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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2776/2016*, **, ***

Communication submitted by:	Jung-Hee Lee and 388 others (represented by Kinam Kim and others, Minbyun Lawyers for a Democratic Society)
Alleged victims:	The authors
State party:	Republic of Korea
Date of communication:	11 December 2015 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 16 June 2016 (not issued in document form)
Date of adoption of Views:	23 October 2020
Subject matter:	Dissolution of a political party
Procedural issues:	Inadmissibility – manifestly ill-founded; applicability of the State party's reservation to article 22 of the Covenant
Substantive issues:	Freedom of association; freedom of expression; right to take part in the conduct of public affairs; permissibility of restrictions; right to equal protection without distinction of any kind
Articles of the Covenant:	2 (1), 19, 22 and 25
Articles of the Optional Protocol:	None

1. The authors of the communication are Jung-Hee Lee and 388 others, all nationals of the Republic of Korea. The authors claim that the State party has violated their rights under article 22, as well as articles 2 (1), 19 and 25, all read in conjunction with article 22, of the Covenant. The Covenant and the Optional Protocol entered into force for the State party on 10 July 1990. The authors are represented by counsel.

* Adopted by the Committee at its 130th session (12 October–6 November 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Furuya Shuichi, Duncan Laki Muhumuza, David Moore, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

*** A joint opinion by Committee members Christof Heyns, David Moore, Vasilka Sancin, Yuval Shany, Hernán Quezada Cabrera and Gentian Zyberi (dissenting) is annexed to the present Views.

Facts as presented by the authors

2.1 The authors were all members of the Unified Progressive Party. Most of them were ordinary members who paid membership fees.

2.2 In September 2013, in the context of increased tensions between the State party's authorities and the regime in the Democratic People's Republic of Korea, Unified Progressive Party lawmaker Seok-ki Lee and six others were charged with conspiracy and instigation to insurrection and with violating the National Security Act. Mr. Lee was accused of organizing and leading an alleged underground organization named the Revolutionary Organization with the purpose of overthrowing the constitutional order and implementing the *juche* ideology of the Democratic People's Republic of Korea. He was accused of instigating those members of the Revolutionary Organization who were also members of the Unified Progressive Party and who were present at meetings on 10 and 12 May 2013 to make physical and military preparations, including for the destruction of the country's infrastructure, in the event of an armed conflict with the Democratic People's Republic of Korea. On 18 February 2014, a court convicted Mr. Lee and Hong-yeol Kim, having found them guilty of conspiracy and instigation to insurrection and of violating the National Security Act. Five others were found guilty on similar charges. The appeal court acquitted Mr. Lee of conspiracy but upheld his conviction for instigating insurrection and violating the National Security Act. The Supreme Court upheld that ruling on 22 January 2015.

2.3 On 5 November 2013, the State Council invited the Constitutional Court to dissolve the Unified Progressive Party, as its objectives and activities were contrary to the fundamental democratic order.

2.4 On 19 December 2014, the Constitutional Court ordered the dissolution of the Unified Progressive Party, finding that it had sought to undermine liberal democracy and pursued the kind of socialism promoted in the Democratic People's Republic of Korea. The Court found that the hidden objective of the Party's "leading core", consisting of members from different alliances, including the East Gyeong-gi Alliance, was to violently establish a "progressive democracy" and socialism. The Court found that objective to directly contradict the fundamental democratic order. It also found that the Party's activities, including insurrection attempts, internal election fraud, violence in its central committee and manipulation of a public poll, undermined national coexistence and the rule of law and were thus contrary to the idea of democracy. It considered the Party's dissolution to be a proportionate restriction and necessary for the prompt removal of the risk posed by its attempts to damage the fundamental democratic order. The Court referred to the confrontations with the Democratic People's Republic of Korea and the latter's revolutionary strategy against the State party. It considered that criminal punishment of individuals would not eliminate the unconstitutional nature of the Party itself. It also considered that the Party's dissolution because of its unconstitutionality required that its lawmakers be deprived of their seats in the National Assembly, as they could otherwise continue their activities. The Court thus removed Party lawmakers from the National Assembly and precluded the possibility of the Party reforming under a different guise. As a result, on 22 December 2014, the National Election Commission removed six Party members from their local assembly seats.

2.5 The authors' membership in the Unified Progressive Party was thus terminated. The Party requested a retrial on 16 February 2015 despite the lack of a law allowing for retrials, on the ground that the Supreme Court had acquitted Mr. Lee and others of conspiracy. On 30 May 2016, the authors informed the Committee that the Constitutional Court had rejected their request on 26 May 2016. On 25 November 2015, Jeonju District Court ruled that the termination of a Party member's local assembly membership was wrongful.

Complaint

3.1 The authors claim that their right to freedom of association under article 22 of the Covenant was violated. They acknowledge that the State party has entered a reservation to that article clarifying that it is to be applied in such a manner as to be in conformity with the provisions of local laws, including the Constitution, but they also argue that the reservation was made because the freedom of association of public officials and teachers was already

restricted pursuant to domestic laws[1] and was therefore irrelevant to their case. Moreover, the State party is estopped from invoking the reservation as it did not do so in respect of communication No. 1119/2002.[2] In any event, the reservation is incompatible with the object and purpose of the Covenant.

3.2 The authors argue that the dissolution of the Unified Progressive Party has made it impossible for them to conduct their political activities as Party members and that this interference is not provided by law. First, the legal requirement obliging the State Council to examine the petition for dissolution before it is submitted to the Constitutional Court was not met, as the President, who was chairing the State Council, was abroad on 5 November 2013. The authors note that, when the President is unable to perform his or her duties owing to an accident, the Prime Minister replaces him or her. However, the executive branch failed to establish the existence of an emergency that would justify taking decisions in the President's absence. The Constitutional Court held that the President's travel abroad constituted an accident preventing her from performing her official duties. The authors believe that the term "accident" should be interpreted narrowly and exclude overseas official duties and that the Prime Minister's role should be understood as relating to duties for the maintenance of the status quo.

3.3 Second, the bill on the petition for the dissolution of the Unified Progressive Party was not deliberated at the vice-ministerial meeting held prior to the State Council meeting, as normally required under the State Council decree. The Constitutional Court observed that the executive branch could exercise discretion when deciding whether a situation of urgency existed and that, given the charges of conspiracy and incitement to insurrection, the executive's reliance on discretion could not be considered abusive. According to the authors, however, there was no urgency. In fact, the Ministry of Justice spent two months preparing the petition for dissolution; by the time the petition had been filed, the criminal trial was already under way. Furthermore, no actual preparation had been made for an insurrection.

3.4 Third, the Constitutional Court failed to apply strict evidentiary standards. It dismissed the request of the Unified Progressive Party to apply criminal litigation laws and regulations, applying civil litigation standards instead. Given the impact of a dissolution on the exercise of the rights to freedom of association and expression, however, the application of civil litigation standards should have been avoided. The Constitutional Court relied upon evidence not admitted in the criminal case because it lacked authenticity and was deemed hearsay, on biased reports and on online posts, unduly shifting the burden of proof to the Party members.

3.5 Fourth, in admitting the transcripts of a pending criminal trial, the Constitutional Court violated article 32 of the Constitutional Court Act, which is aimed at preventing the Court from intervening in ongoing criminal proceedings. On 11 March 2014, the Court dismissed the objection of the Unified Progressive Party on the admission of the records, basing itself on article 113 of the Constitution, article 10 (1) of the Constitutional Court Act and articles 39 and 40 of the Court's judgment rules. However, these provisions only allow the Court to create rules when necessary, not to violate the Constitutional Court Act.

3.6 According to the authors, the restriction on article 22 – i.e., the interference with the right to freedom of association – was not, as it should have been to be justified, necessary in a democratic society.[3] The Constitutional Court considered that there should be a concrete danger that could cause actual harm to the fundamental democratic order and stated that this standard is met if a political party has unconstitutional objectives or activities. The authors submit that the Court did not discover unconstitutional elements in the objectives of the Unified Progressive Party but created instead the concept of hidden objectives driven by the "leading core" that allegedly controlled the Party. The authors submit that no such core existed. The Court identified the Party's alleged members, including Seok-ki Lee, but did not justify why it relied on their past activities and records in doing so. It also relied heavily on the testimony of a former member of the People's Democratic Revolutionary Party who was

[1] The authors refer to CCPR/C/KOR/4, para. 306; and CCPR/C/KOR/2005/3, paras. 317–320.

[2] *Lee v. Republic of Korea* (CCPR/C/84/D/1119/2002), para. 6.4.

[3] The authors refer to *Korneenko et al. v. Belarus* (CCPR/C/88/D/1274/2004), para. 7.3; *Lee v. Republic of Korea*, para. 7.2; and the Committee's general comment No. 34 (2011), para. 34.

however never acquainted with Mr. Lee and was thus unable to testify on his ideological identity. The authors submit that the Court failed to establish the organizational structure, membership qualification and aims of the East Gyeong-gi Alliance and that no such organization ever existed. It was likewise not proven that the participants in the May meetings formed one organization supporting Mr. Lee and controlling the Unified Progressive Party. Nor did the Court explain how or when the "leading core" controlled the Party's decision-making. In ascertaining the Party's hidden objectives, the Court based itself on Party members' individual activities that were unrelated to the Party's official activities. Contrary to the Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, the Court assumed, without doing any verification, that the views of the 130 persons at the May meetings represented those of the Party and did not consider the views of the 100,000 remaining members of the Party.

3.7 The authors deny that the Party's "leading core" aimed to violently establish a "progressive democracy", reunify the Republic of Korea and the Democratic People's Republic of Korea and establish the kind of socialism promoted in the Democratic People's Republic of Korea. In advocating for a "progressive democracy", the Party rather modelled itself on Latin American countries such as Brazil, Chile and Venezuela (Bolivarian Republic of). The Court had also failed to substantiate the claim that the Democratic People's Republic of Korea had ordered the Party to adopt a "progressive democracy" but had based itself on unofficial statements and reports on the activities of some members and one non-member rather than on the Party's official opinion. The authors note that the Party never advocated the deprivation of rights; rather, it supported proportional representation and a reinforcement of the separation of powers. The authors add that the promotion of peaceful reunification is not against the fundamental democratic order. Regarding the Court's finding that the Party supported the Democratic People's Republic of Korea on nuclear tests and armed provocations, they note that simple expression of regret at nuclear tests conducted and criticism of threats by the United States of America do not mean that the Party unconditionally supports the Democratic People's Republic of Korea. Moreover, the Court falsely attributed a statement to Jung-Hee Lee on the succession of power in the Democratic People's Republic of Korea. The Party has not voiced its support of the Democratic People's Republic of Korea in this regard. The Court failed to substantiate the allegations that the Party's campaigns for the abrogation of the National Security Act and the nullification of the free trade agreement with the United States showed its support for the kind of socialism promoted in the Democratic People's Republic of Korea. Moreover, the Court emphasized the similarities in the language used to describe the Party's activities and the revolutionary strategy of the Democratic People's Republic of Korea against the State party, but made a distorted comparison based on partial similarities.

3.8 The authors dispute the Constitutional Court's conclusion that the activities of the Unified Progressive Party represented a threat to the fundamental democratic order. The Court found that the May meetings, the rigged election, the Central Committee violence and the manipulation of public opinion showed the Party's violent objectives and the concrete danger that it posed to the fundamental democratic order. According to the authors, the Court overestimated the extent of the danger. The Court found that the Party had attempted to seize power not only through elections but also by promoting the "right to resistance". The authors submit that the Party was committed to seizing power through elections and considered the right to resistance to be an exceptional means of achieving that end, without seeking to overthrow the democratic order or to instigate violence. The Court also based its findings on the May meetings. However, according to the authors, the meetings were not official Party events, as they were never approved by the Party. The Party had no prior knowledge of Seok-ki Lee's participation, of the content of his speech or of the characteristics of the meetings. It did not contribute to the attendees' payment of the venue and the meetings were organized by officials of the Gyeong-gi Provincial Committee in their personal capacity. The authors add that the Party has never advocated violence and that Seok-ki Lee and Hong-yeol Kim made their remarks in their personal capacity and in contravention of the Party's approach of seeking power through elections.

3.9 The authors dispute the Constitutional Court's assessment that the May meetings amounted to a conspiracy or incitement to an insurrection. Even though the content of the May meetings was problematic and the Court's decision was primarily based on the

allegation of conspiracy, the appeal court and the Supreme Court in the criminal case against Mr. Lee and six others acquitted them of this charge, concluding that there had been no such conspiracy. The authors add that there is no evidence that an insurrection was being prepared prior to the meetings nor of any subsequent activities. Furthermore, no agreements were made during the May meetings and the results of some subgroup discussions showed that there was no meeting of the minds in pursuit of an insurrection. None of the speakers called for violence specifically or directly. Statements about the destruction of infrastructure and military and technical preparations were all vague and abstract. The authors reiterate that the May meetings had not been approved by the Party and that the Party had never used nor planned to use violence to seize power.

3.10 Furthermore, contrary to the Constitutional Court's observation that Party members had tried to make their candidates win elections through violence, including violence in its Central Committee, through a rigged election and the manipulation of public opinion, the authors argue that these incidents were caused by some individual members and were not systematic or intentional or based on the Party's political line.

3.11 The authors argue that less restrictive measures than the Party's dissolution were available. The Constitutional Court found unconstitutional the Party's objectives and activities, including those promoting a "progressive democracy", even though these objectives and activities were the same as those of one its predecessors, the Democratic Labour Party, established in 2000. The primary ground for the Court's decision were the May meetings, but when the Government filed its petition, those involved in the meetings were in custody and when the Court rendered its decision, the criminal procedures were still ongoing. Moreover, in the June 2014 elections, the Party secured only 4.3 per cent of the vote and thus could not seize power. Among others, administrative measures such as the decision to remove Party lawmakers from occupying seats in the National Assembly would have sufficed to protect the fundamental democratic order.

3.12 The authors moreover argue that the dissolution of the Party was not proportionate to the interest to be protected, including the aim of safeguarding of pluralist democracy. Regarding the Party's dissolution, the Committee has already stated that, in view of the particularly far-reaching consequences of dissolving a political party, the State party should ensure that the measure is used with utmost restraint and as a last resort only, and that it reflects the principle of proportionality.[4]

3.13 The authors claim that their rights under article 19, read in conjunction with article 22, of the Covenant have been violated. The Constitutional Court's decision has stopped them from expressing their opinions and prohibited the formation of a party with the same objectives. They reiterate that the dissolution of the Unified Progressive Party was not provided by law and was not necessary in a democratic society.

3.14 The authors also claim that the State party has violated their rights under article 2 (1), read in conjunction with article 22, of the Covenant. Their right not to be discriminated in the exercise of their freedom of association was violated because the authorities considered that they and the Party represented unpopular opinions. There are several political parties in the State party whose programmes differed from that of the Party only insofar as the latter was slightly more sympathetic towards the Democratic People's Republic of Korea.

3.15 Additionally, the authors claim a violation of article 25, read in conjunction with article 22, of the Covenant because the Constitutional Court removed Party members from their seats in local assemblies and in the National Assembly, thus depriving the authors from representation. They reiterate that the restriction imposed was unreasonable.

3.16 The authors submit that they have exhausted all available domestic remedies, as the decision of the Constitutional Court is final. They submitted a request for a retrial, even though no legal provision allowed it, which the Constitutional Court rejected on 26 May 2016.

3.17 The authors request the Committee to urge the State party to provide them with appropriate remedies, including the nullification of the decision of the Constitutional Court, a retrial in a fair, impartial and independent manner, the restoration of the positions of those

[4] CCPR/C/KOR/CO/4, para. 51.

Party members with seats in local assemblies and the National Assembly and monetary reparations.

State party's observations on admissibility and the merits

4.1 On 7 February 2017, the State party submitted its observations on admissibility and the merits. It notes that only four States have objected to the reservation made to article 22, which thus remains effective. The authors' reference to communication No. 1119/2002 is erroneous as the State party expressed its regret at the Committee's application of article 22 in the follow-up procedure. The State party adds that, even if the Committee applies article 22 to the present case, it would be plausible that the scope of the reservation is limited to the right of public officials and teachers to join a trade union, while the principle of estoppel cannot be invoked.

4.2 The State party submits that the authors cannot be considered victims of a violation of the Covenant. They have insufficiently substantiated their claims, which must therefore be found inadmissible.

4.3 The State party observes that its Constitutional Court will only dissolve a political party if it finds that it violates the fundamental democratic order and that it is necessary to dissolve it in order to protect that order. The procedure for making such an assessment is subject to strict legal standards, including the principle of proportionality and the rule that dissolution can be ordered where a party's objectives or activities pose a specific danger to the fundamental democratic order.

4.4 The State party disagrees that the Party's dissolution was not prescribed by law. Under article 12 of the Government Organization Act, the Prime Minister may act for the President if the latter is unable to perform under extenuating circumstances. Under article 2 (4) of the regulations on administrative proxy, presidential visits abroad constitute such circumstances. The Prime Minister's chairing of the State Council was therefore in compliance with due process. As for the lack of a vice-ministerial meeting, the State party observes that, under the regulations on the State Council, this is not required in urgent cases and the Government has discretion in ascertaining the existence of a situation of urgency. As the case in question involved National Assembly lawmakers, the Government's resolution to proceed without vice-ministerial deliberation cannot be considered abusive. Moreover, considering the nature and purpose of constitutional adjudication, the Constitutional Court applied civil litigation rules in accordance with article 40 of the Constitutional Court Act, as such rules are of a general procedural nature, are widely applied in criminal and administrative cases and thus allow for their application in constitutional adjudication.

4.5 The State party also disagrees with the authors' argument that the dissolution of the Party was not necessary in a democratic society. It observes that the Constitutional Court reviewed 170,000 pages of evidence, heard 12 witnesses and 6 expert witnesses during the course of 18 hearings and concluded that the Party's dissolution was necessary to protect the fundamental democratic order. Following the Party's founding in December 2011 and its participation in the April 2012 elections, 13 Party candidates won seats in the National Assembly. However, systematic fraud had been used to determine the ranking of the Party's candidates. On 12 May 2012, a violent incident occurred during a meeting of the Central Committee on that fraud, in which some Party members used violence and the Chair of the meeting sustained a bodily injury. National Assembly member Seong-dong Kim used tear gas in the National Assembly to protest the free trade agreement with the United States. Moreover, Seok-ki Lee and other members of the Party with seats in the National Assembly participated in the Revolutionary Organization's May meetings, which were Party events gathering 130 people. Mr. Lee emphasized that a war was imminent and incited people to destroy infrastructure, telecommunications, railways and gas facilities. On 16 September 2013, Mr. Lee and others were prosecuted for conspiracy and incitement to a rebellion. Despite this, the Party transformed its structure into a "headquarters for struggles" with 16 metropolitan and provincial cells and held nationwide protests and assemblies. The entire Party protected the activities of the Revolutionary Organization by fundraising through special membership fees and encouraging members to write acquittal petitions. On 10 May 2013, the participants affirmed that, given that the Democratic People's Republic of Korea had invalidated the armistice agreement on 5 March 2013, they were at war and discussed

the destruction of the State party's major facilities. On 12 May 2013, they discussed the destruction of major facilities to disrupt communications and target various kinds of infrastructure. Even when this was revealed, the Party continued to openly support Mr. Lee throughout the trial. The State party submits that, considering the totality of the facts, the charge of conspiracy to a rebellion is attributable to the Party.

4.6 The State party submits that the charges of conspiracy and incitement to a rebellion and the election fraud epitomize the Party's attempt to destroy and overthrow the constitutional order. The Constitutional Court found that the Party's discussion on the destruction of major facilities upon a declaration of war by the Democratic People's Republic of Korea constituted an attempt to destroy or abolish the fundamental democratic order with a premeditated, violent attack. The Party encouraged the activities of its members and they followed the Democratic People's Republic of Korea. The Court determined that there was no alternative to the Party's dissolution, as criminal punishment could only be imposed on natural persons and could not eliminate the danger of a political party, which can replace such individuals. The Court noted that the Party's "leading core", while seemingly small in numbers, was a powerful, strongly united group displaying cohesion to greatly influence the selection of candidates for political office and in policymaking and decision-making positions. On the question of proportionality, the Court acknowledged that the dissolution of a political party restricted its activities and narrowed the breadth of political ideas and ideologies, but also affirmed that the pursuit of an ideology that undermined pluralistic societies or encouraged the destruction and abrogation of the fundamental democratic order may be limited to preserve that order.

4.7 The European Court of Human Rights has held that the judicial dissolution of a political party may be decided when, for example, the party infringes democratic principles or seeks to hinder or put an end to the democratic system.[5] According to the Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, "prohibition or enforced dissolution of political parties may only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order", meaning that threatening the peace or the fundamental democratic order justify a dissolution. Moreover, the European Court of Human Rights also considers the existence of exceptional conditions when rendering a decision, following the principle that it is the national authorities, due to their continuous exposure to the domestic situation, that are best placed to assess whether the requirements for a justified dissolution are met. The State party observes that it remains on a war footing with the Democratic People's Republic of Korea and submits that the latter's development of missiles and nuclear weapons should be given full consideration in determining whether the dissolution was necessary. The European Court of Human Rights has consistently held that if the danger is proven based on a party's purpose and activities, then the party should be dissolved even before it takes action.[6]

4.8 The State party also disputes the authors' claim under article 19, read in conjunction with article 22, of the Covenant, arguing that a political party is not covered by the word "media" in that article and that, in any event, a restriction on the right to freedom of expression was justified under article 19 (3) of the Covenant to protect the fundamental democratic order and national security.

4.9 The State party moreover disputes the authors' claim under article 2 (1), read in conjunction with article 22, of the Covenant. The decision to dissolve the Party was taken because the Party did not conform to the democratic constitutional order and in order to eliminate the danger that it posed. The authors failed to substantiate the claim that the Constitutional Court acted in a discriminatory manner since they did not prove that each of them individually espoused an ideology in favour of the Democratic People's Republic of Korea.

[5] European Court of Human Rights, *Herri Batasuna and Batasuna v. Spain*, applications No. 25803/04 and No. 25817/04, judgment, 30 June 2009.

[6] Ibid., *Refah Partisi (The Welfare Party) and others v. Turkey*, applications No. 41340/98, No. 41342/98, 41343/98 and 41344/98, judgment, 13 February 2003. See also *Herri Batasuna and Batasuna v. Spain*.

4.10 The State party furthermore disputes the authors' claim of a violation of article 25, read in conjunction with article 22, of the Covenant. The Party's dissolution places no restrictions on the authors' participation in various political activities, whether or not through elected representatives. Even though the Party lost five lawmakers in the dissolution, three of them were elected through constituency-based votes and the other two were elected proportionately, and there is no evidence that the authors all reside in the constituencies where the lawmakers were disqualified or that they elected those members. The State party observes that the authors can still exercise their right to vote and to be elected.

4.11 The State party adds that while the dissolution deprives the Party of its rights and privileges it does not interfere in most of the fundamental rights of its members and that, even if it did, such restrictions are within the scope of the law.

Authors' comments on the State party's observations on admissibility and the merits

5.1 On 20 April 2017, the authors submitted comments on the State party's observations. They argue that the State party has made a reservation to article 22 of the Covenant with respect to the right of public officials and teachers to strike and that it never intended for it to be a blanket reservation. They contest the State party's argument that they cannot be considered victims of violations of the Covenant.

5.2 The authors dispute the State party's argument that the Party's dissolution was prescribed by law. They reiterate that the time that the State party's authorities took to prepare the petition, the imprisonment of suspects and the absence of any preparation by the Party show that there was no urgency on the basis of which the requirement of vice-ministerial deliberation could have been waived. They also reiterate that, given the impact of the Party's dissolution on the rights of its members, the Constitutional Court was wrong to not set strict evidence standards. They further reiterate that the Court admitted records of an ongoing criminal trial in violation of article 32 of the Constitutional Court Act. Moreover, the Constitution does not mandate the Government to request the deprivation of National Assembly seats, nor does the law prescribe such deprivation in the case of the dissolution of a political party. Moreover, as the lawmakers were not respondents in the case before the Constitutional Court, they could not defend themselves. The five affected lawmakers brought a case that was pending before the Supreme Court at the time of writing.

5.3 The authors contest that the Party's dissolution was necessary in a democratic society. They reiterate that, according to the European Court of Human Rights, only convincing and compelling reasons can justify restrictions on the freedom of association, that States have only a limited margin of discretion in deciding whether a necessity exists and that drastic measures such as the dissolution of a political party may only be taken in the most serious cases.[7] In determining necessity, the Court has considered whether there is plausible evidence that the risk to democracy is sufficiently and reasonably imminent and whether the acts and speeches imputable to the party form a whole which gave a clear picture of a model of society conceived and advocated by the party which is incompatible with the concept of a democratic society.[8] The authors reiterate that the purpose of the Party was not to establish a socialist regime and that there was nothing in its constitution, programmes or activities to indicate that. They also reiterate that the May meetings were not an official Party event, that the participants in the meetings never controlled the Party and that the Party has never supported violence. They add that the election fraud was accidental and that the Party has taken measures, including internal investigations, which have revealed that most of the proxy votes were cast by family members of persons unable to vote and no fake identification had been used. On the violence during the Central Committee meeting, the authors observe that the violence was not perpetrated by the Party as a whole, nor systematically, and that a Party representative publicly apologized. On the tear gas incident, the authors note that this was a personal deviation preceding the establishment of the Party and that it is therefore unfair to single out the incident, as it is not unusual to observe that National Assembly members resort to violence.

[7] See the Court's judgment in *Herri Batasuna and Batasuna v. Spain*, paras. 77–78.

[8] Ibid., para. 83.

5.4 Regarding the May meetings, the authors argue that the Supreme Court found that the existence of the Revolutionary Organization had not been proven, meaning that it did not secretly meet to discuss the destruction of infrastructure. The May meetings had been organized by members of the Gyeong-gi Provincial Committee in their personal capacity. The Party had not approved the meetings or their contents, had provided no support, did not share the viewpoints discussed and had never planned or supported the use of violence to seek power or to overthrow the Government, whether publicly or privately. The 130 participants constituted only 0.124 per cent of the Party's 104,692 registered members and the State party has failed to prove that they controlled the Party's decision-making processes. The Supreme Court had found Mr. Lee and six others not guilty of conspiracy to an insurrection and or of incitement to the destruction of infrastructure. Moreover, as tensions with the Democratic People's Republic of Korea were not unusual, the Party did not believe that a war was imminent. The Party had mobilized an all-out response in anticipation of the Government's petition for dissolution but did not defend the accused persons. The dissolution was not proportionate and alternative measures were available as the Party posed no threat, had lost significant support and those presumed responsible for incitement to violence had been imprisoned.

5.5 The authors contest the State party's argument that political parties are not "media" in the sense of article 19 of the Covenant, advancing that freedom of expression is inconceivable without the participation of a plurality of political parties and article 19 (2) cannot be read as excluding political parties. On article 25 of the Covenant, they affirm that they did elect the proportional representatives in the 2012 general election and had voted for the Party. They dispute that it is necessary to prove their individual support for the Democratic People's Republic of Korea. They argue that the only difference between the Party and other parties with similar ideas is that the former believes that the the Republic of Korea and the Democratic People's Republic of Korea are one nation.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee observes that it is not contested that domestic remedies have been exhausted. Accordingly, it considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the communication.

6.4 The Committee notes the State party's argument that the scope of the reservation to article 22 of the Covenant is limited to the right of public officials and teachers to join a trade union. It also notes that the reservation declares that the provisions of article 22 shall be applied in conformity with the provisions of the State party's domestic law. The Committee therefore considers that the content of the State party's reservation does not preclude it from examining the authors' claims.

6.5 On the authors' claim of a violation of article 2 (1) of the Covenant, read in conjunction with article 22, the Committee notes that the decision of the Constitutional Court was based on its consideration of the totality of the circumstances rather than on the opinions expressed by the authors or by the Party. The Committee considers that the authors have not sufficiently substantiated, for the purposes of admissibility, why the decision discriminated against them and therefore declares this claim inadmissible.

6.6 The Committee considers that the authors have sufficiently substantiated their remaining claims for the purposes of admissibility. Accordingly, it declares the communication admissible for raising issues under articles 19, 22 and 25 of the Covenant and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee notes that the authors argue that the State party breached their rights under article 22 of the Covenant because the Constitutional Court's decision to dissolve the Party, of which they were all members, was a restriction not provided by law and was unnecessary in a democratic society. Even if the State party contests this claim, it does not dispute that the dissolution constituted a restriction. The Committee recalls that, under article 22 (2), in order for an interference with freedom of association to be justified, any restriction must cumulatively meet the following conditions: (a) it must be provided by law; (b) it may only be imposed for one of the purposes set out in subparagraph 2, i.e., it must be in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedom of others; and (c) it must be necessary in a democratic society for achieving one of these purposes.[9]

7.2 The Committee notes that the dissolution of the Party was ordered by the Constitutional Court, which, pursuant to the Constitutional Court Act, can issue such orders at the executive's request. The Committee also notes that the State party's regulations provide that a presidential visit abroad constitutes an "extenuating circumstance" as a result of which which the Prime Minister may act for the President. Furthermore, the Committee finds that, in the light of the context, the authors have not effectively established that the executive acted beyond its discretionary powers in considering that there was a situation of urgency justifying the decision not to arrange for vice-ministerial deliberation prior to the State Council meeting. Also in the light of the Constitutional Court's competence to issue orders to dissolve a political party, the Committee considers that the authors' arguments relating to the procedural standards and the admission of evidence from an ongoing criminal trial are not such as to enable the conclusion that the dissolution was not provided by law. Accordingly, the Committee concludes that the Party's dissolution was prescribed by law.

7.3 The Committee further notes that the authors do not contest that the restriction was for one of the purposes set out in article 22 (2) of the Covenant.

7.4 The Committee must next consider whether the dissolution of the Party was necessary in a democratic society, according to article 22 (2) of the Covenant. In this regard, the Committee recalls that the notion of "democratic society" indicates that the existence and operation of associations, including those that peacefully promote ideas not necessarily favourably received by the government or the majority of the population, is a cornerstone of a democratic society.[10] The mere existence of reasonable and objective justifications for limiting the right to freedom of association is not sufficient; the State party must in addition demonstrate that the prohibition of an association is necessary to avert a real and not only a hypothetical danger to national security or the democratic order, and that less intrusive measures would be insufficient to achieve the same purpose.[11]

7.5 The Committee notes the State party's submission that the Party's dissolution was necessary as its activities and objectives aimed at the destruction of the fundamental democratic order and at the installation of the ideology of the Democratic People's Republic of Korea by violent means. It also notes that the authors contest the reasoning and findings of the Constitutional Court, as well as the measures that it ordered. The authors submit that the Party's goals were democratic and non-violent, that no "leading core" existed, that various incidents involving Party members cannot be attributed to it and that, overall, the Party did not present a threat to the fundamental democratic order.

7.6 The Committee notes that the authors' contentions raise aspects of evidence that have been considered by the Constitutional Court. In doing so, the Court reviewed some 170,000 pages of evidence and heard 12 witnesses and 6 expert witnesses during 18 hearings. Before concluding that the Party threatened the fundamental democratic order, the Constitutional

[9] *Belyatsky et al. v. Belarus* (CCPR/C/90/D/1296/2004), para. 7.3; *Lee v. Republic of Korea*, para. 7.2; *Boris Zvozskov et al. v. Belarus* (CCPR/C/88/D/1039/2001), para. 7.2; and *Korneenko et al. v. Belarus*, para. 7.3.

[10] *Belyatsky et al. v. Belarus*, para. 7.3; *Lee v. Republic of Korea*, para. 7.2; and *Korneenko et al. v. Belarus*, para. 7.3.

[11] *Belyatsky et al. v. Belarus*, para. 7.3; and *Lee v. Republic of Korea*, para. 7.2.

Court considered the totality of the circumstances, including the Party's history, goals, statements, activities, the electoral fraud, the violence espoused by its members and a violent ideology of a core group not repudiated by the larger membership. Furthermore, given that advocacy of violence in a democratic society may be clandestine rather than public, and taking note of the multiple ways in which the Party subsequently lent public support to those charged, the Committee cannot conclude that the Court wrongly took into account the remarks made at the May meetings, which were attended only by Party members, including Central Committee members and representatives. The Committee notes, in this regard, that the authors admit the problematic nature of the discussions, which concerned the alleged imminence of a war, the need to make military and physical preparations, the production and seizure of weaponry, including the manufacturing of bombs, ways of destroying infrastructure and the disruption of communication, all with the aim of impeding the ability of the State party to defend itself and of supporting the Democratic People's Republic of Korea. The Committee is mindful, furthermore, of the State party's observation that it remains on a war footing with the Democratic People's Republic of Korea and that it is constantly subjected to the latter's military provocations. The Committee therefore cannot conclude that the State party has not sufficiently shown the existence of reasonable and objective justifications for limiting the authors' freedom of association.

7.7 The Committee notes the authors' argument that the Constitutional Court's decision to dissolve the Party was not proportionate because less intrusive measures were available. The Committee notes, however, that the Court specifically addressed this question but decided that criminal punishment alone would be insufficient to address the risk, as that would only target specific individuals. The Committee notes that the Court considered that those indicted could be replaced by other equally vindictive members. Regarding the issue of proportionality, the Committee notes that the Court considered that the repeated, concrete and imminent threat posed by leading members of the Party justified its dissolution for the protection of the fundamental democratic order. The Committee notes that the authors failed to demonstrate that the Party unequivocally condemned the violent statements made at the May meetings. The Committee recalls its concluding observations on the fourth periodic report of the State party, in which it expressed its concern at the dissolution of the Party based on the elements available to it at the time.[12] The Committee notes that, in the present case, it has been able to consider more detailed elements brought to its attention by the parties and has since ascertained that the Court based its decision on a very significant body of evidence. Recalling that the dissolution of a political party is always an ultima ratio decision, the Committee concludes that, in this particular case, in view of the very serious circumstances and criminal facts ascertained by the domestic judicial authorities, the State party has adequately justified the dissolution in the light of the need to ensure public safety and the maintenance of the constitutional order. Therefore, in view of the information provided in the present case, the Committee cannot conclude that the State party's restriction of the authors' freedom of association was not necessary and proportionate or that the rights of the authors under article 22 have been violated.

7.8 In view of the above, the Committee cannot conclude that the restriction was not necessary for the protection of national security under article 19 (3) (b) of the Covenant. It therefore finds that the authors' rights under article 19 (2), read in conjunction with article 22, of the Covenant have not been violated.

7.9 The Committee notes that the authors claim a violation of article 25, read in conjunction with article 22, of the Covenant because the Constitutional Court removed Party members from their seats in local assemblies and in the National Assembly, thus depriving the authors from representation. The Committee further notes that, on 25 November 2015, Jeonju District Court ruled that the termination of a Party member's local assembly membership was wrongful. On the removal of the other lawmakers, the Committee notes that the rights listed in article 25 of the Covenant are subject to reasonable restrictions. For the reasons already mentioned (see paras. 7.4–7.6 above), the Committee cannot conclude that the restrictions on the authors' right to take part in the conduct of public affairs were not reasonable and that their rights under article 25 of the Covenant have been violated.

[12] CCPR/C/KOR/CO/4, paras. 50–51.

7.10 The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not disclose a violation of articles 19, 22 and 25 of the Covenant.

Annex

Joint opinion of Committee members Christof Heyns, David Moore, Vasilka Sancin, Yuval Shany, Hernán Quezada Cabrera and Gentian Zyberi (dissenting)

1. We are unable to agree with the outcome of this case, namely that there has been no violation of the rights of the authors under articles 19 (2), 22 or 25 of the Covenant.

2. It is common cause that the dissolution of a political party and the termination of the parliamentary seats of its members are extreme measures that should be taken only as a matter of last resort. In our view, the facts and evidence submitted in the present case do not meet this high threshold.

3. As the prevailing view recognizes (para. 7.4),[1] the Committee has on previous occasions held, regarding the protection of the right of association in general (that is, also regarding associations other than political parties) under article 22, that the mere existence of reasonable and objective justifications for limiting the right to freedom of association is not sufficient. The State party must further demonstrate that the prohibition of an association is necessary to avert a real and not only a hypothetical danger to national security or the democratic order, and that less intrusive measures would be insufficient to achieve the same purpose.[2]

Onus to show that the steps taken were necessary thus lies on the State party

4. Political expression enjoys special protection, which suggests a particularly stringent threshold for the disbanding of political parties.[3]

5. Looking at the circumstances of this particular case, of central importance to the banning of the Unified Progressive Party is the fact that a small minority of its members (130 of some 100,000 members, most if not all of them members of the Party's Gyeong-gi Provincial Committee) attended meetings in May 2013. Based on comments made and reported during the May meetings, of the 130 participants, a total of 7 individuals (not the authors of the communication) were detained, charged with criminal offences and punished.

6. Those prosecuted for their part in the May meetings were found guilty of incitement and conspiracy, but the conviction of conspiracy (at least of some of them) was overturned on appeal, appearing to point towards a less immediate threat than originally perceived.

7. This raises the following question: to what extent can the conduct of the seven individuals be attributed to the Party as a whole? According to the authors, those seven persons spoke in their individual capacities and in contravention of the official policy of the Party, which advocates for a peaceful transition of power. The meeting was not organized and it was not sanctioned, before or during the event, by the Party. The Party did provide some support to the accused while they were on trial, but it appears that at least some of this

[1] Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee's Views.

[2] *Lee v. Republic of Korea* (CCPR/C/84/D/1119/2002), para. 7.2. See also *Belyatsky et al. v. Belarus* (CCPR/C/90/D/1296/2004), para. 7.3.

[3] General comment No. 25 (1996), paras. 25–26. The European Court of Human Rights has held, with reference to article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which protects freedom of association, that the test for establishing whether the dissolution of a political party is necessary requires, among other things, that a State party establish that there is plausible evidence that the risk to democracy is sufficiently and reasonably imminent and that the acts and speeches imputable to the political party form a whole which give a clear picture of a model of society conceived and advocated by the party which is incompatible with the concept of a democratic society. See European Court of Human Rights, *Herri Batasuna and Batasuna v. Spain*, applications No. 25803/04 and No. 25817/04, judgment, 30 June 2009, para. 83.

support was fundraising for their legal defence. The evidence that the Party itself posed a concrete, immediate threat to national security is at best inconclusive.

8. The State party's argument that the dissolution of the Party was "necessary" in the sense of articles 19 (3) and 22 (2) of the Covenant relies heavily on the Constitutional Court's determination that there was no alternative to the Party's dissolution, as criminal punishment could only be imposed on natural persons and could not eliminate the danger of the Party replacing such individuals with other equally vindictive members (paras. 4.6 and 7.7). The prospect of the accused being replaced by the Party with other members tasked with instigating violence seems to raise a hypothetical rather than a concrete risk based on evidence.

9. It is well known that there were strong tensions between the State party and the Democratic People's Republic of Korea at the time of the incident and that the Party was sympathetic to the Democratic People's Republic of Korea. This fact should be given due weight. Yet, little evidence is provided on the concrete and imminent nature of this threat and on the extent to which the Party was ready to actually provide support to the Democratic People's Republic of Korea.

10. In sum, from the information on file, it remains uncertain whether the conduct of the seven participants in the May meetings was more than isolated and whether it can be attributed to the Party as a whole. The conduct of the seven individuals has been dealt with through the criminal prosecution of the individuals involved (which the Committee has found in a parallel case not to have constituted a violation of the Covenant).[4] Given the drastic nature of the decision to dissolve a political party and vacate the parliamentary seats of some of its members, we are not convinced that the State party has discharged the onus placed on it to demonstrate that such additional measures were necessary and proportionate and that less intrusive additional measures would not have sufficed.

11. As the Committee observed in 2015, in view of the particularly far-reaching consequences of dissolving a political party, the State party should ensure that the measure is used with utmost restraint and as a last resort only, and that it reflects the principle of proportionality.[5] We continue to stand behind the validity of that assessment.

12. As noted above (and as recognized in the prevailing view), the Committee requires States that dissolve an association to demonstrate that the prohibition of an association is necessary. The onus is thus on the State party to show the necessity of such a measure. Against this background, it must be noted (see, e.g., paras. 7.6 and 7.8) that the Committee cannot conclude that the restriction was not necessary for the protection of national security. The double negative seems to release the State party of the obligation to show necessity and sets the bar too low, especially where a measure as far-reaching as banning a political party is concerned. Unless the Committee is satisfied that the evidence shows that the State party has discharged the onus placed on it to demonstrate the necessity of dissolving a political party, it must conclude that there was a violation of the applicable rights of the authors under the Covenant.

[4] *Lee et al. v. Republic of Korea* (CCPR/C/130/D/2809/2016).

[5] CCPR/C/KOR/CO/4, para. 51.