

Human Rights Council, 38th Session

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Agenda Item 6 – General Debate

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Last September my organization joined a joint statement under this item drawing attention to the extent to which freedom of religion or belief was under-represented in UPR recommendations.

The present statement had been intended to focus on the sub-issue of conscientious objection to military service, often not mentioned in the UPR of States where it is an important human rights issue.

However the exception came last December when in the Working Group the Republic of Korea received recommendations on this issue from an unprecedented twelve states.¹ In its written responses, the State Under Review repeated the old mantras about the security situation and public opinion,² and accepted only the recommendation³ which weakly suggested that it “consider” making changes.⁴ However it did encouragingly commit to implementing the forthcoming decision of the Korean Constitutional Court on the issue.⁵

That long-awaited decision was published yesterday. It is long and complicated: on some of the questions before it the court was apparently split equally. We are still awaiting a full analysis from our Korean partners. But it does seem that the Court has ruled that the absence of any civilian alternative service option for conscientious objectors is in conflict with the freedom of conscience clause in the Constitution of the Republic of Korea, and have ordered the legislature to rectify this.

1 Germany, (A/HRC/37/11, 27th December 2017, para 132.94), Canada (ibid, para 132.95), USA (ibid, para 132.96), Australia (ibid, para 132.97), Croatia (ibid, para 132.98 and 132.105)), France (ibid, para 132.99), Mexico (ibid, para 132.100), Switzerland (ibid, para 192.101), Argentina (ibid, para 132.102) Panama (ibid, para 132.103), Portugal (ibid, para 132.104), Costa Rica (ibid, para 132.106),

2 A/HRC/37/11?, Add.1, 28th February, 2018, para 32.

3 132.106

4 A/HRC/37/11?, Add.1, para 31.

5 A/HRC/37/11?, Add.1, para 32.

This is a promising step, but it is not the end of the road. Much will depend on the details of the legislation eventually brought forward. Will it be in full conformity with international standards as elaborated by this Council⁶ and applied to the Republic of Korea in the Concluding Observations of the Human Rights Committee?⁷ In particular, will the alternative service be non-punitive in duration and other conditions? And will it be open to all objectors, irrespective of the particular beliefs on which the objections are based?

There remain also to be clarified the implications for the hundreds currently in prison, the hundreds currently facing trial and the tens of thousands of past objectors continuing to live with the stigma of a criminal record.

Nevertheless, we rejoice that at long last there is some hope for Korean conscientious objectors.

6 See Resolution 24/17, 30th September 2013.

7 CCPR/C/KOR/CO/4, 3rd December 2015, paras 44 & 45.