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Conscientious objection to military service to be on the agenda of the United Nations

HRWF (24.01.2023) - On 26 January, the human rights record of the Republic of Korea will be examined by the United Nations in the framework of the Universal Periodic Review (UPR). The NGO "Conscience and Peace Tax International" filed a submission about conscientious objection to military service.

UPR SUBMISSION REPUBLIC OF KOREA 42nd SESSION (Jan/Feb 2023)

Executive Summary

1. This submission, prepared in July 2022, deals with the situation in the Republic of Korea with regard to conscientious objection to military service.

2. Since the last UPR Cycle, the Republic of Korea has taken a praiseworthy step forward by at last recognising the right and by ceasing the automatic imprisonment of conscientious objectors, for which it formerly had, numerically, the worst record of any State.

3. The latest provisions however fall short of international standards in a number of respects.

A. BACKGROUND

4. Military service, now of 18 months is obligatory for all male citizens of the Republic of Korea.

5. For many years, the Republic of Korea refused to acknowledge the right of conscientious objection to military service, arguing that the security situation necessitated that all able-bodied males, without exception, should bear arms in the defence of the State. In a series of rulings, the Constitutional Court had upheld the supremacy of the duty of national defence over the freedom of conscience.

6. All conscientious objectors were formerly tried under Article 88.1 of the Military Service Act, which stipulates that "If a person who has received a draft notice for active duty (...), without justifiable cause, does not report for service within the period specified (...) or refuses the summons, then he shall be sentenced to a prison term of three years or less...". Until the year 2001, those charged under this article were tried in military courts and following imprisonment could face repeated call-up and conviction. From 2001, trials took place in civilian courts, and those who served sentences of 18 months or more were

released from the obligation to perform military service; thereafter almost all were sentenced to exactly eighteen months' imprisonment.

7. In most years, upwards of 500 conscientious objectors, most but not all Jehovah's Witnesses (1), were sentenced, with the result that at any one time the Republic of Korea had more currently-imprisoned conscientious objectors than the rest of the world together. The Jehovah's Witnesses calculated that since 1950 over 19,000 of their members alone suffered imprisonment for their conscientious objection.

Legislative developments

8. In June 2018 the Constitutional Court of the Republic of Korea, dramatically overturning its previous jurisprudence, ruled that the failure to offer alternative forms of civilian service to conscientious objectors was unconstitutional. Furthermore, in November that year, the Supreme Court rendered a decision which decriminalized conscientious objection, holding that moral and religious beliefs are valid reasons to object to military service.

9. In response, the National Assembly in December 2019 amended the Military Service Act and passed a new Act on the Transfer and Service of Alternative Service, which came into effect at the beginning of 2020. Under Article 3 , a person wishing to apply for alternative service on grounds of conscience must apply for "transfer to an alternative role". Applications are examined by a commission set up for the purpose.

10. The UN Special Rapporteurs on Freedom of Opinion and Expression and Freedom of Religion or Belief, in a communication of 28th November 2019 (2) expressed concern that the new legislation does not unequivocally guarantee the right of conscientious objection to military service:

11. "First, there is a concern on the terminology used. Nowhere does the draft bill recognise a right to alternative service. Instead, [Article 5] gives conscientious objectors a right to apply for alternative service A plain reading of the draft bill therefore suggests that there could be circumstances where an individual is a conscientious objector but nevertheless is denied the right to perform alternative service."

12. "Second, (...) Article 13 (2) seems to allow the Alternative Service Committee to disregard the opinions of the individual himself or herself by a vote. This competence is not subject to further conditions. (...) The standard set by the Human Rights Committee is that the belief is genuinely held. Therefore, giving the Alternative Service Committee competence to disregard testimony by the individual concerned is likely to lead to results contrary to [ICCPR] Article 18 (1)."

13. Moreover, "Article 6 (1) of the draft bill precludes individuals who have previously withdrawn their application from resubmitting an application. There might be many reasons for individuals to withdraw their application, one of which is the persistent and well-documented stigma regarding conscientious objection in the Republic of Korea".

14. They also "raise particular concerns with respect to Article 25 of the draft bill, which provides for cancellation of transfer to alternative service. Out of the 7 circumstances in [Article 25 (1)] which determine when a transfer shall be cancelled, only one of them raises no concerns, namely the voluntary cancellation in subparagraph 7. The rest (...) provide for cancellation of transfer where the individual has breached the rules of procedure and/or the rules applicable, but where the individual might legitimately be a conscientious objector."

Alternative service arrangements

15. Conscientious objectors accepted for alternative service are assigned for 36 months to an "alternative service training centre" within a "correctional facility". In effect they are still sent to prison, with only their nominal status distinguishing them and their work from convicts. It has been argued that the service is thus in its very nature punitive (3).

16. In the communication already quoted, the Special Rapporteurs express concerns aboutthe nature of the alternative service:

"As indicated by the Human Rights Committee, the alternative service must be a real service to the community and compatible with respect for human rights. While it is not contested that service in penitentiaries, detention centers, [etc] constitutes work of real service to the community, we express certain concerns relating to the exclusive emphasis on places of detention. In particular because many conscientious objectors might be transferred from a situation of incarceration to a situation where they perform service in prisons. Furthermore, despite draft article 17 (2) 1 excluding activities which require the use of arms or weapons, activities which entail the use of force against other individuals is not excluded. [In its reply dated 12th February 2020, the State answered this by reference to Article 16.2.] We note that in order to ensure that alternative service is of real service to the community and ensure the dignity of alternative service members, alternative service should take into consideration the competencies and preferences of the alternative service member."

17. We therefore suggest that Article 17 be amended, for example in the following way: "(1) Alternative service members shall perform services in the public interest. These services shall not entail the use or management of weapons or the use of force, or that would otherwise be contrary to international human rights law. (2) In the assessment of the placement of alternative service members, including the agency and post of the service member, the competencies and preferences of the alternative service member shall be taken into consideration. (3) Agencies which may receive alternative servicemen shall be designated by Presidential Decree"

18. They note also that the duration f alternative service, twice that of military service, is also punitive. "There does not seem to be any objective justification [for this discrepancy] To be compatible with the Covenant, any unequal treatment on the basis of belief must be based on objective grounds, and be necessary and proportionate. The failure to provide such a justification is not only contrary to Article 26 of the Covenant, but also considered a punitive measure in violation of Article 18 (1)." (4)

The State justifies the duration by reference to the non-military service already performed by, for instance, medical personnel. This would seem to imply rather that the duration of such service is also discriminatory and punitive, and ought to be reconsidered.

19. Various aspects of the conditions of service are also questionable. Everyone is accommodated in dormitories, without the exceptions made for the health difficulties or family responsibilities of those performing military service.. There are very strict restrictions on freedom of movement; during the first month objectors may not leave the facility at any time - thereafter limited numbers may be granted a few hours leave, but in no case beyond 9.30pm. Their access to communication with the outside world is severely restricted, and they have no right to privacy – even during medical consultations a prison official must be present. It is also unclear what, if any remuneration is attached to the service, or what facilities there are for receivng visits.

20. Although objectors are assigned to the prison service, not the armed forces, the arrangements are not free from military control. Applications are considered by the Military Manpower Administration of the Ministry of Defence. Moreover, those performing alternative service are required to wear uniforms similar to those of prison staff. Many objectors view such requirements as detracting from the exclusively civilian nature of the service.

21. Finally, the procedures for assignment to alternative service are to be suspended in a time of general mobilisation. It is not clear what practical effect this would have, but it is worth recalling the observation of UN Human Rights Committee member Sir Nigel Rodley, in an individual case from the Republic of Korea, "...It is precisely in time of armed conflict, when the community interests in question are most likely to be under greatest threat, that the right to conscientious objection is most in need of protection, most likely to be invoked and most likely to fail to be respected in practice..." (5)

22 The first centre opened on 26th October 2020; by the end of that year the first 106 objectors had started alternative service, from a total of 1,962 applicants, 730 of whom had been recognised. By the end of the year 2021, 2,022 conscientious objectors had been recognised, from a cumulative total of 2,536 applications and 654 had commenced alternative service (6) (By 1st March 2022, according to the Jehovah's Witnesses, 749 of their members had been assigned to seventeen facilities. 7) It is not reported how many of the 514 applications unaccounted for were still pending and how many had been definitively rejected. However the Jehovah's Witnesses point out a structural flaw in that the number of placements is far from adequate for the number of applicants; they estimate that by 2023 only about half of some 3,200 applicants can be accommodated.

23. As of 1st March 2022, according to the Jehovah's Witnesses, a total of 44 complaints against the alternative service arrangements had been lodged with the Constitutional Court and seven others submitted to the National human Rights Commission.

Imprisonments

24. By December 2018, all but thirteen of more than five hundred conscientious objectors in prison earlier that year had been released. The thirteen were those of whose conscientious motivation the State was, rightly or wrongly, not convinced. Anticipating the Constitutional Court ruling, lower courts had already put on hold many pending cases, and the Supreme Court had unprecedentedly found for two conscientious objectors on appeal. The State was subsequently able to report that in November 2019 there were no conscientious objectors .in prison. (8)

25. Nevertheless, conscientious objectors whose claims are not accepted by the Commission continue to face imprisonment if they persist with their refusal of military service, and it is alleged that those whose objections are not of a religious nature are particularly at risk. As of March 2022, however, even two Jehovah's Witnesses remained in prison as conscientious objectors and the cases of ten more were still pending.

26. The Republic of Korea also criminalises the refusal of reserve service. The penalty for such refusal may be a short prison sentence, but is usually a fine. However this does not discharge the responsibility; conscientious objectors who are reservists may be subjected to repeated call-ups and repeated penalties over an eight-year period. As the Human Rights Committee has observed, this "may amount to punishment for the same crime if (the) subsequent refusal is based on the same constant resolve grounded in reasons of conscience," thereby breaching the principle of *ne bis in idem* (9). Twenty such Jehovah's Witnesses cases were pending in March 2022.

27. In its List of Issues prior to the Republic of Korea's Fifth Periodic Report under the International Covenant for Civil and Political Rights, (10)" the Human Rights Committee refers back to its previous Concluding Observations and as well as asking for information on progress with the then current proposed legislation on alternative service, asked the State to report on the steps taken to "expunge the criminal records of conscientious objectors, provide compensation to those individuals and ensure that their personal information is not publicly disclosed"

28. The State reply was relatively encouraging: "The Government has taken necessary measures including expunging criminal records under the applicable laws such as the *Act on the Lapse of Criminal Sentences*. When a case is finalized with acquittal, the suspect may claim compensation for the detention period against the Government and apply for the announcement on the intent of the not guilty decision to restore his impaired reputation via Internet, etc. under the procedure provided in the *Act on Criminal Compensation and Restoration of Impaired Reputation*.

"The Government granted 1,879 conscientious objectors a special parole (...) releasing [them] 1,878 from disqualification for appointment as an executive or a public official (11)." This had previously been precluded under Article 76 of the Military Service Law. These numbers must however be seen in the context of the tens of thousands who had over the years been imprisoned as conscientious objectors.

28. Finally, without stating whether Article 81.2 of the Miitary Service Law, introduced in 2015, has been repealed, it reports that "The Military Manpower Administration (...) no longer discloses the list of conscientious objectors (12)."

UPR Recommendations

29. In its examination during the Third Cycle of the UPR, the Republic of Korea received a total of thirteen recommendations on this issue from twelve States: (13)

Decriminalise conscientious objection (Germany, USA, Argentina, Portugal) Introduce alternative service (Mexico, Panama), of a genuinely civilian nature (Germany, USA), under civilian control (Australia, Switzerland), compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature (Croatia) and of a non-punitive length (Canada, Australia, France)

Release those imprisoned for refusing to perform military service (Germany, Panama ; and consider expunging the corresponding charges from their criminal records (Croatia, Costa Rica / examine thesituation of individuals who are currently imprisoned (...) with a view to offering them an alternative civilian service (France);

30. Although at the time the State expressed support only for expunging of criminal records (14), it subsequently acted on all of these recommendations. Nevertheless, as reported above, there are concerns about the nature and duration of the alternative service, and that, although far fewer than in the past, imprisonments of conscientious objectors have not completely ceased.

Suggested recommendations:

31. While applauding the progress made by the Republic of Korea since the last review with regard to recognising and implementing the right of conscientious objection to military service, recommendations might be made:

that, taking into accounts the comments of the Special Rapporteurs on Freedom of Opinion and Eypression and Freedom of Religion ad Belief in their communication of November 2019, it review the current alternative service provisions with a view to ensuring that they all aspects of the arrangements are completely civilian in nature and control, compatible in each case with the reasons for the objection, available without discrimination to all conscientious objectors, irrespective of the grounds of the objection, and that by comparison with military service alternative service is neither punitive no discriminatory in any way.

Footnotes

(1) Of the first 237 current "draft evaders" whose details were notoriously made public by the Government in 2016, 160 were known to be Jehovah's Witnesses.

(2) KOR 4/2019, page 4.

(3) Amnesty international, "South Korea: Alternative to military srvice is new punishment for conscientious onbjectors", 27th December, 2019.

(4) Ibid.

(5) Views adopted on Communications 1642/2007 to 1741/2007*, Min-Kyu Jeong et al v Republic of Korea,* 24th March, 2011 (CCPR/C/101/D/1642-1741/2007, issued 5th April 2011*,* Appendix II, paras 14,15

(6) Submission (dated 24th March, 2022), from the Republic of Korea for the report of the High Commissioner for Human Rights to the 50th Session of the Human Rights Council on conscientious objection to military service (A/HRC/50/43)

(7) Submission from the Jehovahßs Witnesses for A/HRC/50/43

(8) CCPR/C/KOR/5, 21st August, 2021, para 169.

(9) Human Rights Committee, General Comment No. 32 (CCPR/C/GC/32, 23 August 2007), para 55.

(10) CCPR/C/KOR/QPR/5, 21st August 2019, para 21.

(11) CCPR/C/KOR/5, paras 170 and 171. (The Human Rights Committee is not due to examine the report until after the forthcoming UPR Session.)

(12) Ibid, para 174.

(13) A/HRC/37/11, 27th December 2017, paras 94 – 106, inclusive.

(14) A/HRC/28/11, 28th February 2018.

Shincheonji: Why the Korean Supreme Court dismissed a lawsuit based on deceptive evangelism

Overcoming a lower court's decision, the highest court in South Korea ruled that what Shincheonji did was not illegal.

by Massimo Introvigne

Exams in Seoul undertaken by those willing to join Shincheonji.

Bitter Winter (13.01.2023) - Shincheonji is a Christian new religious movement based in South Korea, whose name is known to many internationally because it was accused in 2020 of spreading COVID-19 in its home country by violating health regulations. Although few non-Korean media reported it, first degree and appeal judges, and finally the Supreme Court of Korea on August 12, 2022, found that Shincheonji and its leader, Chairman Lee Man Hee, had not violated any COVID-related regulations, and in fact had "actively cooperated" with health authorities.

Shincheonji has well-organized opponents, as it has been particularly successful in converting members of the politically powerful conservative Korean Protestant churches. They know they can no longer use the COVID argument, the more so because the same conservative churches were often accused of violating themselves the anti-epidemic regulations. However, campaigns against Shincheonji continue, both in Korea and in other countries, including the United Kingdom.

They focus on the accusation of "deceptive" evangelism, which opponents define as "having the potential convert study the doctrine of Shincheonji under the guise of cultural experience programs or Bible studies [without disclosing the name Shincheonji], and having Shincheonji members who are hiding their identities stay by the subjects' side while they are receiving the education, and until they are fully indoctrinated."

Interestingly, before COVID, Shincheonji members, when interviewed by scholars, did not deny that a certain amount of dissimulation was at work in their proselytizing activities. They claimed that this was needed because of the massive anti-cult campaigns targeting Shincheonji and the hostile attitude of most Korean media.

There was also, Shincheonji members claimed, a Biblical justification for this behavior. Apostle Paul in 1 Thessalonians 5:2 prophesied that, at his second coming, Jesus will come

"as a thief in the night." Shincheonji interpreted Paul's passage to the effect that the "harvesting" in the last days (i.e. in our time) will be exceedingly difficult due to organized opposition, and some dissimulation will be justified.

On the other hand, already before COVID, Shincheonji members were conscious that "covered evangelism" perpetuated a vicious circle. It was mentioned by opponents as evidence that Shincheonji is a devious, deceptive "cult," generating more hostile media coverage and, in the eyes of the devotees, the need for an even more cautious approach. For these reasons, the movement is now moving to "open evangelism," using the name Shincheonji from the very first contact with potential converts.

That this is the case is recognized also by Shincheonji's opponents. Australia and New Zealand are countries where the movement is present and has also encountered a strong opposition. Peter Lineham, a scholar from New Zealand who is critical of "cults" and Shincheonji, acknowledged in an interview of July 7, 2022, that, "This was a group that had previously operated under cover names, and now the advertisements are very boldly Shincheonji. It was very clear who that was and no disguise whatsoever… This is a distinct change of strategy to openly proclaim who they are."

The issue may thus soon become moot but will probably remain for years a pillar of anti-Shincheonji propaganda. Again, non-Korean media did not cover at all another decision of the Supreme Court of Korea dated August 11, 2022, i.e., one day before the one exonerating Chairman Lee from the COVID-related charges, which declared that "covered" evangelism as practiced by Shincheonji cannot generally be regarded as illegal. Yet, the decision is very important, both for Shincheonji and for controversies about groups labeled as "cults" in general.

A Founding Day service of Shincheonji (2019).

I published in 2020 a comment about the lower court's decision of January 14, 2020, that was the subject matter of recourses to the Supreme Court both by Shincheonji and its opponents. The case concerned the so-called "youth group," i.e., three former members

of Shincheonji I would call for the sake of privacy X, Y, and Z. They all claimed they had been recruited through the deceptive tactic of "covered evangelism."

They argued that membership in Shincheonji caused to them significant material and moral damages, as they spent time for the movement without pay, and experienced painful conflicts with their families. They sued both the Central Shincheonji Church and the Matthias Tribe of Shincheonji (which is divided into "tribes" for organizational purposes) seeking damages.

The lower court rejected all claims by X and Y, and asked them to pay the corresponding legal expenses. The court regarded X's claims as "groundless," considering that, when he joined Shincheonji, his daughter was already a member and a full-time worker for the church. That he could have been deceived, and had not recognized that the movement he was evangelized into was Shincheonji, was therefore not believable. Y's claims were also dismissed as "difficult to believe," particularly with respect to damages suffered, as the court found that he did not devote to Shincheonji an amount of time preventing him from pursuing other interests and careers.

On the other hand, the court accepted some of the claims by Z, the ex-member who had remained in Shincheonji for the longer period, more than six years, four of them spent working for the movement full-time, although it awarded as damages to be paid by the central Shincheonji Church and the Matthias Tribe only 5 million Won ($4,173), a small fraction of what he had asked.

As I mentioned in my 2020 comment, while the damages awarded were little more than symbolic, the court's indictment of "covered evangelism" was problematic both from a factual and a legal point of view. Factually, the lower court failed to consider that deception cannot be maintained for long. Pretty soon, the potential convert is exposed to the peculiar doctrines of Shincheonji, including that its founder, Chairman Lee Man Hee, is the "promised pastor" appointed by God to lead humanity into the Millennium. Even the dumbest recruits will understand which group they are dealing with.

One is not baptized into Shincheonji, and members proudly proclaim that theirs is the only religion one joins by graduating after an exam. The exam, which many fail and is by no means a mere formality, comes after a demanding course, and includes 300 questions candidates should answer in writing. They include all the most typical and peculiar doctrines of Shincheonji. This means that it is impossible to become a member of Shincheonji without understanding what the movement is all about.

An artistic rendering of Shincheonji's New Jerusalem.

The lower court's decision seemed to accept old-fashioned model of brainwashing, dismissed since the past century by courts in other countries as not being part of accepted science, and being based on a somewhat naïve model of religious conversion.

The Supreme Court first addressed a technical matter and decided that the Matthias Tribe consistently operated as a branch and under the control of the central Shincheonji Church. As a result, the lower court erred in assessing damages against the Matthias Tribe as well, since only the central Shincheonji Church had passive capacity as a party in the case.

Coming to the substance of the matter, the Supreme Court confirmed the lower court 's judgement against X and Y, and in favor of Shincheonji. On the other hand, it reversed the lower court's finding that had been in favor of Z. The Supreme Court found in favor of Shincheonji also in the case of Z.

The Supreme Court agreed on the lower court's reconstruction of the facts. Z had been approached by two Shincheonji members who started discussing religious matters with him and had started "receiving gospel classes" together with other students who concealed from him the fact that they were members of Shincheonji. Because of these circumstances, the lower court accepted Z's claim that he had been "deprived of his free will" and manipulated into joining Shincheonji.

The Supreme Court disagreed. It started from the general premise that freedom of religion includes the freedom to organize a religious organization's missionary activities as it deems fit. "Freedom of religion, the judges wrote in their unanimous decision, includes the freedom of mission to promote one's religion and gather new believers, and the freedom of mission includes freedom to criticize other religions or to encourage conversion of believers of other religions."

It is true, the Supreme Court said, that this freedom is not unlimited. If an act by a missionary "goes to the extent that it causes the other parties to lose their freedom to

choose their religion, it can constitute an illegal act." However, these limits to the freedom of proselytization should be judged conservatively, to make sure that religious liberty is not unduly restricted.

Worship at the Shincheonji headquarters in Gwacheon.

In case of "covered" evangelism where the name of the group to which the missionaries belong is not disclosed, whether the converts lost their freedom of religion making the missionary strategy illegal is a question, the Supreme Court said, that can only be "determined individually and specifically, by considering the age of the other party, educational background, social experience including prior religious life, the relationship between the missionary and the other party, the circumstances in which the other party chose the religion, and the changes in attitude or life before and after the other person chose the religion."

In the case of Z, an examination of all circumstances led the Supreme Court to conclude that, while what the Shincheonji missionaries did "can be viewed as an act deserving social and ethical condemnation," it cannot be declared to be illegal nor to have caused **d**amages to the convert. The Supreme Court observed that, as it might have been expected, pretty soon, although not instantaneously, after having been invited to gospel classes without been told the name of the religious movement organized them, Z clearly understood that it was Shincheonji.

However, he "did not stop studying the doctrine of Shincheonji" at that stage, and there is no evidence that he was forced to continue his study. On the contrary, the Supreme Court said, he "received additional central education programs for 6 months and then joined the Shincheonji Church of Jesus [..], and engaged in religious activities as a member for about 1 year and 6 months."

There is no evidence that he "suffered unexpected financial disadvantages or serious issues in his daily life due to the Shincheonji Church of Jesus before and after joining the church. Considering the plaintiff's age, occupation, social life, prior religion, religious activities, and the process by which he gained a thorough understanding of the doctrines of the

Shincheonji Church of Jesus as well as the circumstances that led to his joining, we can conclude, the Supreme Court judges states, that, even if some deceptive acts were involved in the early stages of the missionary process of defendants […], plaintiff [Z] did not lose the right to choose freely a religion he believed in."

In conclusion, the Supreme decided that "covered evangelization" as practiced by Shincheonji in the cases examined may perhaps be regarded as "deserving social or ethical condemnation," but lacks the "coercive element" that would make it illegal.

It is an important decision, not only for South Korea, as it closes one window through which discredited theories of "brainwashing" may re-enter the legal debate and be used to discriminate against religious minorities.

Wisely, while hailing the decision as a victory for religious liberty, in a press release Shincheonji commented that "regardless of this ruling, Shincheonji Church of Jesus will listen more closely to the concerns of our society, and we will do our best to become a church that all members of society can trust." There is in fact no reason to change the current move from "covered" to "open" evangelism, whose benefits for Shincheonji may clearly outweigh costs.