



# Briefing Paper

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## Conscientious Objection to Military Service: An historic decision

*On 3 November 2006, the Human Rights Committee made clear, once and for all, that conscientious objection to military service is protected by Article 18 of the International Covenant on Civil and Political Rights.*

Article 18 covers the right to freedom of thought, conscience and religion and to manifest that religion or belief. Paragraph 3 of that Article permits some limitations on manifestation of religion or belief but only those prescribed by law and “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”.

The Committee’s decision concerned two Jehovah’s Witnesses in the Republic of Korea (South Korea), a country which has conscription (compulsory military service) with no recognition of conscientious objection or provision for alternative civilian service. As a result, these conscientious objectors had been imprisoned for their refusal to undertake military service.

In its 3 November decision, the Human Rights Committee adopted its views under the Optional Protocol to the Covenant, concluding that the Republic of Korea had violated Article 18, paragraph 1, of the Covenant. Therefore, the State was obliged to provide the individuals concerned with an effective remedy, including compensation. In addition, it was under an obligation to avoid similar violations of the Covenant in the future.

In reaching this conclusion, the Committee noted that:

- the authors’ refusal to be drafted for compulsory service was a direct expression of their religious beliefs, which it is uncontested were genuinely held;
- while the right to manifest one’s religion or belief does not as such imply the right to refuse all obligations imposed by law, it provides certain protection, consistent with article 18, paragraph 3, against being forced to act against genuinely-held religious belief;
- the authors’ conviction and sentence amount to a restriction on their ability to manifest their religion or belief;
- such restriction must be justified by the permissible limits described in paragraph 3 of article 18;
- such restriction must not impair the very essence of the right in question.

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### Treaty Bodies: A brief guide

The Human Rights Committee is the body of independent experts which oversees the implementation of the International Covenant on Civil and Political Rights. All States which are parties to the Covenant report to the Committee on a regular basis. The Committee questions them and makes Concluding Observations highlighting improvements needed as well as progress made. In addition, the Committee produces General Comments clarifying and interpreting the Covenant’s provisions. In those States which are also parties to the First Optional Protocol, individuals can send the Committee complaints about alleged violations of the Covenant.

Having decided that conscientious objection to military service was protected by article 18, the Committee then considered the State's arguments in relation to the restrictions permitted. The Committee concluded "that the State party failed to show what special disadvantage would be involved for it if the rights of the authors' under article 18 would be fully respected. As to the issue of social cohesion and equitability, the Committee considers 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. It likewise observes that it is in principle possible, and in practice common, to conceive alternatives to compulsory military service that do not erode the basis of the principle of universal conscription but render equivalent social good and make equivalent demands on the individual, eliminating unfair disparities between those engaged in compulsory military service and those in alternative service. The Committee considers that the State party has not demonstrated that in the present case the restriction in question is necessary, within the meaning of article 18, paragraph 3, of the Covenant."

### **Welcome clarification:**

In 1993, the Human Rights Committee stated in its General Comment No. 22 on Article 18 that a claim of conscientious objection to military service could derive from the right to freedom of thought, conscience and religion inasmuch as the use of lethal force seriously conflicted with the individual's convictions.

The Committee regularly questions States when they report to it about provision for conscientious objection to military service and aspects of alternative service, and has made recommendations to them in the form of Concluding Observations. However, the individual cases previously considered by the Committee had either been rejected on their facts, or had concerned such issues as differences in length between alternative and military service.

This decision by the Committee also laid to rest any idea that Article 8 of the Covenant is relevant such cases. Article 8 concerns the prohibition of forced labour. Its paragraph 3 excludes from the scope of forced or compulsory labour "any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors". The Committee stated that "article 8 of the Covenant itself neither recognizes nor excludes a right of conscientious objection. Thus, the present claim is to be assessed solely in the light of article 18 of the Covenant". This was an important clarification as in an early case (L.T.K. v Finland (Case No. 185/1984)), while ruling the case out at a preliminary stage, the Committee had suggested that the wording of Article 8 precluded a requirement on all States to provide for conscientious objection to military service.

### **Conclusion:**

These are the first individual cases under the Optional Protocol to the International Covenant on Civil and Political Rights in which the Human Rights Committee has considered on its merits a central claim that Article 18 requires a State to accommodate conscientious objection to military service.

The Committee has made major steps forward:

- a clear finding that the claim for conscientious objection is to be considered under Article 18
- although limitations may be permissible they will have to be justified in each case
- restrictions must not impair the essence of the right in question

Although only directly applicable to the Republic of Korea, all States parties to the Covenant (currently 160) need to take account of this as the Committee's authoritative interpretation. The result is that conscientious objection to military service is at last clearly established as being protected under international human rights law.