

DECISION No. 1/1995 (REPUBLIC OF KOREA)

Communication addressed to the Government of the Republic of Korea on 23 August 1994.

Concerning Lee Jang-hyong, Kim Sun-myung, Ahn Jae-ku, Ahn Young-min, Ryu Nak-jin, Kim Sung-hwan, Kim Jin-bae, Jong Hwa-ryo, Jong Chang-soo, Hong Jong-hee and Park Rae-koon, 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 concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiry of 90 days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 35/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Republic of Korea. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The communication, a summary of which has been transmitted to the Government, concerned the following persons:

(a) Lee Jang-hyong, aged 61, a former lieutenant and restaurant manager; he was reportedly arrested on 15 June 1984 but a warrant for his arrest was not issued until 20 August 1984. He was reportedly being held in Kwangju prison where he was serving a life sentence under the National Security Law. According to the source, upon his arrest he was taken to the Anti-Communist Division of the Police Headquarters in Seoul, where he was allegedly held incommunicado for 67 days. During that time he was allegedly tortured and forced to confess that he had spied for North Korea. He was tried in January 1985 and sentenced to life imprisonment on charges of spying. According to the prosecution, Lee Jang-hyong was recruited as a spy by an uncle living in Japan, a charge which he said he was forced to admit under torture and for which there appeared to be no evidence. He was reportedly also accused of visiting North Korea in December 1982, but his family and friends claimed that during that period he was staying with a cousin in Japan. According to the source, Lee Jang-hyong's family also maintained that during his trial they were intimidated by the authorities into not appointing a sympathetic lawyer; he was therefore defended by a court-appointed lawyer, who apparently did little to counter the prosecution's charges.

(b) Kim Sun-myung, aged 69, a former textile worker, who fought for North Korea during the Korean War (1951-1953), was arrested in 1951 as he crossed the border separating the two parts of the peninsula, accused of espionage and sentenced to 15 years' imprisonment. In 1953 he was tried again by a military court and was sentenced to death, later commuted to life imprisonment. It was alleged that he was tortured during interrogation and convicted unfairly, and that he has been held for 42 years in conditions of extreme isolation, in Taejon prison, and has been denied release on parole since he refused to renounce his alleged communist views.

(c) At least 25 people, including Ahn Jae-ku, aged 61, a mathematics lecturer at Kyonghee University, Ahn Young-min, aged 26, Ryu Nak-jin, aged 66, Kim Sung-hwan, aged 28, a member of the Korean Council of Youth Organizations in Pohang City, Kim Jin-bae, aged 26, a worker, Jong Hwa-ryo, aged 30, Jong Chang-soo, aged 30, Hong Jong-hee, aged 37, and Park Rae-koon, aged 32, were allegedly arrested on 14 June 1994 by the Agency for National Security Planning (ANSP) and the police for alleged pro-North Korean activities. According to the source, they were currently held for interrogation under the National Security Law (NSL). The ANSP reportedly said that some of the prisoners, including Ahn Jae-ku, were accused of forming an underground branch of the (North Korean) Workers' Party of Korea; they were said to have established in January 1993 a pro-North Korean group called "the National Front for Salvation of the Fatherland". Some of the other prisoners were accused of forming a pro-North Korean group called "the Korean Democratic Nationalistic Front".

6. It appears from the facts as described above that the allegations (a) that Lee Jang-hyong and Kim Sun-myung had been tortured during the interrogation which preceded their trials, held 11 and 42 years ago, respectively; (b) that Lee Jang-hyong was kept incommunicado for 67 days and was forced under torture to confess his guilt; and (c) that Kim Sun-myung's trials in 1951 and 1953 were unfair, have not been challenged by the Government. As regards Kim Sun-myung, he is probably one of the longest-held prisoners in the world. He remains in prison, according to the source, for refusing to renounce his (allegedly communist) opinions. The Working Group considers that in the above cases the non-observance of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom an arbitrary character.

7. As regards the 25 persons of whom 9 are indicated by name in paragraph 5 (c) above, their detention can only be explained by the simple fact of their having peacefully exercised their right to freedom of opinion and expression, guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and their right to freedom of association, guaranteed by article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights.

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

(a) The detention of Lee Jang-hyong and Kim Sun-myung, is declared to be arbitrary being in contravention of articles 5, 9 and 10 of the Universal Declaration of Human Rights and articles 7, 9 and 14 of

the International Covenant on Civil and Political Rights, to which the Republic of Korea is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The detention of Ahn Jae-ku, Ahn Young-min, Ryu Nak-jin, Kim Sung-hwan, Kim Jin-bae, Jong Hwa-ryo, Jong Chang-soo, Hong Jong-hee and Park Rae-koon is declared to be arbitrary, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 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.

(c) To transmit the cases of Lee Jang-hyong and Kim Sun-myung to the Special Rapporteur on the question of torture.

9. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons 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 30 May 1995