

DECISION No. 49/1995 (REPUBLIC OF KOREA)

Communication addressed to the Government of the Republic of Korea on 15 May 1995.

Concerning: Kim Sam-sok, Ki Seh-moon and Lee Kyung-ryol, 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 cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

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 but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. The communication submitted by the source, a summary of which was forwarded to the Government, concerned the following persons:

(a) Kim Sam-sok, aged 28, a writer and a peace and human rights activist, was arrested on 8 September 1993 by some 15 men who did not have warrants of arrest and did not identify themselves (together with his sister who was later tried with him, but was acquitted on most of the charges and released). He was held and interrogated by the Agency for National Security Planning (ANSP, the main intelligence agency in the country) from 8 to 24 September, and was later transferred to Youngdungpo and Seoul Prisons for further interrogation. During his interrogation he was allegedly ill-treated, including by being subjected to sleep deprivation and beating, in order to force him to sign "confessions" of his alleged links with "anti-State" groups. On 23 October 1993 he was charged under article 4 of the National Security Law (NSL) for meeting and passing "State secrets" to "agents" in Japan. He denied the charges and said that during his 45-day interrogation he had been forced to make confessions. Kim Sam-sok was tried before Seoul District Court. On 28 February 1994 Kim Sam-sok was sentenced to seven years' imprisonment. According to the source the group with whom Kim Sam-sok was accused of having links, Hantongnyon, is a group of Korean residents of Japan working on human rights and democracy issues. It was further reported that, during the trial, Kim Sam-sok told the Court that he had not been informed of the accusations against him at the time of his arrest and that throughout his 45-day interrogation he had never been informed of his right to remain silent.

(b) Ki Seh-moon, a former political prisoner, and Lee Kyung-ryol, the Vice-President of the Korean Youth Federation, were arrested on 11 and 12 March 1995 and accused under article 7 of the NSL of preparing a pamphlet condoning the activities of a former political prisoner, Yoon Ki-nam, who died in February 1995 after serving a 28-year prison sentence during which he refused to renounce his alleged communist views. The pamphlet in question was alleged to have called Yoon Ki-nam a "patriotic fighter" and a "fighter for national reunification", in violation of article 7 of the NSL which punishes the act of "praising", "encouraging" or "benefiting" North Korea. The two men were taken, after their arrest, to Chonnam Police Station for questioning. The source alleged that the two men were being held for the non-violent exercise of their right to freedom of expression.

6. With regard to Kim Sam-sok, the Government, in its reply, reported that on 7 July 1994, Kim Sam-sok was sentenced to 4 years in prison and to "suspension of qualification" for 4 years. As regards the criminal charges against Kim Sam-sok, the Government informed the Working Group that he was charged with having met in February 1992, in Japan, with the president of "Hantongnyon" (described by the Government as an "anti-State organization"); having been in contact in Japan with a leading member of that North Korean organization and having received from him the sum of 500,000 yen for collecting information which he had to provide to him.

7. The Government stressed in its reply that the money received by Kim Sam-sok originated from "North Korea, a country whose ultimate objective is to overthrow the Republic of Korea to unify both countries under the flag of its own kind of communism", and that Kim Sam-sok had "collected and passed information on military information and State secrets to North Korea, causing harm to national Security". He was indicted under the National Security Law, but denied at his trial having collected and spied out State secrets.

8. The Government rejected the allegation that Kim Sam-sok had been tortured or ill-treated during his interrogation, but informed the Working Group that an investigation was under way by the Seoul District Public Prosecutors Office into the torture allegations, following a complaint by Kim Sam-sok's wife.

9. As regards Ki Seh-moon, the Government reported that the main criminal charges against him were that, in May 1993, he produced, published and distributed the memoirs of Kim Se-won, a member of a North Korean armed unit, and that, in February 1995, he organized the funeral ceremony of Yoon Ki-nam, the commander of the same armed unit who was described by the Government as "an unconverted radical leftist political prisoner". Ki Seh-moon was also accused of having praised the North Korean regime. On 30 May 1995 he was convicted on these charges and sentenced to two years in prison and to a "suspension of qualifications" for two years.

10. As for Lee Kyung-ryol, he also participated, according to the Government, in organizing the above-mentioned funeral. During the period June 1994 to March 1995 he "organized and led four unlawful assemblies with the motive to praise North Korean radical communist ideology". He was arrested on 12 March 1995 and his trial had not yet taken place. The Government stressed that he had taken part in violent unlawful demonstrations,

and that his actions clearly denied basic order of a free and democratic society and could not be accepted as one's exercise of the right to freedom of expression. Both Ki Seh-moon and Lee Kyung-ryol had been arrested and prosecuted on grounds of violating the National Security Law.

11. It appears from the above that Kim Sam-sok, Ki Seh-moon and Lee Kyung-ryol, in their activities, had merely exercised their rights to freedom of opinion and expression, freedom of peaceful assembly and freedom of association, guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights, and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights, to which the Republic of Korea is a party. Furthermore, the Working Group considers that it does not appear from the analysis of the facts submitted to its appreciation that the persons concerned had exercised their above-mentioned rights by resorting or by inciting to violence, or that, in their activities, they had harmed the rights or reputations of others, national security, public order or public health or morals.

12. As regards the allegations made by the Government that these persons were involved in spying activities, the Working Group is of the opinion that these allegations are formulated in vague and general terms and that they do not appear clearly from the facts, as described.

13. The Working Group therefore believes that the detention of Kim Sam-sok, Ki Seh-moon and Lee Kyung-ryol, since the day of their arrest, is solely motivated by their activities undertaken in free exercise of their rights to freedom of opinion and expression, freedom of peaceful assembly and freedom of association, guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights, and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights, respectively.

14. In the light of the above, the Working Group decides:

(a) The detention of Kim Sam-sok, Ki Seh-moon and Lee Kyung-ryol is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Working Group decides, furthermore, to transmit the information concerning the alleged torture to the Special Rapporteur on the question of torture.

15. Consequent upon the decision of the Working Group declaring the detention of Kim Sam-sok, Ki Seh-moon and Lee Kyung-ryol 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 1 December 1995.