**Kim v. Korea**

3 November 1998, Communication No. 574/1994 (UN Human Rights Committee)

Theme: national security

Sub-Issues:

Test:

Penalty: imprisonment

Decision: violation of freedom of expression (Article 19 ICCPR); one dissenting opinion

Jurisdiction: UN Human Rights Committee: Korea

Summary:

The author was imprisoned for disseminating material critical of the government and appealing for national re-unification.

Facts: The author was a founding member and chair of a political organisation. At the inaugural meeting, documents critical of the government and appealing for national re-unification were distributed and read out. At the conclusion of the meeting the author was arrested. He was tried and sentenced to two years' imprisonment under a national security law which stated, “any person who assists an anti-state organisation by praising or encouraging the activities of the organisation, shall be punished” and “any person who produces or distributed documents, drawings or any other materials to the benefit of an anti-state organisation shall be punished”.

Held:

Any restriction on the right to freedom of expression must cumulatively meet the following conditions: it must be provided by law, it must address one of the aims set put in paragraph 3 (a) and (b) of Article 19 and it must be necessary to achieve a legitimate purpose. The impugned restriction was provided by law. The question for the Committee was whether the restriction was necessary for the protection of national security. The need for careful scrutiny was emphasised by the broad and unspecific terms in which the offence under the impugned law was formulated.

National Security

The State party had failed to explain how the dissemination of the views of the author created a risk to national security or what the nature or extent of such a risk could be. There was no indication that the courts had considered whether the views of the author had had any additional effect which might threaten public security. The State party had therefore failed to explain the necessity of its actions against the author.

Link to full text:

<http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/96fa6f7a336cd88b8025671400388618?Opendocument> (on United Nations Human Rights website)