

Decision No. 30/1994 (Republic of Korea)

Communication addressed to the Government of the Republic of Korea on 3 August 1993.

Concerning: Hwang Suk-Yong, on the one hand, and the Republic of Korea, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.
3. (Same text as para. 3 of Decision No. 10/1994.)
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the Republic of Korea. The Working Group transmitted the reply provided by the Government to the source that had submitted the information and the latter has provided the Working Group with its comments. In order to obtain additional information, on 25 May 1994 the Working Group requested the Government of the Republic of Korea to communicate to it the text of the court judgement concerning Hwang Suk-Yong. The Working Group noted with concern that to date the Government has not supplied this document. It notes with regret that the spirit of cooperation displayed in the Government's first reply (20 October 1993) has been called into question by the lack of subsequent reactions.
5. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the comments provided by the source.
6. According to the communication, a summary of which has been transmitted to the Government, Hwang Suk-Yong, aged 50, a writer, was reportedly arrested on 27 April 1993 at Seoul Airport by officials of the Agency for National Security Planning (ANSP) and remained in detention ever since. It was reported that Hwang Suk-Yong travelled to North Korea in 1989 and subsequently went into self-imposed exile to avoid arrest in the Republic of Korea, and that he was arrested upon his return to Seoul from the United States of America. According to the source, Hwang Suk-Yong has been detained solely due to his non-violent exercise of his rights to freedom of expression and association.
7. In its reply of 20 October 1993, five days before Hwang Suk-Yong was convicted, the Government of the Republic of Korea confirmed that he had been arrested on 11 June 1993 under the National Security Act, on the following charges:

(a) Five unlawful visits to North Korea, during which he met members of the North Korean intelligence agency, to which he transmitted information regarding the domestic situation in the Republic of Korea.

(b) The handing over of \$250,000 by a high-ranking North Korean official to assist anti-South Korean organizations based in the United States.

(c) Illegal dissemination of North Korean propaganda hostile to the South.

The Government maintains that State terrorism is an instrument of North Korean foreign policy; but it does not indicate in what respect Hwang Suk-Yong's activities can be described as terrorism. Nothing in the text of the Government's reply testifies to violence perpetrated, premeditated, advocated or upheld by Hwang Suk-Yong. The Government's explanations concerning the scope of the National Security Law, protecting society against "illegal acts such as a violent attempt to overthrow the Government", do not as they stand appear to apply to the case of Hwang Suk-Yong, since the Government does not accuse him of such a violent attempt. The Government also considers that the proceedings against the accused are moving forward properly, without any violation of national legislation guaranteeing the right to a fair trial. The Government concludes by emphasizing that other institutions should not interfere in this matter.

8. The source states in its comments of 17 January 1994 that on 25 October 1993 Hwang Suk-Yong was sentenced to eight years' imprisonment by the court of first instance. It indicates (without specifying the figure of \$250,000) that the money represented copyright fees for the film which was made of his book Jankilsan. The source adds that Hwang Suk-Yong, who was interrogated for the first 17 days of his detention by ANSP, complained of having been deprived of sleep, interrogated for long periods and threatened.

9. The Working Group considers that the grounds for the detention and conviction of Hwang Suk-Yong lie in the personal contacts he has had with individuals originating from North Korea with the aim of publicly advocating dialogue with North Koreans.

10. The Working Group recalls that article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights guarantee the right to freedom of opinion and expression, with the proviso that restrictions of this freedom set out in national legislation must correspond to article 19, paragraph 3 (b) of the Covenant. The Government of the Republic of Korea has not proved that Hwang Suk-Yong used, advocated or premeditated violence; it does not even accuse him of having transmitted secret information or information likely to threaten national security. The Working Group does not regard the mere affirmation that Hwang Suk-Yong had contacts with the North Korean intelligence services as sufficient in itself to establish that Hwang Suk-Yong violated the law setting out restrictions necessary for the protection of national security.

11. In keeping with international standards relating to human rights, the international community has a duty to ensure the application of human rights in national legislation in conformity with international standards, their

practical application and their evolution on the national and international levels. The Working Group on Arbitrary Detention is but one of many examples of machinery working in the cause of human rights.

12. It is apparent from the above that Hwang Suk-Yong was sentenced solely for having exercised his right to freedom of opinion and expression, which is guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. It is also apparent that there is nothing to indicate that in doing so he had recourse to violence, incited violence or caused any threat to national security, public order or public health or morals and thereby violated a national law stipulating permissible restrictions aimed at the protection of those values.

13. In the light of the above the Working Group decides:

The detention of Hwang Suk-Yong is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to which the Republic of Korea is a Party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

14. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned person to be arbitrary, the Working Group requests the Government of the Republic of Korea to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1994.