

DECISION No. 25/1996 (REPUBLIC OF KOREA)

Communication addressed to the Government of the Republic of Korea on 5 March 1996.

Concerning: Kwon Young-Kil and Yang Kyu-hun, on the one hand and the Republic of Korea, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised 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 and received 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, the response of the Government thereto and the comments by the source.

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

(a) Kwon Young-kil, President of *Minju Nochong* (Korean Federation of Trade Unions, KCTU), who was reportedly arrested on 23 November 1995 and was allegedly charged on 16 December of the same year with "third party intervention" in labour disputes. These charges reportedly related to the contents of speeches he made at a series of rallies in May and June 1994 in which he advised workers about industrial action, expressed support for workers and criticized government policy. It was reported that the prohibition on "third party intervention" is contained in article 13-2 of the Labour Dispute Mediation Act which prohibits a "third person", that is anyone who has no immediate connection with a workplace where a dispute is taking place, from intervening in the dispute. The authorities allegedly regard as "third party intervention", advice given to trade union members on their rights, and the conduct of industrial disputes. Three additional minor charges were reportedly brought against Kwon Young-kil in regard to two demonstrations organized by the KCTU in November 1994. These charges included interference with traffic flow, raising funds for the KCTU without government permission and his connection with the violence which erupted during both rallies. The source argued that there was no evidence that Kwon Young-kil had used or advocated violence.

(b) Yang Kyu-hun, Vice-President of the KCTU, was reportedly arrested on 1 February 1996 after having been in hiding since June 1994, when warrants were issued for his arrest and that of Kwon Young-kil on charges of "third party intervention" in labour disputes. It was alleged that under the Republic of Korea's legislation, Yang Kyu-hun may be questioned by police and prosecution authorities for up to 30 days.

(c) The source further noted that in March 1993, the International Labour Organization (ILO) Committee on Freedom of Association had called on the Republic of Korea to lift the ban on "third party intervention", and that in July 1995, the United Nations Human Rights Committee had found that a trade-unionist, named Sohn Jong-kyu, sentenced to 18 months of imprisonment for "third party intervention" in a labour dispute, had been convicted for exercising his right to freedom of expression.

6. In its reply dated 30 May 1996, the Government provides a detailed account of the pertinent legislation in force and the circumstances in which the law was allegedly violated by the two trade-unionists concerned. It also informs the Working Group of the release, on 13 March 1996, of Kwon Young-kil. As regards the legal basis for detention the Government mentions the following charges:

(a) An unauthorized third party intervention in illegal acts of dispute, under articles 12 and 13 of the Labour Dispute Adjustment Act. Article 12 prohibits acts of dispute by public servants. Messrs. Kwon and Yang violated this article by instigating railway workers, who were public servants, to go on illegal strikes in June 1994. They also violated article 13 of the same act, which prohibits unauthorized intervention by a third party in acts of dispute, twice in June 1994. Mr. Yang instigated workers of two companies to go on illegal strikes on four occasions in June and July 1994.

(b) An obstruction of general traffic flow, by marching with 10,000 workers and students and participating in sit-ins, on 12 November 1995, thus violating article 185 of the Criminal Law.

(c) Intrusion into private premises during marches in Kyunghee University campus on 12 November 1994 and in Yonsei University campus on 11 November 1995, in violation of article 319, paragraph 1, of the Criminal Law.

(d) An illegal collection of contributions, carried out by Mr. Kwon in October 1995 in violation of article 3 of the Law on Prohibiting Collection of Contribution in Cash or in Kind.

7. The Government explains the prohibition of third party intervention and in what situations such an intervention is admissible. Following the recommendations made by the ILO Governing Body and the United Nations Human Rights Committee the Government is currently engaged in a process of revision of the labour laws prevailing in the country, in the spirit of "democratization through changes and reforms" pursued by the Government since its inauguration in 1993. Under the "Presidential Vision for New Industrial Relations" announced by President Kim Young-Sam on 24 April 1996 a

Presidential Commission (PCIR) was established on 9 May 1996, composed of 30 members including representatives of the KCTU, of which Messrs. Kwon and Yang are President and Vice-President, respectively. The Government will initiate the revision of current labour laws on the basis of the PCIR report. In conclusion, the Government states that Messrs. Kwon and Yang's involvement in acts of dispute described above went considerably beyond simple advice given to trade union members on their rights, since they instigated violent acts of dispute in violation of the Criminal law and the relevant labour laws, which resulted in a serious threat to the public order. The Government adds that, as stipulated by article 19.3 of the International Covenant on Civil and Political Rights, the right to freedom of expression can be restricted by law for respect of rights or reputations of others and for protection of public order.

8. The source, in its observations, confirmed the release of Mr. Kwon on 13 March 1996.

9. It appears from the facts as described above that the detention of Mr. Yang Kyu-Hun is solely motivated by activities he carried out in the free exercise of his rights to freedom of opinion and expression and to freedom of peaceful assembly and association, guaranteed by articles 19 and 20, respectively, of the Universal Declaration of Human Rights, and by articles 19, 21 and 22, respectively, of the International Covenant on Civil and Political Rights to which the Republic of Korea is a Party. In view of the restrictions provided by the Korean law, under which the exercise of these rights is limited by the prohibition of a third party intervention in a labour dispute, it remains to be seen whether the activities carried out by Mr. Yang could have harmed the rights and reputations of others or could have harmed public order - which the Government claims they did. The Working Group acknowledges that Mr. Yang's interventions in the labour disputes and the organizing of workers' demonstrations could indeed have provoked traffic disruptions and intruded into private premises. But the harm caused to public order and to the rights of others by Mr. Yang's acts is, in the Working Group's opinion, insignificant, or in any case too small to justify the restriction of the aforementioned fundamental rights. Likewise, the Working Group deems there is nothing in Mr. Yang's acts which can be seen as harmful to the reputations of others. The Working Group believes that the activities carried out by Mr. Yang were not of a nature to justify the Government's resorting to the admissible restrictions, as laid down by the Korean law, which are necessary for the respect of rights or reputations of others, or for the protection of public order.

10. The Labour Dispute Adjustment Act currently applied in the Republic of Korea is not in conformity with the provisions of the International Covenant on Civil and Political Rights and confers on the detention of persons held for having violated it an arbitrary character.

11. The Working Group notes with satisfaction the release of Kwon Young-kil, on the one hand, and the preparations under way in the Republic of Korea for a new labour law, on the other. It is hoped that this new legislation would fully guarantee the right to freedom of association, in conformity with the aforementioned provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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

(a) The case of Kwon Young-kil is filed, without prejudging the nature of his detention, in terms of paragraph 14.1 (a) of the Working Group's revised methods of work which provide that "If the person has been released, for whatever reason, since the Working Group took up the case, it shall decide in principle to file the case".

(b) The detention of Yang Kyu-hun 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 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.

13. Consequent upon the decision of the Working Group declaring the detention of Yang Kyu-hun 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 17 September 1996.