

HUMAN RIGHTS COMMITTEE

Kim v. Republic of Korea

Communication No 574/1994**

3 November 1998

CCPR/C/64/D/574/1994*

VIEWS

Submitted by: Keun-Tae Kim (represented by Mr. Yong Whan Cho, Duksu Law Offices, in Seoul)

Alleged victim: The author

State party: Republic of Korea

Date of communication: 27 September 1993

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

Meeting on 3 November 1998

Having concluded its consideration of communication No.574/1994 submitted to the Human Rights Committee by Mr. Keun-Tae Kim, 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, his counsel and the State party,

Adopts the following:

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

1. The author of the communication is Mr. Keun-Tae Kim, a Korean citizen residing in Dobong-Ku, Seoul, Republic of Korea. He claims to be a victim of violations by the Republic of Korea of article 19, paragraph 2, of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author:

2.1 The author is a founding member of the National Coalition for Democratic Movement (Chunminryum; hereinafter NCDM). He was the Chief of the Policy Planning Committee and Chairman of the Executive Committee of that organization. Together with other NCDM members, he prepared documents which criticized the Government of the Republic of Korea and its foreign allies, and appealed for national reunification. At the inaugural meeting of the NCDM on 21 January 1989, these documents were distributed and read out to approximately 4,000 participants; the author was arrested at the conclusion of the meeting.

2.2 On 24 August 1990, a single judge on the Criminal District Court of Seoul found the author guilty of offences against article 7, paragraphs 1 and 5, of the National Security Law, the Law on Assembly and Demonstrations and the Law on Repression of Violent Activities, and sentenced him to three years' imprisonment and one year of suspension of eligibility. The Appeal Section of the same tribunal dismissed Mr. Kim's appeal on 11 January 1991, but reduced the sentence to two years' imprisonment. On 26 April 1991, the Supreme Court dismissed a further appeal. It is submitted that as the Constitutional Court had held, on 2 April 1990, that article 7, paragraphs 1 and 5, of the National Security Law, are not inconsistent with the Constitution, the author has exhausted all available domestic remedies.

2.3 The present complaint only relates to the author's conviction under article 7, paragraphs 1 and 5, of the National Security Law. Paragraph 1 provides that "any person who assists an anti-State organization by praising or encouraging the activities of this organization, shall be punished". Paragraph 5 stipulates that "any person who produces or distributes documents, drawings or any other material(s) to the benefit of an anti-State organization, shall be punished". On 2 April 1990, the Constitutional Court held that these provisions are compatible with the Constitution as they are applied [only] when the security of the State is endangered, or when the incriminated activities undermine the basic democratic order.

2.4 The author has provided English translations of the relevant parts of the Courts' judgements, which show that the first instance trial court found that North Korea is an anti-State organization, with the object of violently changing the situation in South Korea. According to the Court, the author, despite knowledge of these aims, produced written material which reflected the views of North Korea and the Court concluded therefore that the author produced and distributed the written material with the object of siding with and benefiting the anti-State organization.

2.5 The author appealed the judgement of 24 August 1990 on the following grounds:

- although the documents produced and distributed by him contain ideas resembling those which the regime of North Korea advocates, the judge misinterpreted the facts, as the overall message in the documents was "the accomplishment of reunification through independence and democratization". It thus cannot be said that the author either praised or encouraged the activities of North Korea, or that the contents of the documents were of direct benefit to the North Korean regime;

- the prohibited acts and the concepts spelled out in paragraphs 1 and 5 of article 7 of the National Security Law are defined in such broad and ambiguous terms that these provisions violated the principle of legality, that is, article 21, paragraph 1, of the Constitution, which provides that freedoms and rights of citizens may be restricted by law only when absolutely necessary for national security, maintenance of law and order, public welfare, and that such restrictions may not violate essential aspects of fundamental rights; and

- in light of the findings of the Constitutional Court, the application of these provisions should be suspended for activities which carry no obvious danger for national security or the survival of democratic order. Since the incriminated material was not produced and distributed with the purpose of praising North Korea, and further does not contain any information which would obviously endanger either survival or security of the Republic of Korea, or its democratic order, the author should not be punished.

2.6 The appellate court upheld the conviction on the basis that the evidence showed that the author's written materials, which he read out at a large convention, argued that the Republic of Korea was under influence of foreign powers, defined the Government as a military dictatorship and contained other views which corresponded to North Korean propaganda. According to the Court the materials therefore advocated the policy of North Korea, and the first instance court had thus sufficient grounds to acknowledge that the author was siding with and benefiting an anti-State organization.

2.7 On 26 April 1991, the Supreme Court held that the relevant provisions of the National Security Law did not violate the Constitution so long as they were applied to a case where an activity puts national survival and security at stake or endangers basic liberal democratic order. Thus under article 7 (1) "activity which sides with ... and benefits" an anti-State organization means that if such activity could be beneficial to that organization objectively, the prohibition applies. The prohibition is applicable, if a person with normal mentality, intelligence and common sense acknowledges that the activity in question could be beneficial to the anti-state organization, or if there is wilful recognition that it could be beneficial. According to the Supreme Court, this implies that it is not necessary for the person concerned to have intentional acknowledgement or motivation to be "beneficial". The court went on to hold that the author and his colleagues had produced material which can be recognised, as a whole and objectively, to side with North Korean propaganda and that the author, who has normal intelligence and common sense, read it out and supported it, thereby objectively acknowledging that his activities could be beneficial to North Korea.

2.8 On 10 May 1991, the National Assembly passed a number of amendments to the National Security Law; paragraphs 1 and 5 of article 7 were amended by the addition of the words "with the knowledge that it will endanger national security or survival, or the free and democratic order" to the previous provisions.

The complaint:

3.1 Counsel contends that although article 21, paragraph 1, of the Korean Constitution provides that "all citizens shall enjoy freedom of speech, press, assembly and association",

article 7 of the National Security Law has often been applied to restrict freedom of thought, conscience or expression through speech or publication, by acts, association, etc. Under this provision, anyone who supports or thinks in positive terms about socialism, communism or the political system of North Korea is liable to punishment. It is further argued that there have been numerous cases in which this provision was applied to punish those who criticized government policies, because their criticism happened to be similar to that proffered by the North Korean regime against South Korea. In counsel's view, the author's case is a model of such abusive application of the National Security Law, in violation of article 19, paragraph 2, of the Covenant.

3.2 It is further argued that the courts' reasoning clearly shows how the National Security Law is manipulated to restrict freedom of expression, on the basis of the following considerations contrary to article 19 of the Covenant. First, the courts found that the author held opinions which were critical of the policies of the Government of the Republic of Korea; secondly, North Korea has criticized the Government of South Korea in that it distorts South Korean reality; thirdly, North Korea is characterized as an anti-State organization, which has been formed for the purpose of upstaging the government of South Korea (article 2 of the National Security Law); fourthly, the author wrote and published material containing criticism similar to that voiced by North Korea vis-à-vis South Korea; fifthly, the author must have known about that criticism; and, finally, the author's activities must have been undertaken for the benefit of North Korea and therefore amount to praise and encouragement of that country's regime.

3.3 Counsel refers to the Comments of the Human Rights Committee which were adopted after consideration of the initial report of the Republic of Korea under article 40 of the Covenant.¹

Here, the Committee observed that:

"[Its] main concern relates to the continued operation of the National Security Law. Although the particular situation in which the Republic of Korea finds itself has implications on public order in the country, its influence ought not to be overestimated. The Committee believes that ordinary laws and specifically applicable criminal laws should be sufficient to deal with offences against national security. Furthermore, some issues addressed by the National Security Law are defined in somewhat vague terms, allowing for broad interpretation that may result in sanctioning acts that may not truly be dangerous for State security [...] [T]he Committee recommends that the State party intensify its efforts to bring its legislation more into line with the provisions of the Covenant. To that end, a serious attempt ought to be made to phase out the National Security Law which the Committee perceives as a major obstacle to the full realization of the rights enshrined in the Covenant and, in the meantime, not to derogate from certain basic rights [...]."

3.4 Finally, it is contended that although the events for which the author was convicted and sentenced occurred before the entry into force of the Covenant for the Republic of Korea on 10 July 1990, the courts delivered their decisions in the case after that date and therefore should have applied article 19, paragraph 2, of the Covenant in the case.

State party's information and observations on admissibility and author's comments thereon:

4.1 In its submission under rule 91 of the rules of procedure, the State party argues that as the communication is based on events which occurred prior to the entry into force of the Covenant for the Republic of Korea, the complaint is inadmissible ratione temporis inasmuch as it is based on these events.

4.2 The State party acknowledges that the author was found guilty on charges of violating the National Security Law from January 1989 to May 1990. It adds, however, that the complaint fails to mention that Mr. Kim was also convicted for organizing illegal demonstrations and instigating acts of violence on several occasions during the period from January 1989 to May 1990. During these demonstrations, according to the State party, participants "threw thousands of Molotov cocktails and rocks at police stations, and other government offices. They also set 13 vehicles on fire and injured 134 policemen". These events all took place before 10 July 1990, date of entry into force of the Covenant for the State party: they are thus said to be outside the Committee's competence ratione temporis.

4.3 For events occurring after 10 July 1990, the question is whether the rights protected under the Covenant were guaranteed to Mr. Kim. The State party contends that all rights of Mr. Kim under the Covenant, in particular his rights under article 14, were observed between the date of his arrest (13 May 1990) and that of his release (12 August 1992).

4.4 Concerning the alleged violation of article 19, paragraph 2, of the Covenant, the State party argues that the author has failed to identify clearly the basis of his claim and that he has merely based it on the assumption that certain provisions of the National Security Law are incompatible with the Covenant, and that criminal charges based on these provisions of the National Security Law violate article 19, paragraph 2. The State party submits that such a claim is outside the Committee's scope of jurisdiction; it argues that under the Covenant and the Optional Protocol, the Committee cannot consider the (abstract) compatibility of a particular law, or the provisions of a State party's law, with the Covenant. Reference is made to the Views of the Human Rights Committee on communication No. 55/1979,² which are said to support the State party's conclusions.

4.5 On the basis of the above, the State party requests the Committee to declare the communication inadmissible both ratione temporis, inasmuch as events prior to 10 July 1990 are concerned, and because of the author's failure to substantiate a violation of his rights under the Covenant for events which occurred after that date.

5.1 In his comments, the author notes that what is at issue in his case are not the events (i.e. before 10 July 1990) which initiated the violations of his rights, but the subsequent judicial procedures which led to his conviction by the courts. Thus, he was punished, after the entry into force of the Covenant for the Republic of Korea for having contravened the National Security Law. He notes that as his activities were only the peaceful expression of his opinions and thoughts within the meaning of article 19, paragraph 2, of the Covenant, the State party had a duty to protect the peaceful exercise of this right. In this context, the State authorities and in particular the courts were duty-bound to apply the relevant provisions of

the Covenant according to their ordinary meaning. In the instant case, the courts did not consider article 19, paragraph 2, of the Covenant when trying and convicting the author. In short, to punish the author for exercising his right to freedom of expression after the Covenant became effective for the Republic of Korea entailed a violation of his right under article 19, paragraph 2.

5.2 Counsel observes that the so-called illegal demonstrations and acts of violence referred to by the State party are irrelevant to the instant case; what he raises before the Committee does not concern the occasions on which he was punished for having organized demonstrations. This does not mean, counsel adds, that his client's conviction under the Law on Demonstrations and Assembly were reasonable and proper: it is said to be common that leaders of opposition groups in the Republic of Korea are convicted for each and every demonstration staged anywhere in the country, under an "implied conspiracy theory".

5.3 The author reiterates that he has not raised the issue of the National Security Law's compatibility with the Covenant. He does indeed express his view that, as the Committee acknowledged in its Concluding Comments on the State party's initial report, the said law remains a serious obstacle to the full realization of Covenant rights. However, he stresses that his communication concerns "solely the fact that he was punished for his peaceful exercise of the right to freedom of expression, in violation of article 19, paragraph 2, of the Covenant".

The Committee's admissibility decision:

6.1 At its 56th session, the Committee considered the admissibility of the communication.

6.2 The Committee took note of the State party's argument that as the present case was based on events which occurred prior to the entry into force of the Covenant and the Optional Protocol for the Republic of Korea, it should be deemed inadmissible ratione temporis. In the instant case the Committee did not have to refer to its jurisprudence under which the effects of a violation that continued after the Covenant entered into force for the State party might themselves constitute a violation of the Covenant, since the violation alleged by the author was his conviction under the National Security Law. As this conviction took place after the entry into force of the Covenant on 10 July 1990 (24 August 1990 for conviction; 11 January 1991 for the appeal, and 26 April 1991 for the Supreme Court's judgement), the Committee was not precluded ratione temporis from considering the author's communication.

6.3 The State party had argued that the author's rights were fully protected during the judicial procedures against him, and that he was challenging in general terms the compatibility of the National Security Law with the Covenant. The Committee did not share this assessment. The author claimed that he had been convicted under article 7, paragraphs 1 and 5, of the National Security Law, for mere acts of expression. He further claimed that no proof was presented either of specific intention to endanger state security, or of any actual harm caused thereto. These claims did not amount to an abstract challenge of the compatibility of the National Security Law with the Covenant, but to an argument that the author had been the

victim of a violation by the State party of his right to freedom of expression under article 19 of the Covenant. This argument had been sufficiently substantiated to require an answer by the State party on the merits.

6.4 The Committee was satisfied, on the basis of the material before it, that the author had exhausted all available domestic remedies within the meaning of article 5, paragraph 2, of the Optional Protocol; it noted in this context that the State party had not objected to the admissibility of the case on this ground.

7. On 14 March 1996, the Human Rights Committee therefore decided that the communication was admissible inasmuch as it appeared to raise issues under article 19 of the Covenant.

State party's submission on the merits and counsel's comments

8.1 In its submission, dated 21 February 1997, the State party explains that its Constitution guarantees its citizens fundamental rights and freedoms, including the right to freedom of conscience, freedom of speech and the press and freedom of assembly and association. These freedoms and rights may be restricted by law only when necessary for national security, the maintenance of law and order or for public welfare. The Constitution stipulates further that even when such restriction is imposed, no essential aspect of the freedom or right shall be violated.

8.2 The State party submits that it maintains the National Security Law as a minimal legal means of safeguarding its democratic system which is under a constant security threat from North Korea. The law contains some provisions which partially restrict freedoms or rights for the protection of national security, in accordance with the Constitution.³

8.3 According to the State party, the author overstepped the limits of the right to freedom of expression. In this context, the State party refers to the reasoning by the Appeals Section of the Seoul Criminal District Court in its judgement of 11 January 1991, that there was enough evidence to conclude that the author was engaged in anti-State activities for the benefit of North Korea, and that the materials which he distributed and the demonstrations which he sponsored and which resulted in serious public disorder, posed a clear danger to the existence of the State and its free-democratic public order. In this connection, the State party argues that the exercise of freedom of expression should not only be conducted in a peaceful manner but also be directed towards a peaceful aim. The State party points out that the author produced and disseminated materials to the public by which he encouraged and propagandized the North Korean ideology of making the Korean Peninsula communist by force. Furthermore, the author organized illegal demonstrations with massive violence against the police. The State party submits that these acts caused a serious threat to the public order and security and resulted in a number of casualties.

8.4 In conclusion, the State party submits that it is firmly of the view that the Covenant does not condone any acts of violence or violence-provoking acts committed in the name of the exercise of the right to freedom of expression.

9.1 In his comments on the State party's submission, counsel reiterates that the author's conviction under the Law on Demonstration and Assembly and the Law on Punishment of Violent Activities is not the issue in this communication. Counsel argues that the author's conviction under those laws cannot justify his conviction under the National Security Law for his allegedly enemy-benefiting expressions. Counsel therefore submits that if the expressions in question did not put the security of the country in danger, the author should not have been punished under the NSL.

9.2 Counsel notes that the author's electoral rights have been restored by the State party, and that the author was elected as a member of the National Assembly in the general election in April 1996. Because of this, counsel questions the grounds of the author's conviction for allegedly encouraging and propagandizing the North Korean ideology of making the Korean Peninsula communist by force.

9.3 According to counsel, the State party, through the NSL, has been stifling democracy under the banner of protecting it. In this connection, counsel argues that the essence of a democratic system is the guarantee of peaceful exercise of freedom of expression.

9.4 Counsel submits that the State party has not proved beyond reasonable doubt that the author had put the security of the country in danger by disseminating documents. According to counsel, the State party has failed to establish any relation between North Korea and the author and has failed to show what kind of threat the author's expressions had posed to the security of the country. Counsel submits that the author's use of his freedom of expression was not only peaceful but also directed towards a peaceful aim.

9.5 Finally, counsel refers to the ongoing process towards democracy in Korea, and claims that the present democratization is due to sacrifices of many people like the author. He points out that many of the country's activists who had been convicted as communists under the NSL are now playing important roles as members of the National Assembly.

10.1 In a further submission, dated 21 February 1997, the State party reiterates that the author was also convicted for organizing violent demonstrations, and emphasizes that the reasons for convicting him under the NSL were that he had aligned himself with the unification strategy of North Korea by arguing for unification in printed materials which were disseminated to about 4000 participants at the Founding Convention of the National Democratic Movement Coalition and that activities such as helping to implement North Korea's strategy constitute subversive acts against the State. In this connection, the State party notes that it has technically been at war with North Korea since 1953 and that North Korea continues to try to destabilize the country. The State party therefore argues that defensive measures designed to safeguard democracy are necessary, and maintains that the NSL is the absolute minimal legal means necessary to protect liberal democracy in the country.

10.2 The State party explains that the author's electoral rights were restored because he did not commit a second offence for a given period of time after having completed his prison term, and to facilitate national reconciliation. The State party submits that the fact that the

author's rights were restored does not negate his past criminal activities.

10.3 The State party agrees with counsel that freedom of expression is one of the essential elements of a free and democratic system. It emphasizes, however, that this freedom of expression cannot be guaranteed unconditionally to people who wish to destroy and subvert the free and democratic system itself. The State party explains that the simple expression of ideologies, or academic research on ideologies, is not punishable under the NSL, even if these ideologies are incompatible with the liberal democratic system. However, acts committed under the name of freedom of speech but undermining the basic order of the liberal democratic system of the country are punishable for reasons of national security.

10.4 With regard to counsel's argument that the State party has failed to establish that a relation between the author and North Korea existed and that his actions were a serious threat to national security, the State party points out that North Korea has attempted to destabilize the country by calling for the overthrow of South Korea's "military-fascist regime" in favour of a "people's democratic government", which would bring about "unification of the fatherland" and "liberation of the people". In the documents, distributed by the author, it was argued that the Government of South Korea was seeking the continuation of the country's division and dictatorial regime; that the Korean people had been struggling for the last half century against US and Japanese neo-colonial influence, which aims at the continued division of the Korean peninsula and the oppression of the people; that nuclear weapons and American soldiers should be withdrawn from South Korea, since their presence posed a great threat to national survival and to the people; and that joint military exercises between South Korea and the USA should be stopped.

10.5 The State party submits that it is seeking peaceful unification, and not the continuation of the division as argued by the author. The State party further takes issue with the author's subjective conviction about the presence of US forces and US and Japanese influence. It points out that the presence of US forces has been an effective deterrent to prevent North Korea from making the peninsula communist through military force.

10.6 According to the State party, it is obvious that the author's arguments are the same as that of North Korea, and that his activities thus both helped North Korea and followed its strategy and tactics. The State party agrees that democracy means allowing different voices to be heard but argues that there should be a limit to certain actions so as not to cause damage to the basic order necessary for national survival. The State party submits that it is illegal to produce and distribute printed materials that praise and promote North Korean ideology and further its strategic objective to destroy the free and democratic system of the Republic of Korea. It argues that such activities, directed at furthering these violent aims, cannot be construed as peaceful.

11. Counsel for the author, by letter of 1 June 1998, informs the Committee that he has no further comments to make.

Issues and proceedings before the Committee

12.1 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.

12.2 The Committee observes that, in accordance with article 19 of the Covenant, any restriction on the right to freedom of expression must cumulatively meet the following conditions: it must be provided by law, it must address one of the aims set out in paragraph 3 (a) and (b) of article 19 (respect of the rights and reputation of others; protection of national security or of public order, or of public health or morals), and it must be necessary to achieve a legitimate purpose.

12.3 The restriction of the author's right to freedom of expression was indeed provided by law, namely the National Security Law as it is then stood; it is clear from the courts' decisions that in this case the author would also be likely to have been convicted if he had been tried under the law as it was amended in 1991, although this is not an issue in this case. The only question before the Committee is whether the restriction on freedom of expression, as invoked against the author, was necessary for one of the purposes set out in article 19, paragraph 3. The need for careful scrutiny by the Committee is emphasised by the broad and unspecific terms in which the offence under the National Security Law is formulated.

12.4 The Committee notes that the author was convicted for having read out and distributed printed material which were seen as coinciding with the policy statements of the DPRK (North Korea), with which country the State party was in a state of war. He was convicted by the courts on the basis of a finding that he had done this with the intention of siding with the activities of the DPRK. The Supreme Court held that the mere knowledge that the activity could be of benefit to North Korea was sufficient to establish guilt. Even taking that matter into account, the Committee has to consider whether the author's political speech and his distribution of political documents were of a nature to attract the restriction allowed by article 19 (3) namely the protection of national security. It is plain that North Korean policies were well known within the territory of the State party and it is not clear how the (undefined) "benefit" that might arise for the DPRK from the publication of views similar to their own created a risk to national security, nor is it clear what was the nature and extent of any such risk. There is no indication that the courts, at any level, addressed those questions or considered whether the contents of the speech or the documents had any additional effect upon the audience or readers such as to threaten public security, the protection of which would justify restriction within the terms of the Covenant as being necessary.

12.5 The Committee considers, therefore, that the State party has failed to specify the precise nature of the threat allegedly posed by the author's exercise of freedom of expression, and that the State party has not provided specific justifications as to why over and above prosecuting the author for contraventions of the Law on Assembly and Demonstration and the Law on Punishment of Violent Activities (which forms no part of the author's complaint), it was necessary for national security, also to prosecute the author for the exercise of his freedom of expression. The Committee considers therefore that the restriction of the author's right to freedom of expression was not compatible with the requirements of article 19, paragraph 3, of the Covenant.

13. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it disclose a violation of article 19 of the International Covenant on Civil and Political Rights.

14. Under article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy.

15. Bearing in mind that, by becoming a State party to the Optional Protocol, the Republic of Korea 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, the State party has undertaken to ensure to all individuals within its territory and 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 ninety days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to translate and publish the Committee's Views.

*/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Th. Buergenthal, Ms. Christine Chanet, Lord Colville, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdalla Zakhia.

**/ The text of an individual opinion by Committee member Nisuke Ando is appended to the present document.

1/ CCPR/C/79/Add.6, adopted during the Committee's 45th session (Oct.-Nov. 1992), paragraphs 6 and 9.

2/ Case No. 55/1979 (Alexander MacIsaac v. Canada), Views adopted on 14 October 1982, paragraphs 10 to 12.

3/ Article 1 of the National Security Law reads: "The purpose of this law is to control anti-State activities which endanger the national security, so that the safety of the State as well as the existence and freedom of the citizens may be secured." Article 7, paragraph 1, reads "Any person who has praised or has encouraged or sided with the activities of an anti-State organization or its members or a person who has been under instruction from such an organization, or who has benefited an anti-State organization by other means shall be punished by penal servitude for a term not exceeding seven years." Paragraph 5 of article 7 reads: "Any person who has, for the purpose of committing the actions as stipulated in the above paragraphs, produced, imported, duplicated, kept in custody, transported, disseminated, sold or acquired documents, drawings or other similar means of expression

shall be punished by the same penalty as set forth in each paragraph."

[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.]

Appendix

Individual opinion by member Nisuke Ando (dissenting)

I am unable to agree with the Committee's views in this case that "the restriction of the author's right to freedom of expression was not compatible with the requirements of article 19, paragraph 3, of the Covenant". (para. 12.5)

According to the Committee, "there is no indication that the courts considered whether the contents of the speech [by the author] or the documents [distributed by him] had any additional effect upon the audience or readers such as to threaten public security" (para. 12.4) and "the State party has not provided specific justifications as to why over and above prosecuting the author for contraventions of the Law on Assembly and Demonstration and the Law on Punishment of Violent Activities (which forms no part of the author's complaint), it was necessary for national security, also to prosecute the author for the exercise of his freedom of expression". (para. 12.5)

However, as noted by the State party, the author was "convicted for organizing illegal demonstrations and instigating acts of violence on several occasions during the period from January 1989 to May 1990. During these demonstrations ... participants "threw thousands of Molotov cocktails and rocks at police stations, and other government offices. They also set vehicles on fire and injured 134 policemen". (para. 4.2) In this connection the Committee itself "notes that the author was convicted for having read out and distributed printed material which expressed opinions ... coinciding with the policy statements of DPRK (North Korea), with which country the State party was formally in a state of war". (para. 12.4. See also the explanation of the State party in paras. 10.4 and 10.5)

The author's counsel argues that "the author's conviction under the Law on Demonstration and Assembly and the Law on Punishment of Violent Activities is not the issue in this communication" and that "the author's conviction under those laws cannot justify his conviction under the National Security Law for his allegedly enemy-benefiting expressions". (para. 9.1)

Nevertheless, the author's reading out and distributing the printed material in question, for which he was convicted under these laws, were the very acts for which he was convicted under the National Security law and which lead to the breach of public order as described by the State party. In fact, counsel fails to refute that the author's reading out and distributing

the printed material in question did lead to the breach of public order, which might have been perceived by the State party as threatening national security.

I do share the concern of counsel that some provisions of the National Security Law are too broadly worded to prevent their abusive application and interpretation. Unfortunately, however, the fact remains that South Korea was invaded by North Korea in 1950's and the East-West détente has not fully blossomed on the Korean Peninsula yet. In any event the Committee has no information to prove that the afore-mentioned acts of the author did not entail the breach of public order, and under article 19, paragraph 3, of the Covenant the protection of "public order" as well as the protection of "national security" is a legitimate ground to restrict the exercise of the right to freedom of expression.

Nisuke Ando (signed)