

[Statement]

Byun Hui-su Will Be Back

Denunciation on the decision of rejection of personnel complaint by the transgender soldier,
Army Staff Sergeant Byun Hui-su

By **Joint-counteraction Committee for Reinstatement of Byun Hui-su, the Transgender Soldier**¹

3 July 2020

On 3 July 2020, the Army Headquarters (HQ) committee for examination of petitions on military personnel management rejected the request of the transgender soldier, Army Staff Sergeant Byun Hui-su, calling for the cancellation of involuntary discharge from active service. The undersigned civil society organizations sternly denounce the Army HQ rejecting such a request in spite of the sufficient proof of unlawfulness and unfairness of the original disposition of discharge during the deliberation meeting.

On 29 June 2020, the Army acknowledged that the original disposition of discharge on 22 January 2020 did not take her being gendered as a female into consideration. The legal basis of her discharge is 'being a person subject to examination on discharge from active service based on physical and psychological disorder tier due to loss of male genital organ and testes. However, as such a criterion is for males' disorders, the legality of the disposition based on it can only be accepted when Staff Sgt. Byun's sex is male.

Before the decision, Staff Sgt. Byun had already applied for the correction of sex in the family relations register (26 December 2019). In a legal sense, the rectification of family relations registry means the confirmation of error in the registry that is different from the fact and correction of it accordingly. In this case, the purport of the revision is to rectify the misinformation of her sex. If so, the disposition of discharge on 22 January becomes unlawful and invalid after the decision of the court on 10 February as it was based on the erroneous entry. Therefore, it was natural for the Army to accept her request since the Army did not even examine the juristic relations or take account of her changed sex.

In addition, it was pointed out during the committee for examination of petitions on military

¹ (Lawyers for Public Interests, Center for Military Human Rights Korea, Dawoom – Together for Change, Preparation Group for Sexual Minority Committee of the Democratic Party, Social and Labor Committee of the Jogye Order of Korean Buddhism, Rainbow Jesus, Sexual Minority Council of the Sogang University, PFLAG Korea, Rainbow Action Against Sexual-Minority Discrimination, SARANGBANG Group for Human Rights, Korean Confederation of Trade Union, LGBTQIA+ Committee of the Justice Party, People's Solidarity for Participatory Democracy, Catholic Human Rights Committee, LGBTQ Youth Crisis Support Center "DDingDong", Free Trans Right, Human Rights Center of the National Council of Churches in Korea, Korea Women's Association United, Womenlink, Solidarity for LGBT Human Rights of Korea, a total 20 CSOs.)

personnel management as well that the Army did not take proper opportunities to check and review Byun's health concerning her ability to serve in the military after the surgery. Instead, the Army hastily decided while she was under medical treatment. Not all soldiers are unconditionally discharged because they have physical or mental disorders. According to Article 53 (3) of the <Enforcement Rule on Military Personnel Act>, a soldier may continue to work in active service after examination of health, etc. if he or she wishes to as long as he or she does not fall under the prescribed exceptions.² However, Byun did not fall under any exceptions and clearly stated her desire to continue military service. If so, the committee for examination on discharge should have reviewed her health conditions to see if she was fit to serve in the military. Still, the Army just, in haste, discharged from the hospital a patient whose treatment after surgery had not even finished. It was squarely unjust.

The Army rejected the request, repeating that the disposition observed the due process without any further acceptable explanations, even though it was thoroughly explained that the disposition of the involuntary discharge of Byun was unlawful and unfair. In fact, such a result is as expected. The Army misled the public opinion by spreading facts through media that are not true after its disposition on 22 January and defamed Staff Sgt. Byun's reputation. The Army had to rationalize for it knows itself that the disposition was illegitimate and unfair.

The Army made excuses over and over again that Ms. Byun was merely permitted the overseas travel and that it did not know of her plan to have the gender confirmation surgery. This sort of explanation spread out rapidly nationwide, framing her as a pesterer who came back to the military after secretly having had surgery on vacation. This resulted in the condemnation of her for what she had not done.

On the other hand, Staff Sgt. Byun acquired permission from her unit after her military surgeon suggested the gender confirmation surgery in 2019. Subsequently, she also reported to her Regiment and Corps Commanders about the plan for overseas travel, including specifications of the period required for surgery and after-treatment. The Corps Commander even reported this to the Army Chief of Staff face to face. If the Army was opposed to such an idea, it would have already brought Ms. Byun before the committee for examination on discharge based on her incompetence for active service by the time of her request for overseas travel. Nonetheless, she was able to depart to have the surgery through the good offices of her unit.

Staff Sgt. Byun delivered the voice that transgender persons exist in the Korean military. The military should have reformed the laws and policies to allow transgender soldiers to serve in the military and provided an environment that embraces them to work with others.³ However, the military's awareness is not even a step away from the stance regarding their service

² Unlawfully or intentionally inflicted disorder; In need of assistance of others to perform required work, training and mission; contagious disease that can cause severe harm to others; disorder that is difficult to be fully cured or requires continuous hospitalization after the discharge.

³ See SR on Privacy (A/HRC/43/52, para. 37, clause (p)): "Design and implement a protocol for military service of LGBTQI individuals that recognizes their gender identities, enables military service, and protects from discrimination and violence."

uncomfortable, entailing a discharge based on systematically designed illegal grounds.

Now, Byun Hui-su is filing a lawsuit, protesting the result of the committee on military personnel management. She attended the committee on 29 June of this year and verbally stated, "Please, reinstate me. I am ready to carry out a mission immediately. Hormonal treatment does not affect my performance, and I am cleared for action" with honor. Again, according to her school records, she has longed to be a serviceperson since her middle school years. The armed forces should be ashamed of themselves before Ms. Byun, who remains loyal to the military, which broke her dream and denied her existence based on cowardly reasons.

The transgender soldier, Byun Hui-su, is to return to the military. The civil societies will unflinchingly remain in solidarity until the day we see her back in a tank, serving in an armored unit.