REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 71219/98

AT AUCKLAND

Before:	A B Lawson (Member)
Counsel for Appellant:	Ms J Donald (Marshall, Bird & Curtis)
Date of Hearing:	22 March 1999
Date of Decision:	14 October 1999

DECISION

This is an appeal against the decision of the Refugee Status Branch RSB of the New Zealand Immigration Service declining the grant of refugee status to the appellant, a national of the Republic of Korea (also known as South Korea).

INTRODUCTION

The appellant was born on 3 November 1980 in Seoul, South Korea. He arrived in New Zealand on 24 September 1996. The appellant's father was the head of a construction company in South Korea and made visits to New Zealand before deciding to bring his family here and to transfer his company and assets to New Zealand. On 24 September 1996, the appellant accompanied his father and mother, two younger brothers and two sisters to New Zealand. They settled in Auckland but the father made visits to and from South Korea until his business ventures were overcome by the economic downturn in Asia. The appellant and his four siblings all attend public schools in Auckland. The appellant's father was declared bankrupt in about November or December 1997. He was sentenced to three years imprisonment by a South Korean court in February 1998 for offenses which the appellant said consisted of "borrowing money from creditors which he was unable to repay". The appellant claims his father had not defrauded creditors but that the law in Korea was different from New Zealand. In any event his father continues to serve the term of imprisonment and his wife and five children are now

residing in Auckland without any financial assistance from him. According to the appellant, his father had originally obtained a three year work permit which the appellant said covered all of the family. The appellant made his application for refugee status on 17 September 1998. He was interviewed by the RSB on 21 October 1998 and his application was declined by the RSB on or about 9 December 1998. He then appealed to this Authority.

The appellant's mother has also made an application for refugee status which has been "temporarily withdrawn". However, it seems likely that following the delivery of this decision, her application may be renewed and further applications are also expected to be filed by the appellant's two younger brothers who are likely to rely upon the same grounds as advanced in this present appeal.

THE APPELLANT'S CASE

The appellant's claim to refugee status is based upon conscientious objection to performing military service in South Korea. The appellant and the whole of his family claim to be followers of the Jehovah's Witness religion and the appellant bases his objection to military service upon his religious beliefs. The appellant said that his uncle (his father's younger brother) had been sent to prison for three years in 1982 for refusing to perform military service. However, his own father was exempted on health grounds from such service because he failed his "medical". The appellant's uncle was also employed in the same company as his father. The appellant said that he would become liable for military service at the age of 20 years and would be required to serve for about two and a half years. The appellant and his mother and siblings belong to an Auckland Jehovah Witnesses congregation where they attend three meetings a week. In the appellant's original statement, [containing 6 pages] and filed in October 1998 by his solicitors, it was stated that:

> "....as a Jehovah's Witness I never ever want to kill anyone for anybody or any reason. Even if my country was invaded by another country I would choose to put my faith in God rather than fighting against killing many people. I would never fight or participate in any way in fighting nor would I ever work in any kind of alternative military position that supported or facilitated warfare in any way no matter how far removed from the actual fighting that position was. I know that if I did I would be contributing indirectly to the destruction of human life and I can never do that".

To this Authority, when asked to state his objection to military service, he said that he was "brought up in a family who believed in Jehovah Witnesses and one of the teachings of the Bible was to love your neighbour" and:

> "I believe the particular passage in the Bible which taught that swords had to be made into ploughshares. And another teaching was that if you resort to the sword you will be destroyed in the end. But the core of the teaching as far as I am concerned was to love your neighbour and military service was against this teaching that is the reason".

The appellant was asked by the Authority what his attitude was to performing military service if it did not involve a combatant role or if alternative service was provided, such as medical service or service unrelated to combat. His answer was he was quite happy to undertake alternative service if it had nothing to do with military service such as work for environmental protection or driving ambulances and if he was a doctor or a medical attendant he would be prepared to attend wounded people in hospitals. However, he pointed out that there was no provision for alternative service in Korea.

He was further asked by the Authority what objection he would have to the performance of military training in peace time where there was no real chance of him being involved in any acts of violence towards others. He replied that participating in military training "is as good as engaging in military activities of killing people". He believed training to kill amounted to the same thing as actually killing. He said that was his personal view and it was also the view of the Jehovah Witnesses. The Authority suggested to him that by performing the training at a time when there was no prospect of actually killing anyone he could avoid imprisonment. However, he said he would not act in that way simply to avoid imprisonment. He also claimed that the Prophet Isiah as cited in the Bible , condemned "training for war" even where there was no chance of war. The appellant acknowledged that some Jehovah Witnesses that he had known of had performed military service contrary to their beliefs and as a consequence had suffered "disfellowship" from their congregation. However, he also agreed that persons who had suffered "disfellowship" could be reinstated in their congregation if they truly repented of their wrong doing in the presence of the members of the congregation. As far as the appellant himself was concerned, he said he would go to jail rather than perform military service.

It was his view that the period of imprisonment imposed in South Korea for failure to undertake service would generally be the maximum of three years. It was suggested to him by the Authority that some detainees were usually released earlier for good behaviour. He replied that he had heard some of the prisoners had been given jobs in prison such as looking after other prisoners and lighter

responsibilities because of their good conduct but he had not heard of any being released before their time. He conceded it was possible but he had not heard of it.

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

> "... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it".

In terms of Refugee Appeal No. 70074/96 (17 September 1996), the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

2. If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

The Authority is satisfied that the appellant is credible and that he does come from a family committed to the Jehovah Witnesses beliefs. The Authority is also satisfied that he has a broad knowledge of Jehovah Witnesses beliefs and that he genuinely subscribes to those beliefs. The Authority also accepts that he has a genuine conscientious objection to the performance of military service based upon his religion although he has acknowledged, [contrary to his original statement], that he would perform alternative service if such were available in Korea.

MILITARY SERVICE OBLIGATIONS IN SOUTH KOREA

War Resisters International 1998 - "Refusing to bear arms - A world survey of conscription and conscientious objection to military service" at page 172 (15 March 1998) in respect of the situation in the Republic of Korea (South Korea) reported

inter alia:

> **"1 Conscription**
>
> Conscription is enshrined in article 39 of the 1948 Constitution which states:
>
> "(1). All citizens have the duty to defend the nation in accordance with the provisions of law.
>
> (2). No citizen shall be discriminated against on account of fulfilling his obligation of military service.
>
> (3). The present legal basis of conscription is the 1958 conscription law. According to art. 3: Men of Korean nationality must fulfill their military service obligation in a satisfactory manner. Women may also accomplish their active duty if they so desire.
>
> *military service*
>
> All men between the ages of 19 and 40 are liable for military service. The length of military service is usually 26 months. In the case of those performing their service in the public welfare sector, the administration and local government, it lasts for 28 months. In certain special circumstances, when military service is performed in regional sectors of the economy sociological and culture areas and international co-operation, it lasts for 32 months. Reservist obligations apply until the age of 50. Between the ages of 16 and 22, <u>all students must undergo training in the student militia (approximately 150 annual training hours)</u>".

(Underlining added by the Authority).

The Authority observes that this latter obligation, underlined, is the one most likely to apply to the appellant.

> *"postponement and exemption*
>
> Postponement is possible for students and for medical reasons. Exemption is possible for medical reasons. Under the 1989 military service exemption control law (and its 1990 enforcement decree) some groups are exempt from military service under a military duty substitution programme. There are three categories of professional personnel who can be exempt from military service: research, technical and public health staff. The programme requires them to work in their respective fields for at least five years, after undergoing six weeks of basic military training.
>
> *recruitment*
>
> Call up for medical examination takes place at the age of 19 followed by the placing of conscripts concerned in six categories - those in category 1, 2 and 3 are drafted into military service - those in the 4th category are assigned to serve in the public service sector - those in the 5th category can be called up for military service only in war time - those in the 6th category are exempt from military service.

2 Conscientious Objection

The right to conscientious objection is not legally recognised and there are no provisions for substitute service. In 1997, the Government clearly stated "there exists no procedure for obtaining the status of conscientious objector... no substitutitory service exists".

In the 80s and 90s, there have been some reports of Jehovah Witnesses getting sentenced to three years' imprisonment for refusing to perform military service, but no further detail are known about this. In 1969, the Korean Supreme Court ruled in a case against a Jehovah's Witness who refused to perform military service that "the so called conscientious decision" was not implicit in the freedom of conscience protected by article 19 of the Constitution. Apparently, in the 60s and 70s, informal arrangements were made whereby persons who refused to bear arms could perform unarmed military service in non combatant units of the armed forces. It is unknown whether such arrangements still exist. Some conscripts are apparently assigned to serve in the public service sector (see recruitment) but it is not known if this possibility is offered to conscientious objectors.

Draft evasion and desertion

penalties

Draft evasion is punishable by up to three years' imprisonment. Under the Military Penal Code desertion I punishable by 2 - 10 year imprisonment in peace time and at least 5 years imprisonment in war time. Desertion in the face of the enemy is punishable by death, life imprisonment or at least 10 years imprisonment.

practice

It is not known how far monitoring and punishment of draft evasion takes place. Reservists who have not obeyed mobilisation orders have reportedly been fined".

The Authority notes that the appellant having been born on 3 November 1980 will turn 19 in November 1999. He will therefore be eligible for call-up at the age of 20 unless he is entitled to the various exemptions mentioned above. None of these exemptions or the categories mentioned were canvassed at the appeal hearing or in the submissions by counsel - it being assumed that as there was no provision for conscientious objection as such the various exemptions or alternatives mentioned in the War Resisters International would be unavailable. For the purposes of this decision, the Authority has therefore assumed that alternative service would not be available to the appellant nor would he qualify for any of the various exemptions mentioned above.

CONSCIENTIOUS OBJECTION AND THE UNITED NATIONS CONVENTION ON REFUGEES

Professor James C Hathaway in The Law of Refugee Status (1991) at page 179

(5.6.2) states -

> "Persons who claim refugee status on the basis of a refusal to perform military service are neither refugees per se nor excluded from protection. In general terms - "a person is clearly not a refugee if his only reason for desertion or draft evasion is his dislike of military service or fear of combat. He may, however, be a refugee if his desertion or evasion of military service is concomitant with other relevant motives for leaving or remaining outside his country, or if he otherwise has reasons, within the meaning of the definition to fear persecution".

Professor Hathaway then lists at pages [180 -181] what he describes as three exceptions to the exclusion of military evasion and desertion from the scope of the Convention:

1. First exception: This involves claims based on the fact that conscription for engagement in a legitimate and lawful purpose is conducted in a discriminatory manner, or that prosecution or punishment for evasion or desertion is biased in relation to one of the five Convention based grounds of protection.

2. Second exception: This reflects an implied political opinion as to the fundamental illegitimacy in international law of the form of military service avoided. This includes military action intended to violate basic human rights, ventures in breach of the Geneva Convention standards for the conduct of war, and non-defensive incursions into foreign territory. This Authority notes that this exception is now usually defined more conveniently as being objection to partaking in military service in circumstances where the military engages in internationally condemned acts of violence.

3. Third exception: This exception relates to persons who raise principled objections to military service. Hathaway then cites a passage from Professor Guy Goodwin - Gill "The Refugee in International Law" pages 32 - 34 (1983) namely:

> "Objectors may be motivated by reasons of conscience or conviction of a religious ethical moral humanitarian philosophical or other nature. ...Military service and objection thereto seen from the point of view of the state are issues which go to the heart of the body politic. Refusal to bear arms however motivated, reflects an essentially political opinion regarding the permissible limits of state authority; it is a political act. The law of universal application can thus be seen as singling out or discriminating against those who hold certain political views".

In discussing this "third exception", Hathaway notes that the right to conscientious

objection is an emerging part of international human rights law based on the notion that "freedom of belief cannot be truly recognised as a basic human right if people are compelled to act in ways that absolutely contradict and violate their core beliefs." In other words, this Authority understands the third exception to propose that conscientious objection (on what ever basis) should be a ground upon which refugee status can be granted in all cases where there is no provision by the state for alternative service. The rationale for this proposition is the Guy Goodwin-Gill view that any genuine conscientious objection gives rise to the inference that the state regards conscientious objection as a statement of political opinion and consequently for the state to punish the objector would amount to persecution by reason of political opinion. The Authority does not accept the arguments which would extend the Convention in this way and now sets out its reasons.

PREVIOUS DECISIONS OF THIS AUTHORITY

1. The starting point for reaching a determination of the issue in this Authority's view is Refugee Appeal No. 826/92 (27 February 1995) heard by a three panel Authority comprising R.P.G. Haines QC (Chairman), M. Weir (Member) and H.M Domzalski (Member UNHCR). Although not a "conscientious objector" case, the principles enunciated are relevant to such cases. In the first place, the issue of the penalty for military desertion was discussed and in the second place , the issue of whether there was a Convention reason.

   The appellant was a deserter from the Iranian army into which he had been reluctantly conscripted. The passages from the decision at pp9-11 which this Authority believes to be relevant and pertinent are as follows:

> "We further find that in the circumstances he has described, there is a real chance that upon his return to Iran he will be arrested for desertion and punished in some way. No evidence was produced to support the appellant's claim that he will be sentenced to death. The authority can find nothing to support the appellant's claim in reports from Amnesty International and Human Rights Watch. Nor has anything been published on this topic in the annual Department of State Country Reports for Human Rights Practices: Iran over the past several years. We do, however, accept that appellant will be required to complete his term of service and that that term may be well be increased by some multiplier. We also accept that there is a real chance that he will be imprisoned. But there is no evidence that the penalty for desertion in Iran is so disproportionate to the offence as to be inherently persecutory. In making this determination we are entitled to take into account that in New Zealand the maximum penalty for desertion while on active service is imprisonment for life: Armed Forces Discipline Act 1971, s 47(1). A similar conclusion was reached by the Convention Refugee Determination Division of

the Canadian Immigration and Refugee Board in CRDD T92-06414 (January 18, 1993) reported in Reflex Issue 19, 7 (July 1993).

In the result, the second issue is answered in the negative.

We turn now to the fourth issue, namely whether the consequences feared by the appellant are for a Convention reason.

Army deserters are not dealt with as such by the Convention definition. It is necessary in these circumstances to enquire whether the authorities In Iran have or may view his act of desertion in religious or political terms. In short, the essential enquiry is whether there is a real chance of an imputed religious belief or political opinion. It is remembered that the appellant did not desert for a Convention reason. This, however, is irrelevant as the focus is on the attitude taken by the government, a point made in the following passage from Zolfagharkhani v Canada (Minister of Employment and Immigration) (1993) 20 Imm LR (2d) (FC: CA) 1,8:

> "The essence of the reasoning of Pratte J.A in Musial, as it appears to me, is rather that the mental element which is decisive for the existence of persecution is that of the government, not that of the refugee. In the statutory definition of a Convention reason as a person who "by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion", the key words in this context are "persecution for", which have reference to the state of mind of the active party, the persecutor, rather than to that of the "persecuted". Probably all fanatic assassins in the world today have as their motivation political, religious, racial nationalistic or group reasons, but they cannot be refugees if the action which is taken against them by a government is not itself for similar reasons. Accordingly, this Court has held that a claimant has a well-founded fear of persecution if, however unreasonably, his act appears to his government to be an expression of political opinion on his part: Re Inunza and Minister of Employment and Immigration (1979) 31 N.R. 121; Hilo v Canada (Minister of Employment and Immigration) (1991) 130 N.R. 236."

In that case, an Iranian military conscript who discovered during the course of his training that he was to be involved in chemical warfare against the Kurds deserted and fled the country. It was held, on the facts, that the claimant's refusal to participate in military action against the Kurds would be treated by the Iranian government as the expression of an unacceptable political opinion. The case is therefore clearly distinguishable as to the facts but does illustrate the principle under consideration. To like effect, see the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status paras 167 to 169:

> "167. In countries where military service is compulsory, failure to perform this duty is frequently punishable by law. Moreover, whether military service is compulsory or not, desertion is invariably considered a criminal offence. The penalties may vary from country to country, and are not normally regarded as persecution. Fear of persecution and punishment for desertion or draft evasion does not in itself constitute well-founded fear of persecution under the definition. Desertion or draft-evasion does not, on the other hand, exclude a person from being a refugee, and a person may be a refugee, in addition to being a deserter or

draft-evader.

168. A person is clearly not a refugee if his only reason for desertion or draft-evasion is his dislike of military service or fear of combat. He may, however, be a refugee if his desertion or evasion of military service is concomitant with other relevant motives for leaving or remaining outside his country, or if he otherwise has reasons , within the meaning of the definition, to fear persecution.

169. A deserter or draft-evader may also be considered a refugee if it can be shown that he would suffer disproportionately severe punishment for the military offence on account of his race, religion, nationality, membership of a particular social group or political opinion. The same would apply if it can be shown that he has well-founded fear of persecution on these grounds above and beyond the punishment for desertion".

As to the facts of the appellant's case, the appellant's act of desertion was not linked to a Convention reason and there is no evidence that the Iranian authorities attribute (or may attribute) to him religious or political reasons for this act".

2. Refugee Appeal No. 70895/98 (25 June 1998). The appellant was a South Korean. The decision was given on the papers because the appellant did not appear to pursue his appeal. The appellant had however been interviewed by the RSB. At pages 1 - 2 of the decision the Authority said:

"The appellant claimed that he was sentenced in 1991 to 1 1/2 years of imprisonment for disobedience having refused once conscripted, due to his religious beliefs to take up arms and wear the military uniform. The appellant expressed a fear that if returned to South Korea he would face difficulties finding employment etc. because he is a Jehovah's Witness. However the Authority noted that the appellant was released 4 months early due to his good behaviour while in prison and was thereafter employed by a Jehovah's Witness from 1993 until June 1996 when he helped his brothers with their business until he left South Korea for New Zealand. On the basis of the information on file the Authority informed the appellant of its preliminary assessment that his punishment for refusing to perform military service was neither persecutory nor related to any convention grounds and that his fears of encountering work difficulties etc. did not appear to be well founded. Further, based on the country information available (copies of which were also provided to the appellant) there was no suggestion that Jehovah's Witnesses or persons having been convicted for refusing to perform military service were presently being persecuted in South Korea".

Then page 5 - 6 of the decision the Authority said:

"while the Authority accepts the appellant's account of having been in prison for refusing to serve in the South Korean military, such punishment cannot be properly described as persecution. Persecution has been defined as a sustained and systematic denial of core human rights or the denial of human dignity in any key way (see Hathaway the Law of Refugee Status 1991 104 - 108 as adopted by the Authority in Refugee Appeal No. 2039/93 (12 February 1996) at page 15. The appellant was not maltreated while in prison and

> appears to have been favorably treated by the prison officials. He was given special privileges in prison due to his good behaviour and for the same reasons was subsequently released from imprisonment 4 months early.
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> Nor can it be said that the appellant's punishment was "for reason of" any one of the 5 convention grounds in terms of the Refugee Convention. While the appellant may have expressed objections to his performing military service on religious grounds, there is no evidence to suggest that he was being punished by the Authority for reasons of his religion. The appellant was punished according to a law having universal application in South Korea, and there is no evidence to suggest that the appellant faced disproportionately more severe treatment than that accorded to any other individuals who had similarly refused to perform military service but for different reasons...
>
> nor is the Authority aware of any country information, despite its inquiries, which suggest that either Jehovah's Witnesses or persons who have been convicted for refusing to perform military service are presently being persecuted in South Korea. The United States Department of State Country Reports on Human Rights Practices for 1997. Republic of Korea 30 March 1998 at 827 states that the constitution and equal opportunities statues forbid discrimination on the basis of race, sex religion disability or social status and the government respects these provisions. The constitution also provides for freedom of religion and this provision is also respected by the government in practice".

(Underlining added by this present Authority).

3. Refugee Appeal No. 2155/94 (10 April 1997). This was an appeal by a Russian citizen who claimed refugee status on the basis that he would be conscripted to serve in the Russian Federation Army in Chechnya. His objection was based on his religious and moral convictions. At page 9 of the decision, the Authority stated as follows:

> "The Authority accepts that there is a real chance that, having been conscripted, the appellant would be liable to face prosecution due to his failure to present himself to the military authorities when called. It is clear from the country information available, that the failure to comply with military conscription is a criminal offence, punishable under article 328 of the Russian Federation Criminal Code by payment of a fine of between two and five hundred times the appellant's minimum wage or salary for a period of two to five years, (sic) detention for between three and six months, or by a prison sentence of up to two years.
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> In reaching this conclusion, however, the Authority makes the distinction between its finding that there is a real chance of the appellant being prosecuted for a "criminal" offence, and the appellant's submission that he would be persecuted for a Convention-related reason. For it is only the latter category that, if applicable to the appellant, would result in him being recognised as a Convention refugee on this ground.
>
> The appellant has clearly articulated to the Authority his reasons for his unwillingness to serve in the military, due to both his religious and moral convictions. For the appellant's appeal to succeed, however, he must show firstly, that the Russian authorities are aware of his reasons for refusal, secondly, that there is a real chance the particular punishment likely to be meted out to him is of sufficient severity as to amount to *persecution* and

> finally, that such persecutory punishment would be imposed *by reason of* either his race, religion , nationality, membership of a particular opinion.
>
> Even assuming that the authorities were aware of the appellant's reasons for not presenting himself to the military , (which is far from clear in this case), there is no evidence before the Authority to suggest that those who evade the draft on the grounds of conscience are, when compared with those who evade for other reasons, being differentially treated or subject to disproportionately more severe penalties under the Criminal Code.
>
> The punishment provided for draft evasion under the Criminal Code is not, in the Authority's view, in itself persecutory. Nor is the Authority satisfied on the facts of this case, that there is a sufficient nexus between the harm feared and the appellant's civil or political status. The obligation to serve in the military in the Russian Federation is a universal one, having equal application to all male citizens of the Federation being of conscription age. Equally, so, are the provisions contained in the Criminal Code which provide for the punishment of all persons so drafted who attempt to evade the conscription call, regardless of their reasons for so doing".

(Underlining added by this Authority).

4. Refugee Appeal No. 70569 (14 August 1997). The appellant, a Russian, feared returning to Russia because he had failed to report for military duty and feared he would be sent to the war in Chechnya. At page 4 of the decision the Authority said:

> "The Authority further accepts that there is a real likelihood that, having been called up, the appellant would be liable to face prosecution due to his failure to present himself to the military authorities when called. It is clear from the country information available to the Authority that the failure to comply with military conscription is a criminal offence, punishable under Article 328 of the Russian Federation Criminal Code by the payment of a fine of between 200 and 500 times the minimum wage or salary for a period of two to five months, or by arrest for a term of three to six months, or by deprivation of liberty for a term of up to two years. The appellant feared his punishment would be three years in a penal battalion.
>
> However, these punishments, whether those set out in the Criminal Code or that feared by the appellant, do not amount to persecution, as that term is understood in international refugee law. A distinction must be made between prosecution for a criminal offence and persecution for a Convention -related reason. It is only if the appellant fell into the latter category that he would be recognised as a refugee.
>
> The appellant has no religious or moral reasons for not serving. Initially, it was because of his fear of being sent to Chechnya and now it is fear of punishment for not reporting when called. The punishments provided for under the Criminal Code, or feared by the appellant himself, are not of such severity as to be persecutory in nature. Furthermore, the punishment applies to all draft evaders, the obligation to serve being applicable to all males who reach 18 years of age, and accordingly, is not discriminatory in nature and for this reason also, the punishment does not attract refugee status. In other words, the punishment is not for a Convention-related reason since it is not imposed by reason of the appellant's race, religion, nationality, membership of a particular social group or political opinion. The Authority refers to its

> decision in Refugee Appeal No 2155/94 Re OL (10 April 1997), though notes the error in that decision regarding the punishments under Article 328 (erroneously referred to as Article 329), since the fine is calculated by reference to the appellant's minimum wage for a period of two to five months, and not two to five years as set out in that decision.
>
> The Authority finds that while it is likely that the appellant would face legitimate prosecution for a criminal offence if he returns to Russia, there is no real chance that he would face persecution, either for draft evasion or for the fact that his mother is Chechnyan".

(Underlining added by this Authority).

5. Refugee Appeal No. 71055/98 (24 September 1998). This was an appeal by a citizen of the Republic of Korea who had converted to the Jehovah Witnesses faith. The appellant was 50 years old and although he didn't fear being conscripted for military training, he did fear that if a war broke out between North and South Korea he would then be called up. The Authority refused to accept the proposition that there was a real chance that war would break out between North and South Korea. However more relevantly in this case at p 4-5, the Authority adopted and approved the reasoning in Refugee Appeal No. 70895/98 (supra) that:

> "imprisonment was not persecutory and further it was not by reason of any one of the 5 Convention grounds. Although the appellant's objection to performing military service was based on religious grounds, there was no evidence to suggest he was being punished by the authorities by reason of his religion. The appellant was punished according to a law having universal application in South Korea and there was no evidence to suggest that the appellant faced disproportionately more severe treatment than that accorded to any other individuals who have similarly refused to perform military service but for different reasons".

6. Refugee Appeal No. 70625/97 (26 February 1998). This was an appeal by a national of the Ukraine and Russian Federation on the grounds that he feared persecution because having been called up for military service he had avoided service because of his religious objections. At page 7 of the decision, the Authority said:

> "It is also relevant that the Russian Federation is not currently involved in any conflict and that they have withdrawn their troops from Chechnya. The appellant's fear of being called up by the Russian military is therefore unfounded, such a possibility is purely remote and speculative. Even if he was and he refused to serve because of his religious beliefs and was imprisoned as a punishment, he would still not be entitled to refugee status since there is no evidence that the punishment would be harsher or discriminatory because of his religious beliefs. The punishment for draft evasion in Russia is universally applied for committing what is regarded as a criminal offense, it is prosecutory rather than persecutory. The Authority refers in this regard to its decision in Refugee Appeal No. 2155/94 (10 April 1997)

and Refugee Appeal No. 70569/97 (14 August 1997)".

It was accepted however that in the Ukraine, there was provision for an alternative service in any event but at page 8 of the decision the Authority said further:

> "However, even if the appellant was not given the option of the civilian alternative or it did involve military-related duties and he refused to perform it, the appellant's claim that he would be persecuted for draft evasion (because of his religious beliefs) would still fail. Firstly, the appellant put forward no evidence that the term of imprisonment that he could face would be so excessively lengthy as to be persecutory. Indeed, the available evidence suggests otherwise. The Amnesty International report previously referred to makes mention of two Jehovah Witnesses being sentenced by Ukrainian courts to one year and two years imprisonment respectively for refusing to perform compulsory military service and its civilian alternative. The Authority would not regard such punishments as persecutory in nature. Secondly, and more importantly, the appellant put forward no evidence that the punishment he would suffer would be greater than that of draft evaders generally because it is based on a religious objection. In the absence of discriminatory punishment, there would be no Convention reason for any persecution and accordingly, the claim would fail.
>
> As for his fear of execution if war breaks out, there is no evidence whatsoever that this is a real possibility. It is also noted that the Ukraine is not presently involved in any wars".

(Underlining added by this Authority).

7. Refugee Appeal No. 70028/96 (20 February 1997). The appellant was a citizen of Ukraine The grounds for his appeal were fear of persecution if called up for military service on the grounds of his conscientious objection. His conscientious objection was on philosophical not religious grounds. At page 5 concluding its decision, the Authority stated as follows:

> "The Authority does not accept that conscientious objection is generally a Convention reason for claiming refugee status. Even in New Zealand military conscription existed until 1972. Failure to comply with conscription was an offence. A conscientious objector fears prosecution, by domestic law. Persecution is not the same. See Hathaway The Law of Refugee Status (1991) pages 179-185. In Russia there is no evidence of punishment for refusal to comply with military conscription, that could be called persecution.
>
> On the facts accepted, the claim to conscientious objection must fail on the grounds that there is a total absence of a Convention reason, i.e. the Russian/Ukraine governments would be applying a law of general application which does not discriminate according to one's race, religion or the other Convention categories. The fact that the appellant himself might regard his objection as being political/religious is insufficient. The appellant had the burden of demonstrating an additional requirement, namely that the anticipated punishment (which must be at the level of persecution) is for reason of his political opinion/religious belief".

8. Refugee Appeal No. 71047/98 (31 March 1999). This was an appeal by a citizen of Kazakhstan. The grounds for his appeal *inter alia* included conscientious objection to serving in the Kazakhstan army. His conscientious objection was not rooted in any orthodox religious doctrine but in his "own set of beliefs". The appellant had served his compulsory military service but his fear was that if he returned, he could be called up to serve in a peace keeping operation or even in a conflict between Russia and Tajikistan. The Authority concluded that he would not be called upon to breach any conscientious objection because there was no real chance that Kazakstan would become engaged in any military activity within or without its borders. However, more pertinent to the present appeal at page 13 of the decision, the issue of the penalty which the appellant might suffer as a consequence of any conscious objection was discussed. In that respect, the Authority said (at page 13):

> "Furthermore the appellant submitted no evidence to indicate that the penalty for draft evasion or desertion was either discriminatory or excessive."

The Authority then cited from War Resisters International 1998 "Refusing to bear arms - a world survey of conscription and conscientious objection to military service". In the section dealing with Kazakhstan (dated 28 April 1998 at page 167), that report indicated that the Kazakhstan Constitution of 1995 reserves a right of freedom of conscience, it also indicates that the right to conscientious objection is not legally recognised and there was no provision for substitute service. The report also pointed out as follows:

> "several Jehovah Witnesses have openly refused to perform military service. According to the Kazakhstan American Bureau of Human Rights in 1996, prosecution of members of certain religious faiths, in particular Jehovah Witnesses, for refusing to serve in the army is a continual problem.
>
> There are few known details about individual cases of prosecuted conscientious objectors. In 1995, two Jehovah's Witnesses were sentenced to imprisonment for refusing to perform military service.
>
> In 1994, R.G. also a Jehovah's Witness, was initially sentenced to a year's imprisonment under Article 66 of the criminal code by the district court of Almaty. In October 1994, he was released by the city court.
>
> Draft evasion and desertion are punishable under the criminal code by 5 - 7 years imprisonment. In practice, draft evasion and desertion was widespread. In 1995, for instance about 40% of all liable conscripts were believed to have evaded the draft in one way or another."

9 Refugee Appeal No. 1789/93 (14 July 1995). Upon which the appellant

placed reliance is referred to later in this decision.

GENERAL PRINCIPLES

The Authority now wishes to summarise the general principles which it believes can be distilled from the foregoing.

INTENTION TO PERSECUTE

(a) A state is entitled to prosecute and punish its citizens for breaches of the law. Breaches of law include the ordinary criminal law, quasi criminal law and civil laws. Punishment can and may be severe even in cases of breaches of civil or quasi-criminal law e.g. tax evasion or causing serious environmental damage.

(b) All states have the right to enact laws providing for the conscription of their citizens to train for or perform military service both in peace time and in war.

(c) Punishment, even if rising to the level of persecution, imposed for breaches of such laws does not give rise to a valid claim to refugee status unless it is shown that the state, [the persecutor] is motivated to punish the claimant for his breach of the law by reason of one of the five Convention grounds [usually in practise these would be by reason of religion or political opinion]. Unless such a motivating factor can be shown to exist, the claimant cannot sustain a refugee claim. Claims made by conscientious objectors, no matter how genuine and firmly held their belief, are sustainable only in certain exceptional circumstances. They must, when analysed, be capable of demonstrating that the state is motivated in their case to punish (persecute) them by reason of one or more of the five Convention grounds. That the intention of the persecutor and not the belief of the claimant is crucial has been made clear by the decision of this Authority in Refugee Appeal No. 826/92 (supra). Since that appeal was decided the issue has reached the High Court of Australia. See Applicant A & anor v MIEA (1997) 142 ALR 331 where the majority adopted the general approach taken by Burchett J in Ram v MIEA & anor (1995) 57 FCR 565 where Burchett J. said:

> "Persecution involves the infliction of harm, but it implies something

> more: an element of an attitude on the part of those who persecute which leads to the infliction of harm, or an element of motivation (however twisted) for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors...There is...a common thread which links the expressions 'persecuted', 'for reasons of', and [the relevant Convention reason]. That common thread is a motivation which is implicit in the very idea of persecution. [and] is expressed in the phrase 'for reasons of'..."

In the course of his judgment in the High Court Brennan C.J. at p 354 observed:

> "When the definition of refugee is read as a whole, it is plain that it is directed to the protection of individuals who have been or who are likely to be the victims of intentional discrimination of a particular kind. The discrimination must constitute a form of persecution, and it must be discrimination that occurs because the person concerned has a particular race, religion, nationality, political opinion or membership of a particular social group".

The Authority also refers to and relies upon the approach of the Australian Refugee Review Tribunal's Legal Research Issues Paper (4 July 1997) Issues Paper No. 7 entitled "Compulsory Military Service, Conscientious Objection and the Refugee Definition" where the issue is examined at length and confirms the crucial nature of the persecutor's intention.

Since the hearing of this appeal a decision in point has been delivered by the House of Lords, see Islam v Secretary of State for the Home Department, and Regina v Immigration Appeal Tribunal & another ex parte Shah (A.P) [consolidated appeals] (1999) 2.WLR 1015 (House of Lords).

Whilst this decision was directly concerned with the issue of "membership of a particular social group" there were observations made in the course of the judgment which confirmed the importance of the motivation or intention of the persecutor to discriminate against the group or individual in establishing a Convention ground. See the judgment of Lord Craighead (at 1037 - 1038) where he said:

> "The third point is that, while the risk of discrimination by society is common to all five of the Convention reasons, the persecution which is feared cannot be used to define a particular social group. The rule is that the Convention reasons must exist independently of, and not be defined by, the persecution. To define the social group by reference to the fear of being persecuted would be to resort to circular reasoning: *A. and Another v. Minister for Immigration and Ethnic Affairs and Another* (1997) 142 A.L.R. 331, 358, *per* McHugh J. But persecution is not the same thing as discrimination. Discrimination involves the making of unfair or unjust distinctions to the disadvantage one group or class of people as compared with others. It may lead to persecution or it may not. And persons may be persecuted who have not been discriminated against. If so, they are simply persons who are being persecuted. So it would be wrong to extend the rule that

> the Convention reasons must exist independently of, and not be defined by, the persecution so as to exclude discrimination as a means of defining the social group where people with common characteristics are being discriminated against. That would conflict with the application of the eiusdem generis rule. And it would ignore the statement of principle which is set out in the first preamble to the Convention".

See also the dissenting judgment of Lord Millett where at page 1040 he said:

> "Persecution may be indiscriminate. It may be for any reason or none. It is not, however, enough for an applicant for asylum to show that he or she has a well founded fear of persecution. The persecution must be discriminatory and for a Convention reason. By limiting the persecution in this way, the Convention contemplates that the possibility that there may be victims of persecution who do not qualify for refugee status. Furthermore, if the reason relied upon is membership of a particular social group, it is not enough that the applicant is a member of a particular social group and has a well founded fear of persecution. The applicant must be liable to persecution because he or she is a member of the social group in question".

Finally, the Authority wishes to refer to the decision of this Authority (mentioned earlier) and upon which the appellant placed some reliance namely: Refugee Appeal 1789/93 (14 July 1995) where the Authority upheld an appeal by a Ukrainian Baptist who had sought asylum upon the grounds that he feared persecution for reason of religious belief. He had avoided military service in 1988 as being contrary to his religious beliefs but had been arrested in 1992 and detained for fifteen days whilst investigations were made. He had told the Russian authorities that his failure to enlist related to his religious beliefs. He was informed by the authorities that this was no reason and if he continued to refuse service he would be brought before a Military Tribunal and punished. He was then released.

In a six page decision, the Authority addressed the issues of "fear of persecution", "well-foundedness" and "Convention reason" at pages 5-6 as follows:

> "On the second issue, I am satisfied that the harm he fears in the form of detention in a prison camp for a lengthy period would amount to persecution.
>
> In general, a fear of punishment for evasion of military service is not regarded as a fear of persecution in terms of the Refugee Convention. However, if the evasion of compulsory military service is based upon genuinely held religious convictions, then punishment for such evasion can amount to persecution. In this respect I refer to Paragraphs 172 and 173 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.
>
> Given what I am satisfied are the genuine religious convictions of the appellant against military service, I conclude that the punishment involved would be persecutory, in his case.
>
> On the fourth issue I am satisfied that the persecution he fears would be related to his religious beliefs as a Ukrainian Baptist who objected, on genuine religious grounds, to doing military service in any form.

> As to the third issue of the well-foundedness of his fear, the situation is obscure. On the face of it, though it appears that alternatives to military service are available in the Ukraine, the law relating to that alternative service appears to be being selectively and restrictively applied and it is not at all clear that the appellant would be eligible for such service. Again, the nature of the service to be undertaken has not been clarified in any of the information made available to this Authority. Without that information, I consider it would be unsafe for this Authority to reject the claim to refugee status of a genuine conscientious objector, such as the appellant, based on religious grounds."

Whilst the decision is not entirely clear on the point it appears that the Authority was concerned that the alternatives to military service were "selectively and restrictively" applied. In which case the decision may be supported on the basis that there was a finding that the law was applied in a "discriminatory manner" or that prosecution or punishment was "biased in relation to one of the five Convention based grounds (i.e. religion)".

However this Authority, with respect, does not accept the decision as being authority for any wider interpretation of the Convention and in particular does not accept that this claim could have succeeded without any evidence upon which an inference could be drawn that the punishment either amounted to persecution or was imposed by reason of a Convention ground.

THE EXCEPTIONS

1. As Hathaway has pointed out, the first exception to the exclusion of military evasion and desertion from the scope of the Convention involves claims based upon the grounds that, although conscription may be levied for legitimate and lawful purposes, if it is conducted in a discriminatory manner or is biased in relation to one of the five Convention based grounds then refugee status may be granted. In other words, if conscription laws discriminate against Jehovah's Witnesses or the punishment for evasion or desertion imposed on Jehovah's Witnesses is differentially heavy against them, it may then be inferred that the State is motivated in its enforcement of the law against Jehovah Witnesses by reason of their religion as distinguished from enforcement of the law in respect of other sections of its population.

2. The second exception can arise, as Hathaway points out, where the desertion or evasion reflects an implied political opinion as to the fundamental illegitimacy in International Law of the form of military service

avoided. In other words, where a State conducts military action which is internationally condemned as violating basic international standards (such as violation of basic human rights, ventures in breach of the Geneva Convention standards for the conduct of war, or non-defensive incursions into foreign territory), then an individual claimant's refusal to take part in such activity on grounds of conscience, may be interpreted as a political statement. In such a case the infliction of punishment may give rise to the inference that the State intends to impose punishment (persecution) by reason of political opinion. The Authority notes that in such cases there is a distinction to be drawn between situations where the internationally condemned activities are matters of State policy and situations where the State either encourages or is unable to control sections of its armed forces. In the latter case the individual conscientious objector is required to show that there is a real chance that he will personally be involved. See Refugee Appeals Nos: 70472/97 and 70474/97 (28 January 1999).

3. The Authority, earlier in this decision (at p7-8) has referred to the suggestions of some commentators that there is a third exception expressed particularly by Guy Goodwin-Gill (The Refugee and International Law (1983 page 33-34)).

This Authority rejects this attempt to extend the boundaries of refugee law to the point where the motivation or intention of the persecutor is effectively ignored. This Authority does not accept that where there is a law of universal application applied in a non discriminatory fashion, it can nevertheless be inferred that a conscientious objector has been singled out or discriminated against by reason of political opinion (or other Convention reason). There must always be some circumstance upon which an inference of the state's intent can be reasonably inferred. If this was not so conscientious objection, once accepted as genuinely held, would "per se" entitle the claimant to refugee status. The submissions made by counsel in this present appeal and based upon arguments and views of commentators which stem from recommendations or resolutions of United Nations bodies concerning human rights, have attempted to impose a gloss upon the Refugee Convention. If it is the wish of the United Nations, or any of its associate or affiliated bodies to extend the Refugee Convention in this way then in the Authority's view, this can only be achieved by an amendment to the Convention which would require the agreement of the signatory states.

> Until such time as signatory states have an opportunity of adopting any such extension of the Convention, this Authority can see no justification for adding a gloss which effectively removes the necessity for a conscientious objector to satisfy the decision maker by facts, circumstances or inference, that the State is in some way motivated to persecute him for a Convention reason.

Furthermore, since the drafting of this decision, a decision in point has come to the Authority's attention, namely; Mehenni v Minister for Immigration and Multicultural Affairs (1999) 164 ALR 192. (Federal Court of Australia, June 1999 - Lehane.J).

This case concerned an appeal by an Algerian against the decision of the Refugee Review Tribunal (Australia) refusing him a protection visa which he sought on the grounds that he had a valid claim to refugee status for reason of, inter alia, conscientious objection to performing military service in the Algerian Army. The appellant also claimed that he feared persecution at the hands of Islamic groups if he performed such military service. The appeal was dismissed. The following four relevant findings may conveniently be taken from the head-note namely:-

> "**Held**, dismissing the application:
> (i) Conscientious objection, whether the objection of a pacifist to all military service or a "selective objection", may reflect religious beliefs or political opinions; and there was no reason to doubt that conscientious objectors, or a class of conscientious objectors defined by reference to a particular belief or opinion, may be, for the purposes of the Convention, a "particular social group", defined as such by some characteristic, attribute, activity, belief, interest or goal that united its members.
>
> *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225; 142 ALR 331; *R v Immigration Appeal Tribunal; Ex parte Shah* [1999] 2 All ER 545; *Morato v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 39 FCR 401; 111 ALR 417; *Ram v Minister for Immigration and Ethnic Affairs* (1995) 57 FCR 565; 130 ALR 314, considered.
>
> (ii) The fact that an applicant for a protection visa was a member of a particular social group was only significant if he or she had a well-founded fear of persecution "for reason of" membership of that group. A law of general application imposing military service upon males of a certain age which did not operate in a discriminatory way as against a particular social group could not, of itself, form the basis of a fear of persecution for the purposes of the Convention.
>
> *Canas-Segovia v Immigration and Naturalisation* Service 902 F 2d 717 (9th Cir 1990), not followed.
>
> (iii) The tribunal found that the applicant was not likely to come to the adverse

> attention of the Algerian authorities; it did not accept that the applicant would be singled out by the Islamic groups; and it accepted that the Algerian draft evaders were not subjected to excessive or discriminatory punishment, so that an Algerian claiming to fear persecution only on the findings were not challenged. In these circumstances, the evidence relied upon for judicial review, relating to conscientious objection, did not raise a material question of fact on which s 430 of the Act obliged the tribunal to make a finding.
>
> (iv) *Obiter*: *The Handbook on Procedures and Criteria for Determining Refugee Status* (United Nations High Commission for Refugees) did not suggest that the mere requirement that a person serve in the military, in opposition to genuine religious beliefs, necessarily amounted to persecution for a Convention reason."

The Authority also refers to observations of Lehane J, in the course of his decision as relevant in the context of the present appeal where recommendations of International Agencies or the United Nations or its associate in affiliated bodies have been referred to in counsel's submissions. After citing paragraphs 167 to 174 of the United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status, the learned judge @ p 199 (paragraph 19) of his judgement said:

> "**[19]** To a large extent that passage speaks for itself. One aspect of it may be noted immediately. It is suggested in paragraph 172 that if the country of which an applicant is a national does not take account of the applicant's genuine religious convictions in considering whether he should be subjected to compulsory military service, the applicant <u>may</u> be able to establish a claim to refugee status. It is not suggested that the mere requirement that a person serve, in opposition to genuine religious convictions, in itself necessarily amounts to persecution for a Convention reason. Paragraph 173 then suggests that in the light of more recent developments in attitudes to compulsory military service and conscientious objection, "it would be open to contracting states, to grant refugee status to persons who object to performing military service for genuine reasons of conscience": that, however, as I read it, is not a suggestion that contacting states are bound by the Convention to adopt that approach, but rather an indication that states might consider it appropriate to do so."

<u>PERSECUTION</u>

(ii) In addition to the necessity to establish that punishment imposed by the State is by reason of a Convention ground, it is also necessary that it be shown that the punishment for evasion or desertion will rise to the level of persecution. It is apparent that in most countries the punishment for evasion and/or desertion includes terms of imprisonment. Such is the case even in western style democracies. It may also be necessary to distinguish between punishments likely to be applied in times of peace with those likely to be applied in times of war. The issue is whether there is a real chance in

the particular case of punishment rising to the level of persecution. The decisions of this Authority which have been referred to above have all been concerned with cases where one of the forms of punishment available to the State has been imprisonment for varying terms. In most cases, a more severe punishment is provided for under the law where the evasion/desertion occurs in war time. In most cases the degree of punishment whether in peace time or war time will vary from case to case depending on the circumstances, the country and gravity of the situation. In the present appeal, the appellant faces punishment up to a maximum of three years imprisonment. In practice, the War Resisters International report (supra) on South Korea indicates that:

> "It is not known how far monitoring and punishment of draft evasion takes place. Reservists who have not obeyed to mobilisation orders have reportedly been fined."

In the appeal cases decided by the Authority mentioned above, some of those who have been imprisoned have been released early for good behaviour. It is also clear from the War Resisters International report that in South Korea, fines are at times imposed, at least on reservists, who have not obeyed mobilisation orders. In the Authority's view, the law and practice for draft evasion in South Korea is not significantly harsher than comparable provisions even in western style democratic states. There is also no evidence that draft evaders are treated any more harshly in prison than other prisoners. Indeed as earlier release is available for good conduct, it seems likely that conscientious objectors would usually be in a position to avail themselves of such a concession. The Authority therefore concludes that although the appellant would be liable to prosecution and punishment for draft evasion if he returned to South Korea, it is satisfied that such punishment would not rise to the level of persecution.

ALTERNATIVE SERVICE

The Authority now addresses the issue of alternative service. Many states particularly western European democratic countries make provision for alternative service for conscientious objectors. In such cases, apart from any other considerations, that fact would usually indicate that there could be no question of the punishment rising to the level of persecution. In the case of South Korea, whilst it makes provision for exemptions on medical and some other grounds such as employment in essential occupations, it does not provide alternative service. The Authority is of the view that the failure to provide alternative service whilst a

factor to be considered in determining whether the level of punishment may amount to persecution, its absence does not, per se, establish persecution nor does it establish an intention to persecute.

WAR AND PEACE

The Authority deems it appropriate to make mention of a possible distinction between the consequences of refusing to undergo military training in peace time as distinct from service in a time of war. The Authority put to the appellant's counsel the point raised in Refugee Appeal No. 70474/97 (28 January 1999), namely, that if the conscientious objection to military training is based upon a moral objection to harming or killing others then in time of peace undergoing such training will not necessarily give rise to a real chance that the claimants conscience will be violated. The performance of training in peace time should therefore give rise to no more problems of conscience, than performing alternative service in war time. As the appellant had said that training even without the prospect of warfare was contrary to the Jehovah Witness belief, the Authority gave leave to counsel to supply any documentation related to Jehovah Witness teachings or doctrine bearing upon this point. In his final submissions, dated 9 April 1999, counsel annexed a document marked "A", containing a number of references from Jehovah Witness publications relating to reasons for opposition to war and to the duty to always remain neutral in any conflict. The Authority has considered this material, but has to say that it is not at all clear whether the moral imperative laid down by the teachings of Jehovah Witness founders or present day "authorities" (as disclosed therein) relate only to a prohibition upon taking sides in war or whether it also extends to military training in peace time.

It is noteworthy that amongst the references given in Document "A", it is stated that Jehovah's Witnesses have declined to do non-combatant service or to accept other work assignments as a substitute for military service. The references clearly referred to war time. Despite that however, the appellant and other Jehovah Witnesses, (in other appeals dealt with by this Appeal Authority) have not raised such an objection but have indicated they would be willing to carry out alternative service. Service which they conceded did not offend against their conscience nor would it result in their being the subject of disfellowship from their congregation. The Authority mentions this point as an avenue which may need to be explored upon a future occasion but finds it unnecessary to reach a conclusion in this decision.

CONCLUSION

1. The law relating to military service in South Korea is a law of universal application. Conscription is not conducted in a discriminatory manner nor is the prosecution or punishment for evasion or desertion biased in relation to one of the five Convention grounds. The specific form of military service objected to in this case, is not fundamentally illegitimate i.e. it does not violate basic human rights or general principles of international law. There is no evidence or circumstance from which it could reasonably be inferred that the Republic of Korea (South Korea) is motivated to persecute the appellant for any Convention reason.

2. In the alternative, the punishment which might be imposed on the appellant for breach of military service requirements would not rise to the level of persecution.

3. There is no real chance that the appellant would suffer persecution if returned to South Korea.

Accordingly the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

.....
Member