

HUMAN RIGHTS COMMITTEE

Ajaz and Jamil v. Republic of Korea

Communication No. 644/1995

19 March 1997

CCPR/C/59/D/644/1995*/

ADMISSIBILITY

Submitted by: Mohammad Ajaz and Amir Jamil

Alleged victims: The authors

State party: Republic of Korea

Date of communication: 1 June 1995 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91 decision, transmitted to the State party on 1 August 1995 (not issued in document form)

Date of present decision: 19 March 1997

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The authors of the communication are Mohammed Ajaz and Amir Jamil, both Pakistani citizens currently incarcerated in the Republic of Korea. The authors claim that they are victims of violations of their human rights by the Republic of Korea.

2.1 The authors state that they were convicted of murdering one Mokhter Ahmed (Vicky) and one Ahsan Zuber (Nana), two fellow Pakistani citizens, in Songnam City on 24 March 1992. The authors were tried and sentenced to death on 29 September 1992, after having pleaded not guilty to the charges.

2.2 The authors state that on 23 March 1992 they were in Songnam's mountain area south-east of Seoul. They were with the deceased. The authors allege that the four of them were tricked, by one

Imran Shazad (Zubi), into accompanying him to Songnam City. Once in Songnam, the men walked down to a field. The authors alleged that Zubi exposed two knives, accused the deceased of murdering one Riaz Ahmed Quder (Gogu), Zubi's brother, who had been stabbed to death earlier that night in the town of Itaewon, allegedly by a group with whom the deceased associated. The authors allege that Zubi then stabbed both deceased. The authors claim that they begged Zubi to desist, but that Zubi threatened that if the authors spoke of the evening's incidents, he would "include all of them in the murders".

2.3 The authors claim that at that point, one Kh-farooq Sarwar and one Asif Nadeem, previously unmentioned in the account, were present to help bury the two deceased in a shallow ditch. The authors then state that Zubi washed the knives in a small stream, then buried them about 200 metres from the murder scene. Zubi then walked behind a bus stop shelter and burned his coat, which had blood on it.

2.4 The authors state that, on 26 March 1992, they were questioned by the Republic of Korea police about the murder of Gogu, and as to the whereabouts of Zubi. The police had evidently found the author Jamil's passport on Gogu's dead body. The authors claim that they told the police that they knew nothing either about Gogu's death, or the whereabouts of Zubi. The authors then claim that the police and the investigating prosecutor brought in one Zahid, the authors' roommate, and that Zahid was forced to sign a statement written by the police which alleged that the authors had stolen approximately \$200 from Zahid on 5 March 1992. The authors claim this was not possible since Zahid had not arrived in the country until 18 March 1992. The authors submit that the police elicited the statement from Zahid by severely beating him. The authors were subsequently charged with theft.

2.5 The authors state that, on 28 March 1992, the police discovered the bodies of the deceased. They further claim that, some time in April 1992, the police found and questioned Zubi. The authors submit that Zubi had been beaten by the police into signing a statement in which he confessed to the murders, and in which he implicated the authors. The authors state that "all six Pakistani men" who were present at the scene of the crime implicated Zubi. The authors claim that the police, in order to obtain inculpatory statements from the authors, proceeded to beat them and to apply electro-shock to their genitals. They state, however, that they neither made nor signed any confessions.

The complaint

3.1 The authors state that, during the trial, both Zubi and Zahid testified that the Republic of Korea police forced them to sign statements which implicated the authors. The authors also claim that no evidence was brought against them at trial. They state that the murder weapons were never found, that evidence of a "racketeering and criminal ring" in which they were allegedly involved was never substantiated and that after a witness testified to being present while the authors were being beaten by the police, the court was cleared of all defendants, following which, upon their return, the witness retracted his statement on record.

3.2 The authors claim that they were sentenced to death, while Zubi received 15 years of imprisonment, and others present at the scene of the crime received five years. They claim that the Supreme Court and the High Court allowed the sentences to stand. The authors acknowledge that

they did not fully cooperate with the authorities, and submit that they were frightened by their co-accused Zubi, who threatened to harm their families if they told the truth.

3.3 Although the authors do not claim specific violations under the Covenant, the communication appears to raise issues under articles 6, 7, 9, 10 and 14.

State party's comments on admissibility and authors' comments thereon

4.1 By submission of 2 October 1995, the State party states that, on 29 September 1992, the Seoul Criminal District Court convicted the authors for murder, abandonment of corpse, robbery and attempted robbery and sentenced them to death. On 28 January 1993, the Seoul High Court denied the authors' appeal, and on 4 May 1993, the Supreme Court dismissed a further appeal. With this, the State party acknowledges that all available domestic remedies have been exhausted.

4.2 The State party explains that the authors belong to a Pakistani gang known as Jubipa, which is in constant rivalry with another Pakistani gang called Bikipa. On 24 March 1992, Aded Riaz Kadir, a member of Jubipa, was murdered by members of Bikipa. In revenge, Ahmed Mugul and Asan Jaber were abducted by Jubipa members and taken to Sungnam, where they were stabbed and killed.

4.3 The State party submits that the authors have been convicted of these murders on the basis of testimonies and confessions of three accomplices to the crime. The authors themselves did not make a confession, and the State party argues that their allegations of torture are thus incredible. The State party contests the authors' claim that Imran Shazad (Zubi) confessed to the murders, and states that he only confessed to being an accomplice.

4.4 The State party submits that the authors have been sentenced to death because of the seriousness of their crime, and that their co-accused have been sentenced less severely because their crime was less serious. The State party adds that, in the absence of additional evidence, it cannot reinvestigate the case. However, if the authors can present sufficient evidence that a miscarriage of justice has occurred, they are entitled to a retrial.

5.1 In their response to the State party's submission, the authors state that they do not belong to any gang, and that the facts presented by the State party are nothing more than speculations, for which no evidence exists. They reiterate that all witnesses and accused were tortured by the police and gave their testimony under pressure.

5.2 They explain that Imran Shazad killed Vicky and Nana because they were friends of Akber Ali who had killed his cousin the evening before. They also state that Vicky and Nana were both friends of Imran, and that they did not belong to any gang.

5.3 The authors further contend that the police beat them in their faces, and with a baseball bat over their bodies, in order to make them confess. During the interrogation, the interpreter Yooa Suk Suh was present and witnessed the beatings. Later they were subjected to electric shocks. They reiterate that during the trial their co-accused denied that the authors were the murderers. They further note that the State party mentions the names of the persons on whose evidence they were allegedly

convicted, but claim that those mentioned were only interpreters who all testified that they were beaten. They request that the State party furnish copies of the trial transcript.

5.4 The authors further state that the Republic of Korea authorities do not allow free correspondence with outside organizations such as the Human Rights Committee.

6.1 By a submission of 29 April 1996, the State party reiterates that, although the authors denied their involvement in the crime from the beginning and throughout the trial, the testimonies of Yooun Suk Suh, Moahammed Tirke and Sang Jin Park, accomplices to the crimes, demonstrate that the authors murdered their victims in revenge against a rival criminal organization. The State party reiterates that their convictions were based on concrete evidence.

6.2 The State party further explains that the authors were represented by legal counsel throughout the trial and the appeals. However, the release of trial records to the authors, who are convicted murderers, simply on the basis of their groundless claims is considered to be inappropriate. In this context, the State party points out that the Government of Pakistan has not filed a petition on behalf of the authors.

6.3 As regards the right to correspondence, the State party submits that the Prisoners Communications Rules are in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners, and allow correspondence with family and friends. Further, article 18 of the Penal Administration Act permits occasional correspondence with those other than family and friends. The latter right can be restricted only in exceptional cases for the sake of correctional education.

7. In their response to the State party's submission, the authors reiterate that the persons mentioned by the State party as having testified against them were interpreters during their time in detention. They conclude that this shows that the accusations against them were fabricated, and request the Committee to demand from the State party copies of the statements used in the trial. In this context, the authors claim that the Head of the Prosecutor's office was found guilty of corruption six months after their trial.

Issues and proceedings before the Committee

8.1 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.

8.2 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.

8.3 The Committee notes that the State party has acknowledged that the authors have exhausted all available domestic remedies, and that it has not raised any other objection to the admissibility of the communication.

8.4 The Committee considers that the allegations raised in the communication, including those of torture, confessions and testimonies given under duress, the use of these testimonies against the authors and the reliance of the Republic of Korea judicial authorities on these testimonies despite later withdrawal of the accusations contained therein, need to be examined on their merits.

9. 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; that the State party shall be requested in particular to furnish original copies and translations into English of the trial transcripts and judgements in the case against the authors, as well as the statements on the basis of which the authors were convicted;

(c) That the State party shall be requested, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against Mr. Mohammad Ajaz and Mr. Amir Jamil while their communication is under consideration by the Committee. This request does not imply a determination of the merits of the communication;

(d) 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 authors, with the request that any comments which they may wish to make should reach the Human Rights Committee, in care of the High Commissioner/Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(e) That this decision shall be communicated to the State party and to the authors.

[Done in English, French, and Spanish, the English text being the original version.]

*/ All persons handling this document are requested to respect and observe its confidential nature.