

## HUMAN RIGHTS COMMITTEE

### Ajaz and Jamil v. Republic of Korea

Communication N° 644/1995

13 July 1999

CCPR/C/66/D/644/1995\*

## VIEWS

*Submitted by: Mohammed Ajaz and Amir Jamil*

*Alleged victim: The authors*

*State party: Republic of Korea*

*Date of communication: 1 June 1995*

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

Meeting on 13 July 1999,

Having concluded its consideration of communication No.644/1995 submitted to the Human Rights Committee by Mohammed Ajaz and Amir Jamil, 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 authors of the communication and the State party,

Adopts the following:

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

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

## The facts as presented by the authors

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, together with the deceased and three other men. According to the authors one of them, a certain Zubi accused the deceased of murdering his brother, who had been stabbed to death earlier that night in the town of Itaewon. 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 state that, on 26 March 1992, they were questioned by the Republic of Korea police as to the whereabouts of Zubi. The authors claim that they told the police that they knew nothing about Zubi's whereabouts. The authors further claim that the police and the investigating prosecutor then 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 submit that the police elicited the statement from Zahid by severely beating him. The authors were subsequently charged with theft.

2.4 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 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. They also complain about errors in the translation of their statements.

3.2 The authors state that they were sentenced to death, while Zubi received a sentence of 15 years of imprisonment, and others present at the scene of the crime received a sentence

of five years. They submit 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 of 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 submits that the authors have been convicted of the 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.

4.3 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 reiterate that all witnesses and accused were tortured by the police and gave their testimony under pressure.

5.2 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.

5.3 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. The State party further explains that the authors were represented by legal counsel throughout the trial and the appeals.

6.2 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.

#### The Committee's admissibility decision

8.1 At its 59th session, the Human Rights Committee considered the admissibility of the communication.

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

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

8.4 The Committee considered 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. Accordingly, on 19 March 1997, the Human Rights Committee decided that the communication was admissible and requested the State party 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.

#### State party's observations and the authors' comments

10.1 By submission of 7 November 1997, the State party recalls the facts of the case against the authors as established by the courts. With regard to the authors' claims that they were forced to provide false testimony under mistreatment, the State party submits that the investigations documents show that the authors' testimonies were recorded word for word and that they had full opportunity to present an alibi. The State party emphasizes that a defence counsel was provided at all three stages of the proceedings. In relation to the translation, claimed to be inaccurate by the authors, the State party notes that this point was argued at length by the authors' counsel. A reinvestigation conducted in April 1997 proved the authors' claims to be inaccurate.

10.2 In a spirit of cooperation with the Committee, the State party submits that it reviewed the authors' case, despite it having been fairly and thoroughly deliberated by the courts. During the reinvestigation, conducted by a public prosecutor from the Ministry of Justice, the authors and the accomplices verified that their testimonies had been correctly recorded in the initial investigation documents. According to the State party, this nullifies the claim that acts of torture were employed to obtain confessions from the authors. When the authors reviewed the content of the translations, they acknowledged that the translations were done properly.

10.3 In respect to the authors' claim of having been tortured, the State party notes that this allegation was brought before the court during the trial, but that the authors and their legal defence failed to present any tangible evidence, and their claims were dismissed. In this connection, the State party recalls that acts of torture are prohibited by law; if torture nevertheless occurs, the perpetrator is severely punished and any confession obtained through acts of torture loses its validity.

10.4 The State party further submits that the authors tried to entice and threaten the accomplices to offer favourable testimonies and manufacture evidence. According to the State party this is shown by correspondence and anonymous blackmail messages. It encloses English translations of some letters.

10.5 With regard to the Committee's request for the trial transcripts and the judgements in the case, the State party maintains as a rule that it is not allowed to peruse, photocopy and transmit the records of closed cases in order to protect the safety of victims and witnesses and the repute of defendants. It moreover argues that translating about a thousand pages of investigation documents is physically impossible at this time.

11.1 By letter of 30 June 1997, Mr. Hyoung Tae Kim, Chairman of the Korean Catholic Human Rights Committee presents himself as the authors' legal representative and encloses a power of attorney to this effect.

11.2 By submission of 23 March 1998, the authors comment on the State party's submission. They reiterate that their conviction is not based on facts but on speculation. They reiterate that they were taken into custody on false charges of robbery, that they were ill treated and that the interpreters misrepresented the facts.

11.3 With regard to the State party's reinvestigation, the authors state that a prosecutor came to visit them in prison in late April 1997, and that he asked them questions which were translated by a prison guard. They state that no proper reinvestigation has been carried out. They deny that they verified that their statement had been properly recorded in the investigation documents and state that they have never been allowed to verify the contents of the translations of their statements.

11.4 The authors reject the State party's claims that they tried to influence the witnesses and co-accused in order to have them testify in their favour.

11.5 The authors state that they cannot show how the police tortured them, but they refer to the statements made by the accused at trial that they had been tortured. Mr. Ajaz states that he suffered permanent damage to his left ear, and Mr. Amir nasal damage and the fracture of his right hand finger. They state that they have no access to their medical reports.

12.1 By further submission of 3 July 1998, the State party provides additional observations. With regard to the authors' claim that they were found guilty because of errors in the translation and interpretation, the State party submits that the testimony of the translators shows that the authors' statements have been correctly translated. In this context, the State party notes that one of the interpreters was a Pakistani national.

12.2 With regard to the authors' allegations of torture, the State party refers to a medical report that at the time of his arrest, Mr. Ajaz was suffering from chronic tympanitis of the left ear. In court, a Korean interpreter testified that he never saw any use of torture during the investigative process. According to the State party, during the reinvestigation in April/May 1997, the authors never complained to the prosecutor about use of torture against them.

12.3 With regard to the authors' suggestion that they were discriminated against because they were foreigners, the State party notes that all criminal proceedings apply equally to foreigners and citizens alike and that the Constitution assures everyone within the State's jurisdiction effective protection and remedies against any acts of racial discrimination.

12.4 The State party notes that some of the discrepancies between the State party's account of the facts and that of the authors are due to problems of translation. The State party maintains that the authors were found guilty by the courts on the basis of the consistent and coinciding confessions of the accomplices. According to the State party, the authors during the court hearings denied being present at the scene of the crime, and acknowledged for the first time their presence in their interview with the prosecutor on 1 May 1997. The prosecutor also spoke to one of the co-accused in prison, who testified that he had lied in court when he said that he didn't know anything about the crime, and that he had taken part in it together with the authors.

12.5 The State party maintains that the authors received a fair and impartial trial, and that they were found guilty at three levels, by the District Court, the High Court and the Supreme Court. It adds that the authors are entitled to a retrial if they present sufficient evidence.

12.6 The State party provides copies of English translations of the Courts' judgements. From the judgements, it appears that the District Court considered the voluntariness of the statements made by the defendants, but that in the light of the testimonies it found no sustainable reason to doubt the voluntariness of the statements. On appeal, the High Court examined the authors' grounds of appeal that the statements made by the defendants were not trustworthy because of mistakes in the translation and interpretation, and because of threats and violence used against the defendants. The High Court found however that the interpreters were capable of interpreting in Pakistani and Korean, and did so correctly. It also noted that the police officer in charge of the investigation had made detailed and elaborate reports on the investigation process and that no evidence was found to prove that he had treated the accused harshly in any way or that he fabricated testimony. The Court concluded that the defendants had not been forced to testify, nor tortured. The Supreme Court rejected the authors' appeal on the basis that no misinterpretation of facts in the use of evidence occurred which would cause a violation of the law.

13.1 By letter of 23 July 1998, the authors' representative informs the Committee that the authors have been granted a pardon by the President. This information is confirmed by a note from the State party, dated 2 September 1998, that the authors' death sentence has been commuted to life imprisonment, in compliance with its national amnesty programme.

13.2 By letter of 26 February 1999, the authors' representative informs the Committee that the authors have been released from prison and have returned to Pakistan on 25 February 1999. This information has been confirmed by the State party in a note dated 9 March 1999.

#### Issues and proceedings before the Committee

14.1 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.

14.2 The Committee notes that the authors' claims that there was not enough evidence to convict them, that they had been tortured in order to force them to confess and that mistakes occurred in the translations of their statements were examined by both the court of first instance and the court of appeal, which rejected their claims. The Committee refers to its jurisprudence that it is not for the Committee, but for the courts of States parties, to evaluate the facts and evidence in a specific case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. The Committee regrets that the State party did not provide a copy of the trial transcript which has prevented the Committee from examining fully the conduct of the trial. Nevertheless, the Committee has considered the judgements of the District Court and the High Court. Having regard to the content of these judgments and in particular their evaluation of the authors' claims subsequently made to the Committee, the Committee does not find that those evaluations were arbitrary or amounted to a denial of justice or that the authors have raised before the Committee any issues beyond those so evaluated.

15. 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 do not disclose a violation of any of the articles of the International Covenant on Civil and Political Rights.

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\*/ The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra N. Bhagwati, Ms. Christine Chanet, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

[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.]