



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/84/D/1119/2002
23 August 2005

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-fourth session
11 – 29 July 2005

VIEWS

Communication No. 1119/2002

| | |
|-----------------------------------|---|
| <u>Submitted by:</u> | Mr. Jeong-Eun Lee (represented by counsel, Mr. Seung-Gyo Kim) |
| <u>Alleged victim:</u> | The author |
| <u>State party:</u> | Republic of Korea |
| <u>Date of communication:</u> | 23 August 2002 (initial submission) |
| <u>Document references:</u> | Special Rapporteur's rule 97 decision, transmitted to the State party on 20 September 2002 (not issued in document form). |
| <u>Date of adoption of Views:</u> | 20 July 2005 |

* Made public by decision of the Human Rights Committee.

Subject matter: Conviction of complainant under National Security Law for membership in “anti-State organization”

Procedural issues: Substantiation of claims by author - Exhaustion of domestic remedies - Applicability of State party’s reservation to article 22 of the Covenant

Substantive issues: Freedom of thought and conscience - Freedom of opinion - Freedom of expression - Permissibility of restrictions on freedom of association - Right to equality before the law and to equal protection of the law

Articles of the Covenant: 18 (1), 19 (1) and (2), 22 and 26

Articles of the Optional Protocol: 2 and 5 (2) (b)

On 20 July 2005, the Human Rights Committee adopted the annexed draft as the Committee’s Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1119/2002. The text of the Views is appended to the present document.

[ANNEX]

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

Eighty-fourth session

Concerning

Communication No. 1119/2002*

Submitted by: Mr. Jeong-Eun Lee (represented by counsel,
Mr. Seung-Gyo Kim)

Alleged victim: The author

State party: Republic of Korea

Date of communication: 23 August 2002 (initial submission)

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

Meeting on 20 July 2005,

Having concluded its consideration of communication No. 1119/20002, submitted to the Human Rights Committee on behalf of Mr. Jeong-Eun Lee 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 author of the communication,

Adopts the following:

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

1. The author of the communication is Mr. Jeong-Eun Lee, a citizen of the Republic of Korea, born on 22 February 1974. He claims to be a victim of violations by the Republic of Korea¹ of articles 18, paragraph 1, 19, paragraphs 1 and 2, 22, paragraph 1, and 26 of the

* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Ms. Christine Chanet, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

¹ The Covenant and the Optional Protocol thereto entered into force for the Republic of Korea on 10 July 1990. Upon ratification, the State Party entered reservations/declarations: "The Government of the Republic of Korea [declares] that the provisions of paragraph 5 [...] of article 14, article 22 [...] of the Covenant shall be so applied as to be in conformity with the provisions of the local laws including the Constitution of the Republic of Korea."

International Covenant on Civil and Political Rights (“the Covenant”). He is represented by counsel, Mr. Seung-Gyo Kim.

Factual background

2.1 In March 1993, the author began his studies at the faculty of architecture of Konkuk University. In his fourth year, he was elected Vice-President of the General Student Council of Konkuk University. As such, he automatically became a member of the Convention of Representatives, the highest decision-making body of the Korean Federation of Student Councils (Hanchongnyeon), a nationwide association of university students established in 1993, comprising 187 universities (as of August 2002), including Konkuk University, and pursuing the objectives of democratization of Korean society, national reunification and advocacy of campus autonomy.

2.2 In 1997, the Supreme Court of the Republic of Korea ruled that Hanchongnyeon was an “enemy-benefiting group” and an anti-State organization within the meaning of article 7, paragraphs 1 and 3,² of the National Security Law, because the platform and activities of the fifth-year³ Hanchongnyeon were said to support the strategy of the Democratic People’s Republic of Korea (DPRK) to achieve national unification by “communizing” the Republic of Korea.

2.3 In 2001, the author became a member of the Convention of Representatives of the ninth year Hanchongnyeon. On 8 August 2001, he was arrested and subsequently indicted under article 7 of the National Security Law. By judgment dated 28 September 2001, the East Branch Division of the Seoul District Court sentenced him to one year imprisonment and a one-year “suspension of eligibility”. His appeal was dismissed by the Seoul High Court on 5 February 2002. On 31 May 2002, the Supreme Court dismissed his further appeal.

2.4 The courts rejected the author’s defence that the ninth year Hanchongnyeon had revised its platform to endorse the “June 15 North-South Joint Declaration” (2000) on national reunification agreed to by both leaders of North and South Korea and that, even if the programme of Hanchongnyeon was to some extent similar to North Korean ideology, this alone did not justify its characterization as an “enemy-benefiting group”.

2.5 At the time of the submission of the communication, the author was serving his prison term at Gyeongju Correctional Institution.

² Article 7 (1) of the National Security Law reads: “Any person who praises, incites or propagates the activities of an anti-State organization, a member thereof, or a person who has received an order from it, or who acts in concert with it, or propagates or instigates a rebellion against the State, with the knowledge of the fact that it may endanger the existence and security of the State or democratic fundamental order, shall be punished by imprisonment for a term not exceeding seven years.”

Article 7 (3) of the National Security Law reads: “Any person who forms or joins an organization aiming at the acts referred to in paragraph (1) shall be punished by imprisonment for a term of one year or more.”

³ The Convention of Representatives of Hanchongnyeon establishes committees on a yearly basis to carry out the organization’s activities.

The complaint

3.1 The author claims that his conviction for membership in an “enemy-benefiting group” violates his rights to freedom of thought and conscience (article 18, paragraph 1), to freedom of opinion (article 19, paragraph 1) and expression (article 19, paragraph 2), to freedom of association (article 22, paragraph 1), and to equality before the law and equal protection of the law (article 26).

3.2 He submits that his conviction simply because he was a representative of Hanchongnyeon violated his right under article 18 to freedom of thought and conscience, since his membership in the association was based on his free will and conscience.

3.3 By reference to the Committee’s jurisprudence,⁴ the author argues that the fact that he was convicted for membership in an “enemy-benefiting group” also violated his rights under article 19 to hold opinions without interference and to freedom of expression, as his conviction was based on the organization’s ideological inclination, rather than the actual activities of the ninth year Hanchongnyeon. He emphasizes that the Committee itself has criticized article 7 of the National Security Law as being incompatible with the requirements of article 19, paragraph 3.⁵

3.4 For the author, his right to freedom of association was breached because he was punished for joining Hanchongnyeon as an *ex officio* representative. Moreover, his conviction amounted to discrimination on the ground of political opinion, in violation of article 26, given that Hanchongnyeon had never carried out any activities that would have directly benefited the DPRK.

3.5 The author requests the Committee to recommend to the State party to rescind paragraphs 1 and 3 of article 7 of the National Security Law and that, pending annulment, these provisions should no longer be applied and that the author be acquitted through retrial and compensated for the damages sustained.

3.6 On admissibility, the author submits that the same matter is not being examined under another procedure of international investigation or settlement and that he has exhausted all available domestic remedies.

State party’s observations on admissibility and merits

4.1 In its observations dated 8 May 2003, the State party only challenged the merits of the communication, arguing that the author’s conviction under article 7, paragraphs 1 and 3, of the National Security Law was justified by the necessity to protect its national security and democratic order. It submits that, in accordance with the limitation clauses in articles 18, paragraph 3, 19, paragraph 3, and 22, paragraph 2, of the Covenant, article 37, paragraph 2, of the Constitution of the Republic of Korea provides that the freedoms and rights of citizens may be restricted by law for the protection of national security, maintenance of law and order,

⁴ The author refers to Communications No. 628/1995, *Tae Hoon Park v. Republic of Korea*, Views adopted on 20 October 1998, and No. 574/1994, *Keun-Tae Kim v. Republic of Korea*, Views adopted on 3 November 1998.

⁵ See Concluding observations of the Human Rights Committee on the second periodic report of the Republic of Korea, 1 November 1999, at paras. 8-9.

or public welfare. Article 7, paragraph 1 and 3, of the National Security Law, which had been enacted to protect national security and the democratic order against the threat posed by North Korea's revolutionary aim to "communize" the Republic of Korea, had repeatedly been declared compatible with the Constitution by the Supreme Court and the Constitutional Court. The State party concludes that the author's conviction, in a fair trial before independent tribunals, based on the proper application of article 7, paragraphs 1 and 3, of the National Security Law, was consistent with both the Covenant and the Constitution.

4.2 The State party dismisses the author's defence that the ninth year Hanchongnyeon revised its agenda and that it could not be considered an anti-State organization, merely because some of its objectives resembled North Korean ideology. It argues that the organization's programme, rules and documents reveal that Hanchongnyeon is "benefiting an anti-State organization and endangering the national security and liberal democratic principles of the Republic of Korea."

4.3 Lastly, the State party denies that the author was discriminated against based on his political opinion. It submits that the laws of the Republic of Korea, including the National Security Law, were applied equally to all citizens. The author was not prosecuted because of his political opinion, but rather because his actions constituted a threat to society.

Committee's request for author's comments

5. On 13 May 2003, the State party's submission was sent to counsel for comments. No comments were received, despite three reminders dated 8 October 2003, 26 January and 13 July 2004.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim 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.

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for purposes of article 5, paragraph 2 (a), of the Optional Protocol, and that the author has exhausted domestic remedies, as required by article 5, paragraph 2 (b), of the Optional Protocol.

6.3 The Committee considers that the author has not substantiated, for purposes of admissibility, his claim that his conviction amounted to discrimination on the ground of his political opinion, in violation of article 26 of the Covenant. It follows that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.4 As regards the alleged violation of article 22 of the Covenant, the Committee notes that the State party has referred to the fact that relevant provisions of the National Security Law are in conformity with its Constitution. However, it has not invoked its reservation *ratione materiae* to Article 22 that this guarantee only applies subject "to the provisions of the local laws including the Constitution of the Republic of Korea." Thus, the Committee does not need to examine the compatibility of this reservation with the object and purpose of

the Covenant and can consider whether or not article 22 has been violated in this case.

6.5 The Committee therefore declares the communication admissible insofar as it appears to raise issues under articles 18, paragraph 1, 19 and 22, of the Covenant.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 The issue before the Committee is whether the author's conviction for his membership in Hanchongnyeon unreasonably restricted his freedom of association, thereby violating article 22 of the Covenant. The Committee observes that, in accordance with article 22, paragraph 2, any restriction on the right to freedom of association to be valid must cumulatively meet the following conditions: (a) it must be provided by law; (b) it may only be imposed for one of the purposes set out in paragraph 2; and (c) it must be "necessary in a democratic society" for achieving one of these purposes. The reference to a "democratic society" indicates, in the Committee's view, that the existence and functioning of a plurality of associations, including those which peacefully promote ideas not favorably received by the government or the majority of the population, is one of the foundations of a democratic society. Therefore, the existence of any reasonable and objective justification for limiting the freedom of association is not sufficient. The State Party must further demonstrate that the prohibition of the association and the criminal prosecution of individuals for membership in such organizations are in fact necessary to avert a real, and not only hypothetical danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose.

7.3 The author's conviction was based on article 7, paragraphs 1 and 3, of the National Security Law. The decisive question which must therefore be considered is whether this measure was necessary for achieving one of the purposes set out in article 22, paragraph 2. The Committee notes that the State party has invoked the need to protect national security and its democratic order against the threat posed by the DPRK. However, it has not specified the precise nature of the threat allegedly posed by the author's becoming a member of Hanchongnyeon. The Committee notes that the decision of the Supreme Court of the Republic of Korea, declaring this association an "enemy-benefiting group" in 1997, was based on Article 7, paragraph 1, of the National Security Law which prohibits support for associations which "may" endanger the existence and security of the State or its democratic order. It also notes that the State party and its courts have not shown that punishing the author for his membership in Hanchongnyeon, in particular after its endorsement of the "June 15 North-South Joint Declaration" (2000), was necessary to avert a real danger to the national security and democratic order of the Republic of Korea. The Committee therefore considers that the State party has not shown that the author's conviction was necessary to protect national security or any other purpose set out in article 22, paragraph 2. It concludes that the restriction on the author's right to freedom of association was incompatible with the requirements of article 22, paragraph 2, and thus violated article 22, paragraph 1, of the Covenant.

7.4 In the light of this finding, the Committee need not address the question whether the author's conviction also violated his rights under articles 18, paragraph 1, and 19 of the

Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal a violation of article 22, paragraph 1, of the Covenant.

9. In accordance with article 2, paragraph 3, of the Covenant, the author is entitled to an effective remedy, including appropriate compensation. The Committee recommends that the State party amend article 7 of the National Security Law, with a view to making it compatible with the Covenant. The State party is under an obligation to ensure that similar violations do not occur in the future.

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, that State party has undertaken an obligation to ensure to all individuals within its territory or 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 90 days, information about the measures taken to give effect to the Committee's 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.]
