HUMAN RIGHTS COMMITTEE

Park v. Republic of Korea

Communication No. 628/1995

5 July 1996

CCPR/C/57/D/628/1995*/

ADMISSIBILITY

Submitted by: Tae-Hoon Park (represented by counsel)

Victim: The author

State party: Republic of Korea

Date of communication: 11 August 1994 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 12 June 1995 (not issued in document form)

Date of present decision: 5 July 1996

Decision on admissibility

1. The author of the communication is Mr. Tae-Hoon Park, a Korean citizen, born on 3 November 63. He claims to be a victim of a violation by the Republic of Korea of article 18, paragraph 1, 19, paragraphs 1 and 2, and 26 of the Covenant. He is represented by counsel. The Covenant and the Optional Protocol thereto entered into force for the Republic of Korea on 10 July 1990.

The facts as submitted by the author

2.1 On 22 December 1989, the Seoul Criminal District Court found the author guilty of breaching paragraphs 1 and 3 of article 7 of the 1980 National Security Law[1] and sentenced him to one year's suspended imprisonment and one year's suspension of exercising his profession. The author appealed to the Seoul High Court, but in the meantime was conscripted into the Korean Army under the Military Service Act, following which the Seoul High Court transferred the case to the High Military Court of Army, in accordance with Korean law. The High Military Court, on 11 May 1993, dismissed the author's appeal. The author then appealed to the Supreme Court, which, on 24 December 1993, confirmed the author's conviction. With this, it is argued, all available domestic

remedies have been exhausted. In this context, it is stated that the Constitutional Court, on 2 April 1990, has declared that paragraphs 1 and 5 of article 7 of the National Security Law are constitutional. The author argues that, although the Court did not mention paragraph 3 of article 7, it follows from its decision that paragraph 3 is likewise constitutional, since this paragraph is intrinsically woven with paragraphs 1 and 5 of the article.

2.2 The author's conviction was based on his membership and participation in the activities of the Young Koreans United (YKU), during his study at the University of Illinois in Chicago, USA, in the period 1983 to 1989. The YKU is an American organization, composed of young Koreans, and has as its aim to discuss issues of peace and unification between North and South Korea. The organization was highly critical of the government of the Republic of Korea and of the US support for that government. The author emphasizes that all YKU's activities were peaceful and in accordance with the US laws.

2.3 The Court found that the YKU was an organization with as purpose the committing of the crimes of siding with a furthering the activities of the North Korean Government and thus an "enemy-benefitting organization". The author's membership in this organization constituted therefore a crime under article 7, paragraph 3, of the National Security Law. Moreover, the author's participation in demonstrations in the USA calling for the end of US' intervention constituted siding with North Korea, in violation of article 7, paragraph 1, of the National Security Law. The author points out that on the basis of the judgement against him, any member of the YKU can be brought to trial for belonging to an "enemy-benefitting organization".

2.4 It is stated that the author's conviction was based on his forced confession. The author was arrested at the end of August 1989 without a warrant and was interrogated during 20 days by the Agency for National Security Planning and then kept in detention for another 30 days before the indictment. No opportunity was given to the YKU to defend itself at the trial against the author. The author states that, although he does not wish to raise the issue of fair trial in his communication, it should be noted that the Korean courts showed bad faith in considering his case.

2.5 Counsel submits that, although the activities for which the author was convicted took place before the entry into force of the Covenant for the Republic of Korea, the High Military Court and the Supreme Court considered the case after the entry into force. It is therefore argued that the Covenant did apply and that the Courts should have taken the relevant articles of the Covenant into account. In this situation, the author states that, in his appeal to the Supreme Court, he referred to the Human Rights Committee's Comments after consideration of the initial report submitted by the Republic of Korea under article 40 of the Covenant (CCPR/C/79/Add.6), in which the Committee voiced concern about the continued operation of the National Security Law; he argued that the Supreme Court should apply and interpret the National Security Law in accordance with the recommendations made by the Committee. However, the Supreme Court, in its judgement of 24 December 1993, stated:

"Even though the Human Rights Committee established by the International Covenant on Civil and Political Rights has pointed out problems of National Security Law as mentioned, it should be said that NSL does not lose its validity simply due to that. . . . Therefore, it can not be said that punishment against the defendant for violating of NSL violates international human rights regulation

or is contradictory application of law without equity." (Translation by author)

The complaint

3.1 The author states that he has been convicted for having opinions critical of the situation in and the policy of South Korea, which are deemed by the South Korean authorities to have been for the purpose of siding with North Korea only on the basis of the fact that North Korea is also critical of South Korean policies. The author argues that these presumptions are absurd and that they prevent any freedom of expression critical of government policy.

3.2 The author claims that his conviction and sentence constitute a violation of articles 18, paragraph 1, 19, paragraphs 1 and 2, and 26, of the Covenant. He argues that although he was convicted for joining an organization, the real reason for his conviction was that the opinions expressed by himself and other YKU members were critical to the official policy of the South Korean Government. He further contends that, although freedom of association is guaranteed under the Constitution, the National Security Law restricts the freedom of association of those whose opinions differ from the official government policy. This is said to amount to discrimination in violation of article 26 of the Covenant. Because of the reservation made by the Republic of Korea, the author does not invoke article 22 of the Covenant.

3.3 The author requests the Committee to declare that his freedom of thought, his freedom of opinion and expression and his right to equal treatment before the law in exercising freedom of association have been violated by the Republic of Korea. He further requests the Committee to instruct the Republic of Korea to repeal paragraphs 1, 3 and 5, of article 7 of the National Security Law, and to suspend the application of the said articles while their repeal is before the National Assembly. He further asks to be granted a retrial and to be pronounced innocent, and to be granted compensation for the violations suffered.

State party's observations and counsel's comments

4.1 By submission of 8 August 1995, the State party argues that the communication is inadmissible for failure to exhaust domestic remedies. In this context, the State party notes that the author has claimed that he was arrested without a warrant and arbitrarily detained, matters for which he could have sought remedy through an emergency relief procedure or through an appeal to the Constitutional Court. Further, the State party argues that the author could demand a retrial if he has clear evidence proving him innocent or if those involved in his prosecution committed crimes while handling the case.

4.2 The State party further argues that the communication is inadmissible since it deals with events that took place before the entry into force of the Covenant and the Optional Protocol.

4.3 Finally, the State party notes that on 11 January 1992 an application was made by a third party to the Constitutional Court concerning the constitutionality of article 7, paragraphs 1 and 3, of the National Security Law. The Constitutional Court is at present reviewing the matter.

5.1 In his comments on the State party's submission, counsel for the author notes that the State

party has misunderstood the author's claims. He emphasizes that the possible violations of the author's rights during the investigation and the trial are not at issue in the present case. In this context, counsel notes that the matter of a retrial has no relevance to the author's claims. He does not challenge the evidence against him, rather he contends that he should not have been convicted and punished for these established facts, since his activities were well within the boundaries of peaceful exercise of his freedom of thought, opinion and expression.

5.2 As regards the State party's argument that the communication is inadmissible ratione temporis, counsel notes that, although the case against the author was initiated before the entry into force of the Covenant and the Optional Protocol, the High Military Court and the Supreme Court confirmed the sentences against him after the date of entry into force. The Covenant is therefore said to apply and the communication to be admissible.

5.3 As regards the State party's statement that the constitutionality of article 7, paragraphs 1 and 3, of the National Security Law, is at present being reviewed by the Constitutional Court, counsel notes that the Court on 2 April 1990 already decided that the articles of the National Security Law were constitutional. Later applications concerning the same question were equally dismissed by the Court. He therefore argues that a further review by the Constitutional Court is devoid of chance, since the Court is naturally expected to confirm its prior jurisprudence.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has noted the State party's argument that the communication is inadmissible since the events complained of occurred before the entry into force of the Covenant and its Optional Protocol. The Committee notes, however, that, although the author was convicted in first instance on 22 December 1989, that is before the entry into force of the Covenant and the Optional Protocol thereto for Korea, both his appeals were heard after the date of entry into force. In the circumstances, the Committee considers that the alleged violations continued after the entry into force of the Covenant and the Optional Protocol thereto and that the Committee is thus not precluded ratione temporis from examining the communication.

6.3 The Committee has also noted the State party's arguments that the author has not exhausted all domestic remedies available to him. The Committee notes that some of the remedies suggested by the State party relate to aspects of the author's trial which do not form part of his communication to the Committee. The Committee further notes that the State party has argued that the issue of the constitutionality of article 7 of the National Security Law is still pending before the Constitutional Court. The Committee also notes that the author has argued that the application to the Constitutional court is futile, since the Court has already decided, for the first time on 2 April 1990, and several times since, that the article is compatible with the Korean constitution. On the basis of the information before it, the Committee does not consider that any effective remedies are still available to the author within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

6.4 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.5 The Committee considers that the facts as submitted by the author may raise issues under articles 18, 19 and 26 of the Covenant that need to be examined on the merits.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which he may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party, to the author and to his counsel.

(Done in English, French, and Spanish, the English text being the original version.)

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[1] The National Security Law was amended on 31 May 1991. The law applied to the author, however, was the 1980 law, article 7 of which reads (translation provided by the author):

> (1) Any person who has benefitted the anti-State organization by way of praising, encouraging, or siding with or through other means the activities of an anti-State organization, its member or a person who had been under instruction from such organization, shall be punished by imprisonment for not more than 7 years.
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> ...
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> (3) Any person who has formed or joined the organization which aims at committing the actions as stipulated in paragraph 1 of this article shall be punished by imprisonment for more than one year.
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> . . .
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> (5) Any person who has, for the purpose of committing the actions as stipulated in paragraphs 1 through 4 of this article, produced, imported, duplicated, possessed, transported, disseminated, sold or acquired documents, drawings or any other similar means of expression shall be punished by the same penalty as set forth in each paragraph."