious objectors, and 12 of these decisions were rendered by appellate courts. As more judges saw the need to reform the MSA, they suspended hearings in many cases, preferring to wait on the decisions by the Constitutional Court and the Supreme Court rather than render an unjust verdict.

Landmark Ruling From the Constitutional Court

Beginning in 2012, lower courts referred six cases to the Constitutional Court, asking it to rule again on whether the

MSA is constitutional. On July 9, 2015, the Constitutional Court held a hearing to examine the matter for the third time.

After deliberating for almost three years, on June 28, 2018, the Constitutional Court acknowledged the right to conscientious objection. The Court ruled that failure to provide alternative service for conscientious objectors is unconstitutional and that the government must change the MSA. Although the present law will remain in force for now, the government must amend it by December 31, 2019, and provide alternative service for conscientious objectors.

The Ministry of National Defense has stated that it will respect the Court's ruling. However, to abide by international standards, acceptable alternative service must not be punitive, it must be truly civilian in nature, and it must not be under military control or supervision. The government has yet to implement an alternative service, but Jehovah's Witnesses hope that the new program will be acceptable for all conscientious objectors.

The Court also ruled on whether it was constitutional to penalize conscientious objectors under the MSA. It determined that criminal courts have the right to imprison those who evade military service. However, it also determined that, depending on the circumstances of each case, a conscientious objector could be found "not guilty" of evading military service based on the provision in the law of "justifiable grounds."

Milestone Decision From the Supreme Court

On November 1, 2018, the Supreme Court recognized the right to conscientious objection for the first time in the country's history. In its ruling, the Court quashed the earlier guilty verdict rendered by the Changwon District Court in June 2016 against a Witness who objected to military service. The Supreme Court stated that the original court had not fully examined whether the defendant had acted on a genuinely held religious conviction, and it returned the case back to the Changwon court for further review.

According to the new ruling, courts may accept conscientious objection based on genuinely held religious beliefs as "justifiable grounds" for refusing military service. In its majority opinion, the Court stated: "Forcing a military duty with criminal punishment or other punitive measures is an excessive restraint of freedom of conscience."

The Supreme Court not only recognized conscientious objection as a lawful right but also vindicated the neutral stance of Witnesses who had been imprisoned in the past. Additionally, the Court stated that "the existence of alternative service is not a prerequisite for the recognition of conscientious objection as a 'justifiable ground.'" Rather, according to the Court, if someone objects to military service because of deep, firm, genuinely held beliefs, this should be recognized as "justifiable grounds."

Far-Reaching Effects of the Supreme Court Decision

Since the Supreme Court decision, nine trial courts and four

appellate courts have already handed down not-guilty verdicts for Witnesses who are conscientious objectors. The Supreme Court has also rendered 161 favorable decisions recognizing the rights of conscientious objectors and has referred those cases back to the appellate courts. On December 28, 2018, the government announced its new alternative service program. If the Presidential Office approves it, the draft bill will then be submitted to the National Assembly for final review.

As previously stated, on November 30, 2018, Korean authorities released on parole 57 Witness conscientious objectors. They had served at least one third of their 18-month sentence. On December 24, 2018, six more Witness conscientious objectors were also released on parole. The remaining two Witnesses still in prison should be released once they have served at least six months of their sentence.

Jehovah's Witnesses welcome this shift in the government's policy. Over three generations, 19,350 Witnesses have been prosecuted and sentenced to a combined total of 36,824 years in prison for refusing to perform military service. Witnesses around the world rejoice at the prospect that South Korean conscientious objectors and their families may no longer have to endure unjust punishment for their sincere beliefs.

Paul Gillies, a spokesman for Jehovah's Witnesses, stated: "With these two decisions, South Korea has finally chosen to respect the rights of conscientious objectors, upholding its own constitution and international standards. Jehovah's Witnesses hope that all of their fellow believers imprisoned in South Korea for conscientious objection will soon be released. They are optimistic that the judges in pending cases will accept the decision these young men make in adhering to

their Bible-trained conscience as 'justifiable grounds' to find them 'not guilty.' Jehovah's Witnesses also hope that the government will expunge the records of the 19,350 Witnesses who have been labeled as criminals for refusing military service based on their strongly held religious beliefs."

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