

**International Covenant on  
Civil and Political Rights**Distr.: General  
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**Human Rights Committee****Communication No. 1786/2008****Views adopted by the Committee at its 106th session  
(15 October to 2 November 2012)**

<i>Submitted by:</i>	Jong-nam Kim et al. (represented by counsels, André Carbonneau and Hana Lee)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	The Republic of Korea
<i>Date of communication:</i>	15 January, 16 January and 25 April 2008 (initial submissions)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 April 2008 (not issued in a document form).
<i>Date of adoption of Views:</i>	25 October 2012
<i>Subject matter:</i>	Alternative to compulsory military service; conscientious objection
<i>Substantive issue:</i>	Right to freedom of thought, conscience and religion.
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Article of the Covenant:</i>	18, paragraph 1
<i>Article of the Optional Protocol:</i>	5, paragraph 2 (b)

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (106th session)**

Concerning

#### **Communication No. 1786/2008\***

*Submitted by:* Jong-nam Kim et al. (represented by counsels, André Carbonneau and Hana Lee)

*Alleged victims:* The authors

*State party:* The Republic of Korea

*Date of communication:* 15 January, 16 January and 25 April 2008 (initial submissions)

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting* on 25 October 2012,

*Having concluded* its consideration of communication No. 1786/2008, submitted to the Human Rights Committee on behalf of Jong-nam Kim et al. under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the authors of the communication, and the State party,

*Adopts* the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The authors of the communication are 388 persons,<sup>1</sup> all nationals of the Republic of Korea. They claim to be victims of a violation by the State party of their rights under article

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\* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

An individual (concurring) opinion signed by Committee member Mr. Michael O'Flaherty is appended to the present views.

An individual (concurring) opinion signed by Committee member Mr. Walter Kälin is appended to the present Views.

An individual (concurring) opinion signed by Committee members Mr. Gerald Neuman and Mr. Yuji Iwasawa is appended to the present Views.

An individual (concurring) opinion signed by Committee member Mr. Fabián Omar Salvioli is appended to the present Views.

18, paragraph 1, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 10 April 1990. The authors are represented by counsels André Carbonnier and Hana Lee.

### **The facts as presented by the authors**

2.1 All 388 authors are Jehovah's Witnesses who have been sentenced to 18 months of imprisonment each for refusing to perform compulsory military service due to their religious beliefs.<sup>2</sup> Sixteen authors appealed their first-instance sentences to the Supreme Court of Korea, which refused to recognize their rights as conscientious objectors. The authors note that Supreme Court of Korea, on 15 July 2004, and the Constitutional Court of Korea, on 26 August 2004, decided that conscientious objectors must serve in the army or face prison terms. In a ruling, the Constitutional Court rejected a constitutional challenge to article 88 of the Military Service Act on the grounds of incompatibility with the protection of freedom of conscience, as proclaimed under the Korean Constitution. The Court stated, *inter alia*, that:

“the freedom of conscience, as expressed in Article 19 of the Constitution, does not grant an individual the right to refuse military service. Freedom of conscience is merely a right to make a request to the State to consider and protect, if possible, an individual's conscience, and therefore is not a right that allows for the refusal of one's military service duties for reasons of conscience, nor does it allow one to demand an alternative service arrangement to replace the performance of a legal duty. [...]”

2.2 The authors claim that since the highest courts of Korea had already rendered a final decision on the issue, any further appeal would be ineffective.

2.3 The authors state that since the decisions of the Supreme and Constitutional courts, some 600 to 700 conscientious objectors have been sentenced and imprisoned for refusing to bear arms. Others are convicted and imprisoned each month.

### **The complaint**

3. The authors claim that the absence of an alternative to compulsory military service in the State party amounts to a violation of their rights under article 18, paragraph 1, of the Covenant. They refer to the Committee's Views in communications Nos. 1321 and 1322/2004, *Yoon and Choi v. the Republic of Korea*, adopted on 3 November 2006, in which the Committee concluded that the State party had breached article 18, paragraph 1, of the Covenant, on the basis of identical facts as those in the present communication, and the State party was requested to provide the authors with an effective remedy.

### **State party's observations on admissibility and merits**

4.1 By note verbale of 14 November 2008, and with reference to the Committee's Views of 3 November 2006 in *Yoon and Choi v. the Republic of Korea*, the State party requests the Committee to reconsider its decision, taking into account the security environment in the Korean peninsula. Concretely, regarding the Committee's observation in its previous Views that “an increasing number of States parties to the Covenant, which have retained compulsory military service, have introduced alternatives to compulsory

<sup>1</sup> The list of authors is annexed to the present Views.

<sup>2</sup> All the authors declare that they had received their draft notices to perform military service between September 2004 and May 2007. All the authors were sentenced, between February 2006 and February 2008, to 18 months' imprisonment.

military service,” the State party points out that the legal systems of Germany and Taiwan, countries which have introduced alternative service, are quite different from its own. The State party also notes that Taiwan has not been at war, while the Korean War was fought across the Korean peninsula and lasted for three years and one month from 1950 to 1953, when a cease-fire agreement was finally signed. The war left one million dead from the south, and more than 10 million Koreans were separated from their families. The State party submits that the cease-fire agreement is still effective in the State party, which distinguishes it from other countries. The agreement has not yet been superseded by a new legal framework, such as a declaration to end the war or a peace agreement to ensure non-aggression and peace, despite continued efforts to this end. In the State party’s view, the security environment is not comparable to that of either Germany or Taiwan, as it shares a border with the Democratic People’s Republic of Korea (DPRK) which spans 155 miles.

4.2 As to the Committee’s contention that “the Republic of Korea has failed to show what special disadvantage would be involved for it if the rights of the authors under article 18 were fully respected,” the State party submits that conscientious objection or the introduction of an alternative service arrangement is closely linked to national security, which is the very prerequisite for national survival and the liberty of the people. It fears that introduction of an alternative to military service would jeopardize national security.

4.3 According to the State party, there have always been those who are intent on evading conscription due to the relatively challenging conditions often required in the military, or concerned over the effect such an interruption will have on one’s academic or professional career. Thus, it is even more necessary to maintain the current policy of no-exception to military service so as to ensure sufficient ground forces. The State party adds that if it were to accept claims of exemption from military service, in the absence of public consensus on the matter, it would be impeded from securing sufficient military manpower required for national security by weakening the public’s trust in the fairness of the system, leading the public to question its necessity and legitimacy. Thus, for the State party, the recognition of conscientious objection and the introduction of alternative service arrangements should be preceded by a series of measures: stable and sufficient provisions of military manpower; equality between people of different religions as well as those with no religion; in-depth studies on clear and specific criteria for recognition of an exemption and consensus on the issue among the general public.

4.4 As to the Committee’s argument that “respect on the part of the State for conscientious beliefs and manifestations thereof is itself an important factor in ensuring cohesive and stable pluralism in society,” the State party is of the view that as a unique security environment prevails, fair and faithful implementation of mandatory military service is a determining factor to secure social cohesion. Respect for conscientious beliefs and its manifestations cannot be enforced through the implementation of a system alone. It is sustainable only if general agreement on the issue is achieved. Public opinion polls conducted in July 2005 and in September 2006 showed that 72.3 per cent and 60.5 per cent, respectively, expressed opposition to the recognition of alternative service for conscientious objectors.

4.5 The State party submits that it is very difficult to set up an alternative service in practice, guaranteeing equality and fairness between those performing military and those performing alternative service. The majority of the soldiers in the State party perform their duties under difficult conditions and some are involved in life-threatening situations. They face the risk of jeopardizing their lives while performing their duty of defending the country. Indeed, six people died and 19 were wounded in the clash between South and North naval vessels in the Yellow Sea in June 2002. Thus, it is almost impossible to ensure equality of burden with those fulfilling military service and those performing an alternative one.

4.6 The State party regrets that upon its accession to the Covenant on 10 April 1990, the Committee had not provided a clear position on whether conscientious objection fell within the ambit of article 18. It was only on 30 July 1993, in its general comment No. 22 that the Committee announced its position that failure to recognize conscientious objection constituted a breach of this provision. The State party points out that both its Supreme and Constitutional Courts had ruled that the failure to introduce a system at the present time cannot be interpreted as a breach of the Covenant, and that the requisite article of the Military Service Act which punishes conscientious objectors is in conformity with the Constitution.

4.7 The State party adds that from April 2006 to April 2007, the Ministry of Defence had set up a “Joint Committee between the public and private sectors to research the alternative service system.” The Committee conducted research on the possibility of revising the Military Service Act and introducing an alternative service system, including prospects for the future demand and supply of military personnel, the statements of those who refused military service, the opinions of experts in this field and relevant cases of foreign countries.<sup>3</sup>

4.8 In addition, in September 2007, the authorities announced a plan to introduce a system assigning social services to those who refuse conscription due to their religious beliefs, once there is a “public consensus” on the issue. The State party indicated that once such consensus is reached, “as a result of the research on public opinion and positions of the relevant Ministries and institutions,” it would consider introducing an alternative service system. In conclusion, it requests the Committee to reconsider its previous view on this matter, in the light of the arguments presented.

#### **Authors’ comments**

5.1 In their comments dated 23 February 2009, the authors note that their claims are identical to those in communications Nos. 1321 and 1322/2004 submitted by Yoon Yeobum and Choi Myung-jin,<sup>4</sup> in which the Committee found a violation of article 18 of the Covenant. The authors deplore the State party’s failure to implement its national action plan for conscientious objection.

5.2 With respect to the State party’s argument on the necessity to preserve national security, the authors note that countries like the United Kingdom of Great Britain and Northern Ireland, the Netherlands, Norway, Denmark or Russia had all adopted laws recognizing the rights of conscientious objectors during war time. There is no evidence that those laws weakened the States’ national security. Another example is the State of Israel, which, since 1948, has been involved in military confrontations that have resulted in a much higher number of casualties than those the Republic of Korea has experienced over the last 50 years. The State of Israel, nevertheless, exempts conscientious objectors from military service. The authors conclude that recognition of conscientious objection does not compromise a country’s national security.

5.3 The authors further contend that the current number of conscientious objectors in the State party amounts to two per cent of those enlisted for military service each year; this number is not high enough to have any type of influence on the ability of the State party to defend itself. They further note that conscientious objectors do not serve the army, but spend time in prison, which, in their view, suggests that the State party’s refusal to recognize conscientious objectors and to allow alternative service has not contributed to

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<sup>3</sup> The State party has not provided any indication of the results of this research.

<sup>4</sup> Communications Nos. 1321 and 1322/2004, *Yoon and Choi v. the Republic of Korea*, Views adopted by the Committee on 3 November 2006.

improving or maintaining its national security. As for the State party's fear that recognizing the right to conscientious objection would lead to an increase in requests from Buddhists, Catholics, and others from the Christian faith, the authors contend that there is no record in any country which has introduced alternative service for conscientious objectors of a substantial increase in requests for exemption from the ranks of Buddhists, Catholics and others from the Christian faith.

5.4 With regard to State party's argument of the alleged necessity to preserve social cohesion, the authors reply by quoting a United States of America Supreme Court ruling of 1943, in which it was considered that fundamental freedoms do not depend on the outcome of elections.<sup>5</sup> The authors argue that public opinion cannot excuse a breach of the Covenant, or of the State party's own Constitution. The State party's Constitution protects fundamental rights, including the right to freedoms of conscience and religion. Thus, domestic law, which includes the Covenant, protects such rights and therefore protects the authors' right to conscientious objection. The authors, further contend that reliance on public polls can be misleading; on 18 September 2007, when the Ministry of Defence announced that it had decided to introduce alternative civilian service for conscientious objectors, it made reference to a poll showing that 50.2 per cent of the population consented to the introduction of an alternative to military service. The authors quote two other polls showing a similar trend.

5.5 As for the State party's argument that when it acceded to the Covenant, the Committee had not yet issued its general comment No. 22 broadening the scope of article 18 to the right to conscientious objection, the authors point out that subsequent to the State party's accession to the Covenant, it became a member of the then Human Rights Commission, which adopted resolutions on the rights of conscientious objectors in 1993, 1995, 1998, 2000, 2002 and 2004. The State party did not object to any of them.

5.6 On 16 January 2012, the authors inform the Committee that in two judgements of 30 August 2011, the Constitutional Court stated the following:

“[...] no article in the Covenant, including article 18, explicitly mentions a right to conscientious objection as one of the basic human rights [...]. The interpretation of the Committee [...] is merely a recommendation to its States parties, but is not legally binding [...]. Therefore, the Covenant does not automatically mean the recognition of the right to conscientious objection, nor does it exercise legally binding effect upon conscientious objection.”<sup>6</sup>

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

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<sup>5</sup> Supreme Court of the United States, *West Virginia State Board of Education et al. v. Barnette et al.*, 319 U.S. 624, 639 (1943).

<sup>6</sup> Constitutional Court of Korea, case 2008 Hun Ga 22, 2009 Hun Ga 24, 2010 Hun Ga 16, 2009 Hun Ga 7, 2010 Hun Ga 37, 2008 Hun Ba 103, 2009 Hun Ba 3 of 30 August 2011, para. 3.3.2.1.; Constitutional Court of Korea, case 2007 Hun Ga 12, 2009 Hun Ba 103 (consolidated) of 30 August 2011, para. 3.4.2.1.

6.2 The Committee notes, as required by article 5, paragraph 2 (a) of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

6.3 The Committee notes that, apart from the 16 authors mentioned in para. 2.1 above, the majority of the authors have not appealed the judgements of the respective District Courts on the basis that any appeal would have been ineffective. The Committee notes the authors' contention that both the Supreme Court of Korea, on 15 July 2004, and the Constitutional Court, on 26 August 2004, as well as most recently on 30 August 2011, decided that conscientious objectors must serve in the army or face prison terms; and since the highest jurisdictions had made a final decision on the issue, any further appeal would be futile. Taking into account the authors' arguments, and in absence of any objection by the State party in this connection, the Committee considers that it is not precluded by the provisions of article 5, paragraph 2 (b), of the Optional Protocol, from examining the present communication.

6.4 The Committee considers that the authors have sufficiently substantiated their claims, for purposes of admissibility; it declares the communication admissible under article 18, paragraph 1, of the Covenant, and proceeds to its consideration of the merits.

#### *Consideration of the merits*

7.1 The Human Rights Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the authors' claim that their rights under article 18, paragraph 1, of the Covenant have been violated, due to the absence in the State party of an alternative to compulsory military service and, as a result, they were prosecuted and imprisoned. The Committee notes that in the present case, the State party reiterates the arguments advanced in response to similar earlier communications<sup>7</sup> before the Committee, notably on the issues of national security, equality between military and alternative service and lack of a national consensus on the matter. The Committee considers that it has already examined these arguments in its earlier Views,<sup>8</sup> and finds no reason to depart from its earlier position.

7.3 The Committee recalls its general comment No. 22 (1993), in which it considers that the fundamental character of the freedoms enshrined in article 18, paragraph 1, of the Covenant is reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4, paragraph 2, of the Covenant. Although the Covenant does not explicitly refer to a right of conscientious objection, the Committee reaffirms its view that such a right derives from article 18, inasmuch as the obligation to be involved in the use of lethal force may seriously conflict with the freedom of conscience.<sup>9</sup> The Committee further notes that freedom of thought, conscience and religion embraces the right not to declare, as well as the right to declare, one's conscientiously held beliefs. Compulsory military service without possibility of alternative civilian service implies that a person may be put in a position in which he or she is deprived of the right to choose whether or not to declare his or her conscientiously held beliefs by being under a legal

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<sup>7</sup> Communications Nos. 1321 and 1322/2004, *Yoon and Choi v. the Republic of Korea*, Views adopted by the Committee on 3 November 2006; communications Nos. 1593-1603/2007, *Jung et al. v. the Republic of Korea*, Views adopted by the Committee on 23 March 2010.

<sup>8</sup> *Ibid.*

<sup>9</sup> See for example, communications Nos. 1642-1741/2007, *Jeong et al. v. the Republic of Korea*, Views adopted by the Committee on 24 March 2011.

obligation, either to break the law or to act against those beliefs within a context in which it may be necessary to deprive another human being of life.

7.4 The Committee therefore reiterates that the right to conscientious objection to military service is inherent to the right to freedom of thought, conscience and religion. It entitles any individual to exemption from compulsory military service if the latter cannot be reconciled with the individual's religion or beliefs. The right must not be impaired by coercion. A State party may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside of the military sphere and not under military command. The alternative service must not be of a punitive nature, but must rather be a real service to the community and compatible with respect for human rights.<sup>10</sup>

7.5 In the present case, the Committee considers that the authors' refusal to be drafted for compulsory military service derives from their religious beliefs which, it is uncontested, were genuinely held, and that the authors' subsequent conviction and sentence amounted to an infringement of their freedom of conscience, in breach of article 18, paragraph 1, of the Covenant. Repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibit the use of arms, is incompatible with article 18, paragraph 1, of the Covenant.<sup>11</sup>

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, concludes that the facts before it reveal, in respect of each author, violations by the Republic of Korea of article 18, paragraph 1, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including expunging their criminal records and providing them with adequate compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future, which includes the adoption of legislative measures guaranteeing the right to conscientious objection.

10. Bearing in mind that by becoming a party to the Optional Protocol the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's present Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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<sup>10</sup> See for example, communications Nos. 1853 and 1854/2008, *Atasoy and Sarkut v. Turkey*, Views adopted by the Committee on 29 March 2012, para. 10.4.

<sup>11</sup> See for example, communications Nos. 1642-1741/2007, *Jeong et al. v. the Republic of Korea*, Views adopted on 24 March 2011.



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**Appendix 1**

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1. Jong-nam Kim	195. Dae-ho Shin
2. Hyun-suk Kang	196. Jae-gul Yoon
3. Ue-dong Jeong	197. Hyo-jae Choi
4. Hyun-ju Shin	198. Tae-ho Eom
5. Jun-tae Park	199. Tae-hyun Hwang
6. Seung-tae Kim	200. Sung-young Kim
7. Joon-ho Seok	201. Jae-min Seol
8. Hee-won Choi	202. Sang-yeon Won
9. Yang-ho Jung	203. Chung-won Jeong
10. Jung-hoon Kwon	204. Don-bum Joh
11. Su-min Park	205. Chang-hwan Kim
12. Jun-won Seok	206. Su-won Lee
13. Seul-gi Hong	207. Young-bin Oh
14. Bong-june Kim	208. Jin-bum Park
15. Hyung-chan Kim	209. Dong-hwan Kim
16. Hyun-je Kim	210. Sol Kim
17. Yeo-ma-ye Na	211. Byeong-joo Ko
18. Jae-il Hong	212. Jung-ho Lee
19. Hyung-won Kang	213. Byung-hyun Oh
20. Kyung-hee Jo	214. Sung-ryong Oh
21. Da-woon Jung	215. Ki-soo Song
22. Tae-song Kim	216. Sung-hyun Yoon
23. Kyu-dong Park	217. Sung-wan Go
24. Geon-uk Kim	218. Se-hee Han
25. Sul-ki Kwon	219. Joon-tae Hwang
26. Gyeong-su Park	220. Deuk-soo Kim
27. Chan-ho Eom	221. Hyo-sung Kim
28. Bit Han	222. Jae-won Kim
29. Soon-hyun Hwang	223. Pil-young Kim
30. Jae-ha Lee	224. Tae-won Kim
31. Hyung-ju Kang	225. Sung-hun Ko
32. Jun-seok Oh	226. Jeong-tae Lee
33. Jung-hyun Seo	227. Su-hyeon Park

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34. Jae-chul Chung	228. Hye-gang Seo
35. Sung-il Jang	229. Sung-yub Jung
36. Ki-yong Kim	230. Dae-hyun Kang
37. Dong-il Song	231. Ja-won Kim
38. Hyun-sung Ha	232. Jung-woo Kim
39. Sung-min Chung	233. Kyung-min Kim
40. Min-jae Kim	234. Hae-joon Kwon
41. Byong-oh Ko	235. Sang-suk Lee
42. Sun-il Kwon	236. Ji-yun Park
43. Young-nam Choi	237. Young-jae Park
44. Ji-won Min	238. Young-wook Park
45. Yeo-reum Yoon	239. Dong-in Seon
46. In-hee Kim	240. Ji-min Ham
47. Jeong-hun Ko	241. Yoon-suk Kim
48. Tae-ik Kwan	242. Kwang-eun Lee
49. Jin-woong Kim	243. Hee-min Park
50. Ki-bok Sung	244. Neong-kul Park
51. Sang-il Ma <sup>12</sup>	245. Seong-il Park
52. Kyong-nam Choi <sup>13</sup>	246. Sung-yoon Park
53. Seul-gi Lee <sup>13</sup>	247. Jun-sub Shim
54. Jin-taek Choi <sup>13</sup>	248. O-nam Song
55. Yun-taek Hong <sup>13</sup>	249. Hyun-woo Choi
56. Eun-sang Lee <sup>13</sup>	250. Il-jung Jo
57. Young-il Jang <sup>13</sup>	251. Jeong-duk Kim
58. Chang-yang Jung	252. Seung-woo You
59. Jin-geun Kim	253. Tae-jong Yu
60. Seon-kyum Kim	254. Hyun Baek
61. Min-kyu Park	255. Cheong-won Bang
62. Do-in Jun	256. Sung-kook Jo
63. Kyu-myung Jung	257. Hong-won Kim
64. Min-spp Kang	258. Sang-goo Lee

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<sup>12</sup> Messrs. Sang-gil Ma, Kyong-nam Choi, Seul-gi Lee, Jin-taek Choi, Yun-taek Hong, Eun-sang Lee, Young-il Jang, Won-il Ji, Kwang-hyun Kim, Seoung-ho Choi, Hyoung-mo Jeong, Ji-woong Kim, Yong-hun Jeung, Gang-hee Lee, Jin-woo Lee and Byoung-kwan Park were sentenced to 18 months' imprisonment by the lower court. Their appeals were rejected by the Court of Appeal and the Supreme Court.

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65. Yeong-chang Yu	259. Sung-won Lee
66. Sung-hyun Son	260. Mun-gye Min
67. Suk-dong Kim	261. Han-gyol Soun
68. Doc-ho Her	262. Jun Yu
69. Yang-hyun Ko	263. Kyeong-tae Kang
70. Jung-woo Hong	264. Han-gil Lee
71. Kyoung-soeb Lee	265. Kyoung-jun Lee
72. Min-kyu Lee	266. Heung-soo Reu
73. Jun-cheol Yoon	267. Gyo-sik Bae
74. Jong-min Jang	268. Seung-sik Bae
75. In-goon Kim	269. She-Young Kim
76. Myeong-seob Kim	270. Seung-gwan Back
77. Sung-ho Kim	271. Ki-hoon Choi
78. Yong Kim	272. Chang-hoon Jeon
79. Young-joon Kwon	273. Seung-hwan Kim
80. Hee-sung Lee	274. Dong-yoon Lee
81. Joo-min Park	275. Sung-min Park
82. Jung-joo Park	276. Jun-ho Son
83. Hyun-dong Yang	277. Seong-ki Jung
84. See-won Kim	278. Yong-hwa Kim
85. Oh-hyun Kwon	279. Gang-geon Lee
86. Jue-hune Park	280. Jung-geun Yoo
87. Deok-min Ahn	281. In-jae Han
88. Chung-jeol Lee	282. Ha-rim Min
89. Ho-young Lee	283. Chan-hyuk Joun
90. Jun-young Lee	284. Seok-min Lee
91. Chul-seung Yang	285. Joon-young Ahn
92. Jin-hwang Kim	286. Young-jae Kim
93. Hyun-woo Lee	287. Sun-Pil Hwang
94. Ki-taek Lee	288. Doo-sup Kim
95. Hak-in Oh	289. Hyun-sub Kim
96. Barl-keun Lee	290. Jae-jun Kim
97. Ju-hak Lee	291. Seung-hyun Jung
98. Song-taek Jeong	292. Chung-yeol Choi
99. Ji-won Park	293. Jae-hee Kim

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100. Sung-hyun Choi	294. Dong-hwan Ko
101. Sa-em Park	295. David Shin
102. Jin-gon Kim	296. Sang-hyun You
103. Kwang-nam Kim	297. Dong-geun Kim
104. Tae-hoon Uhm	298. Cheon-ha-tongil Jeon
105. Young-hoon Jang	299. Seung-jin Jeon
106. Woo-jin Jung	300. Hyun-il Jin
107. Myung-jin Kim	301. Chong-jul Kim
108. Sung-gyu Kim	302. Myoung-chul Lee
109. Jun-hyung Cho	303. Yeng-gol Nam
110. Hyuung-duk Jeon	304. Hyung-min Sim
111. Jae-myeong Kim	305. Suk-hun Kang
112. Kyung-hoon Kim	306. Kang-surk Kim
113. Jin-ho Park	307. Jung-kyu Kim
114. Dae-an Kim	308. Kyung-yong Yoon
115. Jae-sung Kim	309. Tae-jae Kim
116. Jeong-hwan Lee	310. Dong-wook Kim
117. Jae-min Lee	311. Keun-hi Choi
118. Jun-yeol Song	312. Tae-jong Park
119. Sung-min Choi	313. Woan-suk Suh
120. Tae-jin Jeon	314. Ji-min Yu
121. Young-il Lim	315. Da-woon Kim
122. Jae-yoon Lee	316. Youl-eui Ko
123. Sang-yoon Lee	317. Byung-joon Lee
124. Jong-chan Shin	318. Byeong-woo Do
125. Jun-cheol Shin	319. Jeong-hun Kim
126. Ji-min Kim	320. Sung-chan Kim
127. Bok-jin Lee	321. Yul-song Lee
128. Sung-geun Lee	322. Ho-sung Son
129. Young-hak Lee	323. Jun-hyuk Kim
130. Jae-won Park	324. Jun-young Kim
131. Ji-ho Yoon	325. Woon-pyo Hong
132. Si-ik Ryu	326. Chul-min Kim
133. Kyeong-ho Lim	327. Dong-soo Park
134. Seung-min Roh	328. Dong-jin Kim

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135. Young-il Cha	329. Sung-mo Kim
136. Young-gwang Son	330. Hyun-sang You
137. Dong-seok Yoon	331. Dong-jun Choi
138. Ji-sang Eun	332. Dong-seon Choi
139. Hang-kyoon Kim	333. Won Huh
140. Jeong-ro Kim	334. Ki-ryang Kim
141. Man-suk Kim	335. Jin-hyuk Lee
142. Jong-min Lee	336. Young-man Kim
143. Ki-bum Uhm	337. Su-won Lee
144. Young-su Kim	338. Su-je Park
145. Jae-hyuck Oh	339. In-chang Park
146. Ji-hoon Park	340. Seung-gyu Choi
147. Ji-chang Jeon	341. Dong-sub Kim
148. Dong-ho Kang	342. Sung-min Choi
149. Hyun-min Lee	343. Sung-woo Cho
150. Jae-hyuk Lee	344. Sung-yup Ha
151. Lee-seok Kang	345. In-kyu Choi
152. Jong-joon Lee	346. Jin-kyu Lee
153. Sung-jin Yoon	347. Kyung-soo Lee
154. Yong-min Jeong	348. Ju-ho Choi
155. Kwang-min Kim	349. Sung-min Joo
156. Geum-dong Lee	350. Yoon-sik Kang
157. Ji-hun Shin	351. Dae-sung Yoon
158. Jin-hak Song	352. Joon-hwee An
159. Sung-geon Ye	353. Seung-ha Bang
160. Kwang-hyun Ahn	354. Sung-jin Han
161. Jun-hyung An	355. Hae-won Lee
162. Bo-ram Han	356. Su-kwang Chae
163. Ho-jin Hwang	357. Hae-nam Jo
164. Jeong-keun Jang	358. Il-joong Lee
165. Nam-ho Kim	359. Jeong-pyo Lee
166. Byoung-oh Ko	360. Min-che Yoon
167. Jong-min Lee	361. In-chan Hwang
168. Kyung-hoon Na	362. Da-Hyung Kim
169. Jung-won Park	363. Sang-wook Yang

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170. Chang-suk Kim	364. Kyung-ho Kim
171. Jin-hee Kim	365. Hyun-jin Lee
172. Hyun-seok Lee	366. Young-ho Son
173. Bok-young Roh	367. So-chul Yoo
174. Jin-myung Yang	368. Ji-hwan Yoon
175. Su-min Kim	369. Jin-sung Lee
176. Sung-sil Kim	370. Jun-ho Bae
177. Tae-hee Lee	371. Sang-il Jung
178. Hyung-min Lim	372. Dong-hyeon Kim
179. Sam Lim	373. Kwang-sung Lee
180. Jin-gi Park	374. Jong-in Lim
181. Jong-hwan Park	375. Ho-young Noh
182. Kyung-bin Park	376. Won-il Ji <sup>13</sup>
183. Kook-chun Seol	377. Kwang-hyun Kim <sup>13</sup>
184. Dong-deuk Sin	378. Seoung-ho Choi <sup>13</sup>
185. Gil-ho Song	379. Hyoung-mo Jeong <sup>13</sup>
186. Sung-pyo An	380. Ji-woong Kim <sup>13</sup>
187. Jun-song Choi	381. Yong-hun Jeung <sup>13</sup>
188. Won-suk Choi	382. Gang-hee Lee <sup>13</sup>
189. Chong-ouk Kim	383. Jin-woo Lee <sup>13</sup>
190. Dong-yun Kim	384. Byoung-kwan Park <sup>13</sup>
191. Doo-il Kim	385. Se-ek You
192. Jae-min Park	386. Jun-sun Shim
193. Ji-hoon Park	387. Hyun-kyu Moon
194. Joon-kyu Park	388. Gook-il Jang

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## Appendix II

### **Individual opinion of Committee member Mr. Michael O'Flaherty (concurring)**

I concur with the majority of the Committee in finding that the facts before the Committee reveal, in respect of each author, violations by the Republic of Korea of article 18, paragraph 1, of the Covenant. However, as I observed in separate opinions in the cases of *Atasoy and Sarkut v. Turkey* and *Jeong et al. v. the Republic of Korea*, the majority of the Committee adopted reasoning that is unconvincing. I consider that the Committee should use the approach that is employed in *Jung et al v. the Republic of Korea*, and earlier cases. I have set out my position, which remains unchanged and will not be repeated here, in my opinions in the *Atasoy and Sarkut* and the *Jeong et al.* cases.

(Signed) Michael O'Flaherty

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## Appendix III

### **Individual opinion of Committee member Mr. Walter Kälin (concurring)**

I agree with the conclusion of the Committee that the State party has violated the rights of the authors under article 18 of the Covenant. The State party has not sufficiently shown that punishing the authors for refusing to perform military service for conscientious reasons and not providing them with the opportunity of an alternative service is a limitation of their right to manifest their belief as protected by article 18, paragraph 1, of the Covenant that is justified and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others in accordance with paragraph 3 of said provision. Therefore, the case should have been decided on the same basis as communications Nos. 1321 and 1322/2004.<sup>1</sup>

I continue to have serious doubts as to the reasoning the majority adopted in *Atasoy and Sarkut v. Turkey*,<sup>2</sup> and further developed in this case. In paragraph 7.3, the majority recalls paragraph 11 of the Committee's general comment No. 22 (1993) by highlighting that the right of conscientious objection is derived "from article 18, inasmuch as the obligation to be involved in the use of lethal force may seriously conflict with the freedom of conscience," and noting "that freedom of thought, conscience and religion embraces the right not to declare, as well as the right to declare, one's conscientiously held beliefs". It concludes that compulsory military service without possibility of alternative civilian service forces a person to declare his or her conscientiously held beliefs in violation of that freedom.

This reasoning is problematic in several regards. The majority's reference to general comment No. 22 is incomplete as there, the Committee accepted that "the obligation to use lethal force may conflict with the freedom of conscience *and* the right to manifest one's religion or belief" (emphasis added). With the latter reference (deleted by the majority) the Committee indicated that conscientious objection is based on two elements: strong conviction that performing military service is incompatible with the demands of conscience and the manifestation of this conviction by actually refusing to join the armed forces. While it is true that the freedom of thought, conscience and religion absolutely prohibits forcing anyone to divulge his or her inner convictions, the right to manifest such conviction in words or deeds may be limited under article 18, paragraph 3, of the Covenant. By disregarding the fundamental distinction made by article 18 between these two rights, the majority seems to assume that certain conscientious decisions, including the one not to perform military service, are privileged insofar as their manifestation deserves the absolute protection of the freedom of thought, conscience and religion. This approach implies that other convictions may not be worthy of such protection. Would the majority provide absolute protection to persons conscientiously refusing to pay taxes or to provide their children with any kind of education? If no, what are the criteria to distinguish between manifestations of conviction worthy of absolute protection and those expressions of one's beliefs that may be limited?

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<sup>1</sup> Communications Nos. 1321 and 1322/2004, *Yoon and Choi v. the Republic of Korea*, Views adopted by the Committee on 3 November 2006.

<sup>2</sup> See communications Nos. 1853 and 1854/2008, *Atasoy and Sarkut v. Turkey*, Views adopted on 29 March 2012, Individual opinion of Committee member Mr. Gerald L. Neuman, jointly with Mr. Yuji Iwasawa, Mr. Michael O'Flaherty and Mr. Walter Kälin (concurring).



The majority's approach dilutes and, in the long run, risks jeopardizing the very core meaning of the freedom of conscience, namely that the *forum internum* must be protected absolutely, even in the case of thoughts, conscientious convictions and beliefs considered offensive or illegitimate by authorities or public opinion. Freedom at its most basic level would be undermined if we would allow the State to assess what we think, feel and belief, even where we do not manifest these inner convictions.

Finally, it is difficult to understand the majority's assumption that the possibility of alternative civilian service would not force a person to declare his or her conscientiously held beliefs. Indeed, as long as such service would only be open to conscientious objectors, they would be required to explain why they are not in a position to perform military service. The absolute right not to be compelled to reveal one's thoughts or belief is the right to remain silent and not the right to raise claims vis-à-vis the State (here, to be exempted from military service) without giving any reasons.<sup>3</sup>

(Signed) Walter Kälin

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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<sup>3</sup> Communications Nos. 1321 and 1322/2004, *Yoon and Choi v. the Republic of Korea*, Views adopted by the Committee on 3 November 2006.

## Appendix IV

### **Individual opinion of Committee members Mr. Gerald L. Neuman and Mr. Yuji Iwasawa (concurring)**

We concur on the Committee's conclusion that the State party has violated the rights of the authors under article 18 of the Covenant, but for somewhat different reasons than those given by the majority. In paragraphs 7.3 and 7.4 of its Views, the majority continues the recent trend in its jurisprudence that considers the right to conscientious objection to military service as part of the absolutely protected right to hold a belief, rather than as part of the right to manifest a belief in practice, which is subject to limitation under paragraph 3 of article 18. For the reasons expressed in a concurring opinion in *Atasoy and Sarkut v. Turkey*,<sup>1</sup> we continue to adhere to the Committee's earlier approach, which treated conscientious objection as an instance of manifestation of belief in practice. We also conclude that the Republic of Korea has not provided a sufficient justification for denying the right of conscientious objection, as the Committee had found in prior cases applying its earlier approach to the situation in this State party.<sup>2</sup>

We write separately on the present occasion to add a few further observations.

First, while we appreciate the efforts of the Committee and of individual members to elaborate reasons for the change of approach, we do not find them convincing. We do not see how they would successfully distinguish the activity the Committee considers "absolutely protected" from other pacifist activities that the Committee would regard as manifestations of belief in practice subject to proportionate limitation under paragraph 3, or from other religious activities that the Committee might regard as expressing values shared by the Covenant. These other religious practices are also entitled to respect, and yet remain subject to restriction when circumstances so necessitate.

Second, paragraph 7.3 of the present Views places some emphasis on the fact that individuals may be forced to declare their beliefs in order to avoid violating their consciences. We do not see how that emphasis is consistent with the general approach of the Committee to religious exemptions from facially neutral rules, which ordinarily requires claimants to assert their religious scruples in order to bring themselves within an exemption.

The majority's analysis in this case does not depend on any particular feature of the State party's conscription law, other than its failure to provide for conscientious objection. There is no argument here that the law discriminates on its face against religious practices, unlike in the case of *Singh v. France*,<sup>3</sup> where the express singling out of religiously motivated apparel for disfavored treatment provided an important element in the Committee's analysis. Even in that situation, the Committee applied paragraph 3 of article 18, and gave the State party the opportunity to explain how its targeted restriction of religious practice was proportionate to the legitimate purposes it was designed to serve. We would similarly

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<sup>1</sup> Communications Nos.1853 and 1854/2008, *Atasoy and Sarkut v. Turkey*, Views adopted on 29 March 2012, Individual opinion of Committee member Mr. Gerald L. Neuman, jointly with members Mr. Yuji Iwasawa, Mr. Michael O'Flaherty and Mr. Walter Kaelin (concurring).

<sup>2</sup> Communications Nos. 1321 and 1322/2004, *Yoon and Choi v. the Republic of Korea*, Views adopted by the Committee on 3 November 2006; communications Nos. 1593-1603/2007, *Jung et al. v. the Republic of Korea*, Views adopted by the Committee on 23 March 2010.

<sup>3</sup> Communication No. 1852/2008, *Singh v. France*, Views adopted by the Committee on 1 November 2012.

consider the State party's arguments here, but would then conclude that it has not sufficiently justified its denial of conscientious objection.

*(Signed)* Gerald L. Neuman

*(Signed)* Yuji Iwasawa

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## Appendix V

### **Individual opinion of Committee member Mr. Fabián Salvioli (concurring)**

1. I concur with the decision of the Human Rights Committee in the case of *Kim et al. v. the Republic of Korea* (communication No. 1786/2008) and with all the arguments set forth in its Views, which have consolidated the fundamental case law in respect of conscientious objection to compulsory military service, which was laid down following the decisions on communications 1642-1741/2007 (*Jeong et al. v. the Republic of Korea*) and which were adopted on the historic date of 24 March 2011 and re-asserted in the decision in the case of *Atasoy and Sarkut v. Turkey* (communications 1853 and 1854/2008) adopted on 29 March 2012.
2. The discussion within the Committee prior to the adoption of the decision in the case at hand of *Kim et al. v. the Republic of Korea* has led me to set out a number of thoughts on the matter.
3. As I indicated in my concurring opinion in the case of *Atasoy and Sarkut v. Turkey*, decisions have hitherto been limited to conscientious objection to performing compulsory military service, which the Committee has declared to be in violation of the International Covenant on Civil and Political Rights. The views adopted by the Committee since the *Jeong et al. v. the Republic of Korea* case, in direct application of article 18, paragraph 1, of the Covenant (and in a departure from the Committee's previous case law, which subjected domestic legislation to the test of article 18, paragraph 3, to decide on a possible violation) have taken into account the evolution of the right to freedom of conscience in contemporary international law.
4. Since the *Jeong et al. v. the Republic of Korea* and the *Atasoy and Sarkut v. Turkey* cases, and as has been reasserted in this case of *Kim et al. v. the Republic of Korea*, the Committee has developed a case law that reflects the considerable evolution, to date, of the right to conscientious objection to compulsory military service under the International Covenant on Civil and Political Rights. The Human Rights Committee holds that freedom of conscience and religion (article 18 of the Covenant) includes the right to conscientious objection to compulsory military service.
5. Conscientious objection to compulsory military service is inherent in the right to freedom of thought, conscience and religion; accordingly, compulsory military service is not only a violation of the right to practice a belief or religion, it is also a violation of the right to hold a belief or religion.
6. It follows that, in accordance with the contemporary interpretation of the Covenant, there can no longer be any restriction or possible justification to enable a State to compel a person to perform military service. The Committee has provided ample explanation for its new approach, which is legally robust, and reflects the evolution of the right to freedom of thought, conscience and religion.
7. In contrast, the minority position within the Committee is unable to explain how its stance provides better guarantees for human rights, and better fulfils the object and purpose of the Covenant. Were we to continue to apply the former interpretation – which enjoys the support of the minority – a State would be able to find reasons for compelling a person, against his or her will, to use weapons; to become involved in armed conflict; to run the risk of dying and, what is even worse, of killing, without such act(s) constituting a violation of the Covenant.

8. Which of these two interpretations better fulfils the object and purpose of the Covenant? Which interpretation better contributes to the effective application of the International Covenant on Civil and Political Rights? Which of them better guarantees the rights of individuals? The answer is indisputable, and the Committee should ask these questions of itself each time it decides on a case.

9. The Committee should not revert to its previous case law; were it to do so, it would be a serious retrograde step that would be unacceptable from the angle of better international protection for human rights.

10. The Committee has set out its position on the content of article 18 of the Covenant; States should take due note of this and honour the commitments they entered into when they ratified the International Covenant on Civil and Political Rights.

11. States parties should adopt legislation to amend their domestic law in such a way that compulsory military service becomes a thing of the past and an example of a form of oppression that should never have existed. Until this comes to pass, when examining the reports of States parties and in its case law on individual cases, the Committee should maintain its progressive approach towards conscientious objection to compulsory military service.

*(Signed)* Fabián Omar Salvioli

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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