

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right to privacy; and the Special Rapporteur on freedom of religion or belief

REFERENCE:
AL KOR 2/2018

28 May 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right to privacy; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 34/18, 37/2 and 31/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the continued criminalization of conscientious objection in South Korea.

During the third cycle of the United Nations Universal Periodic Review for South Korea in 2017, 13 recommendations were made by 12 states on the issue of conscientious objection. At the adoption of the report on 15 March 2018, the Government accepted one recommendation involving to consider releasing conscientious objectors who have been imprisoned, and to consider removing the corresponding charges on their criminal records.

Concerns related to the criminalization of conscientious objection was raised in a communication by the Special Rapporteur on freedom of religion on 11 December 2015 (reference number KOR 4/2015). We thank your Excellency's Government for the reply of 24 February 2016.

According to the information received:

Military service remains compulsory for South Korean men and most are conscripted in their early 20s.

As of the end of February 2018, there was an estimated minimum of over 250 South Korean conscientious objectors imprisoned in South Korea. Many conscientious objectors reportedly face economic and social disadvantages that last beyond their typical 18-month jail term. These disadvantages include limited options for employment due to their criminal record that bars them from entering public service. In addition, professionals such as lawyers lose their license to practice law.

There has been an increase in the number of cases pending with a reported approximately 600 hearings pending at courts of first instance and appeal courts.

There are also four cases of appeal against acquittals by the appeals courts pending before the Supreme Court.

There is an increasing number of lower courts across the country that are ruling in favour of men who refuse military service for reasons of conscience. Since 2004, a total of 77 acquittals of conscientious objectors have been handed down by courts.

The National Human Rights Commission of Korea (NHRCK) has been consistently recommending that authorities introduce an alternative to military service for conscientious objectors.

Currently, three bills detailing the introduction of an alternative to military service for conscientious objection with civilian character have been submitted to the National Assembly. None of the bills have progressed to the relevant subcommittee for further deliberation.

The Government has maintained that introducing an alternative service for conscientious objectors would jeopardize national security and undermine social cohesion.

The Ministry of Manpower Administration continues to publish the personal information of conscientious objectors to a public registry despite a 2015 recommendation by the Human Rights Committee not to do so (CCPR/C/KOR/CO/4, para.45). In 2016, the Ministry published the personal information of 237 individuals they termed “draft evaders” on its website, including conscientious objectors. In response, 105 individuals filed a lawsuit with the Seoul Administrative Court which, in May 2017, called for a stay of execution on the publication of their personal information until a final legal decision had been made. However, the personal information of 266 individuals was again published on the Ministry’s website in December 2017.

We welcome the judicial developments that de-criminalize conscientious objectors, but we remain concerned that conscientious objection continues to be criminalized at the legislative level in contravention to the right of every individual to freedom of religion or belief or opinion as set out in articles 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR) to which the Republic of Korea is a State Party. Moreover, we express concern at the practice involving publication of personal information of conscientious objectors in ways that are incompatible with international human rights law, including the right to privacy as set forth in article 17 of the ICCPR.

In addition, we draw the attention of Your Excellency’s Government to General Comment NO.22 issued by the Human Rights Committee (CCPR/C/21/Rev.1/Add.4):

“Many individuals have claimed the right to refuse to perform military service on the basis that such right derives from their freedoms under article 18. In response to such

claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, 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 Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service”.

Furthermore, the Human Rights Committee stated in 2011, in the case *Min-Kyu Jeong et al. v. Republic of Korea* (CCPR/C/101/D/1642-1741/2007), that the failure of the Republic of Korea to offer “an alternative to compulsory military service” violated article 18 of the ICCPR, because it “entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual’s religion or beliefs”.

In October 2015, the Human Rights Committee expressed its concern for the lack of implementation by the Republic of Korea of its recommendations concerning conscientious objectors to military service and called the Republic of Korea to “[i]mmediately release all conscientious objectors condemned to a prison sentence for the exercising their right to be exempted from military service; [...] Ensure that the criminal records of conscientious objectors are expunged, that they are provided with adequate compensation and that their information is not publicly disclosed; and [...] Ensure the legal recognition of conscientious objection to military service, and provide conscientious objectors with the possibility to perform an alternative service of civilian nature.”

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comments you may have on the above-mentioned allegations
2. Please indicate how the criminalization and imprisonment of young Korean men for conscientious objection is consistent with the Republic of Korea’s international human rights obligations, including under the ICCPR.

3. Please indicate the current status of the legislative proposals regarding the introduction of an alternative to military service.
4. Please provide information about the legal basis for publishing the personal information of conscientious objectors to a public registry, in contravention with the 2015 recommendation by the Human Rights Committee.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Joseph Cannataci
Special Rapporteur on the right to privacy

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief