

RUSSIAN FEDERATION/ DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Refoulement of Lee Yen Sen/ Fear for Safety in North Korea

Summary of the case of Lee Yen Sen

Lee Yen Sen, a citizen of the Democratic People's Republic of Korea (DPRK, North Korea) was returned by the authorities of the Russian Federation to his country of origin in September 1995. Lee Yen Sen was serving a prison sentence in the Russian Federation for a common criminal offence, and is believed to be currently imprisoned in the DPRK to serve the remainder of that sentence. However, Amnesty International is concerned that he is at risk of imprisonment as a prisoner of conscience in the DPRK and may face the death penalty. He may also have been ill-treated.

Lee Yen Sen had requested asylum in the former Soviet Union (USSR) on at least two occasions. His last request, made in 1993, was never considered and a decision was not taken. According to the Russian authorities, Lee Yen Sen was returned to North Korea on the basis of an agreement which sanctions the transfer of prisoners to serve their sentences in their country of origin.¹ Amnesty International believes that the forcible return of Lee Yen Sen amounts to *refoulement*, which is prohibited under the 1951 Convention relating to the Status of Refugees.

Background of the case of Lee Yen Sen

Lee Yen Sen was born in Korea before the Korean War (1950-53). The exact year and place of his birth are not known to Amnesty International. During the Korean war the family of Lee Yen Sen was split up and many of his relatives are now living in the

¹ The Convention on the Consignment of Prisoners was signed in Berlin on 19 May 1978 between the USSR and a number of other countries of the former socialist block. North Korea acceded to the Convention on 1 January 1988. See also pages 3 and 4 of this document.

Republic of Korea (South Korea). Lee Yen Sen is believed to have been living and working in the locality of Suncheon, South Pyongan Province.

Lee Yen Sen claims to have been arrested in the summer of 1971 by North Korean law enforcement officials, after having made an incautious joke in the company of friends earlier that year. In a letter to a Russian journal, Lee Yen Sen recounted having said that "he was sick and tired of digging in the mud and would run away from North Korea". Someone apparently told the authorities about this "joke" and Lee Yen Sen was arrested some time later. He claims to have spent 98 days in police detention in the locality of Suncheon, where he was, according to his letter, badly ill-treated.

Lee Yen Sen said that during the 98 days he spent in police detention, he was not once allowed to wash or change his clothes and bed-linen. In his letter he described that lice were so numerous that they crawled all over his arms, face and clothes, even during the day. He said that prisoners were forced to sit in a "Buddha-position" (legs crossed, hands on the knees, head straight forward) from 5am till 10pm, every day. The smallest change in the sitting position was seen as a violation of the regulations, as were looking up or around and whispering with other prisoners. All rooms were watched from the corridor through a gate made of metal bars. Prisoners apparently sat with their backs to the corridor. Lee Yen Sen wrote that methods used by guards to punish violations of the regulations included beating up prisoners and breaking their bones. Guards apparently sometimes forced other prisoners to do the beating or forced violators to kneel down before beating their heads against the iron bars. Guards apparently also used to pour water on the heads of prisoners in winter and would then open the windows of the building. Prisoners were also punished by diminishing their food rations.

Lee Yen Sen was given an amnesty on the occasion of the 60th birthday of then President Kim Il Sung in early 1972. In May 1972 Lee Yen Sen was sent to the Soviet Union to work at a North Korean-run timber felling site. Lee Yen Sen recounted in his letter that the North Korean authorities sent many "politically distrusted" people to work in the Soviet Union in those days.

Lee Yen Sen did not want to return to North Korea. In 1976 he applied to the Soviet authorities from a Soviet prison for asylum in the USSR. Amnesty International does not have information about the exact reason for his imprisonment but believes it was not politically motivated. The Soviet authorities denied his request, saying that "North Korea demands its citizens back after they have served their prison terms." Considering this answer from the Soviet authorities, Lee Yen Sen wrote in his letter that he had to decide between a life in Soviet prisons (which meant he had to commit crimes every time his sentence came to an end) or being sent back to North Korea. Lee

Yen Sen chose the first option and committed new crimes whenever he had almost served out his sentence. He recounted in his letter that he had been convicted three times since his first conviction (the letter was written in 1993). The crimes he committed ranged from attempted escape to causing physical injury. Lee Yen Sen was last convicted in 1994 when he was sentenced to four years' deprivation of freedom.

Lee Yen Sen's request for asylum and Amnesty International's action on his behalf

Lee Yen Sen wrote to President Yeltsin in 1993 with a further request to be granted asylum in the Russian Federation. Amnesty International wrote to several Russian officials in support of Lee Yen Sen's request in 1995, because it believed Lee Yen Sen would be at grave risk of human rights violations in North Korea and should therefore not be sent back. Amnesty International pointed out in its letters to the Russian authorities that to return Lee Yen Sen to North Korea would be in violation of the Russian Federation's obligations under international law, more specifically the 1951 Convention. Amnesty International also wrote to the central prison authorities in Moscow with a request to be granted permission to visit Lee Yen Sen in the corrective labour institution in order to receive further details on his case.

On 31 October 1995 Amnesty International received a letter from the Commission on Citizenship of the Russian Federation which stated that: "Lee Yen Sen is serving a term of deprivation of freedom, in accordance with a court ruling, since 1994 for a crime committed by him. Time of release - 1998. Lee Yen Sen has been informed that his request for asylum in the Russian Federation can only be looked into after his release."

In late November 1995, an Amnesty International delegation, intending to visit Lee Yen Sen, was told by an official of the central prison authorities that he had been returned to North Korea on 1 September 1995 in accordance with the Berlin Convention.² The official said that the decision to return Lee Yen Sen to North Korea had been sanctioned by the General Procuracy of the Russian Federation in Moscow.

The Convention on the Consignment of Prisoners

The Convention on the Consignment of Prisoners was signed between the USSR and a number of other countries of the former socialist block on 19 May 1978 and the agreement went into force on 26 August 1979. North Korea acceded to the Convention

² The Berlin Convention is the Convention on the Consignment of Prisoners.

on 1 January 1988. The Convention sanctions the consignment of prisoners between states to serve their sentences at home. The Convention only relates to persons who are serving sentences of deprivation of freedom, as its title implies.³

According to its preamble, the Convention was prompted by "... the awareness that serving sentences by the convicted person in the state whose citizen he is would contribute to the more effective achievement of the goals of rehabilitation and re-education, and the principle of humaneness".

The consignment of an individual prisoner can be suggested by the State in which the prisoner has been convicted or requested by the State of which the prisoner is a citizen. The prisoner himself has to be informed of the right to request consignment to the country of his citizenship. However, in the case that States decide about the consignment of a prisoner, the prisoner himself is not consulted.

The refoulement of Lee Yen Sen

A fundamental principle of customary international law states that: "No-one shall be returned to a country where his life and freedom might be endangered". This principle is enshrined in Article 33 of the Convention relating to the Status of Refugees and is binding on all states irrespective of whether or not they have signed the Convention.

Amnesty International fears that the life and freedom of Lee Yen Sen are in danger in North Korea. The organization bases these fears on the fact that, according to North Korean criminal law, "defection" is a crime punishable by law.⁴ "Defectors" can face, a minimum of seven years in a reform institution and in some cases even the death penalty according to Article 47 of the North Korean Criminal Code. Amnesty

³ For a more detailed analysis of the Convention on the Consignment of Prisoners, see also George Ginsburg, "The Soviet Union and International Cooperation in Legal Matters"

⁴ Under the Criminal Code of North Korea, the life and freedom of North Korean refugees may be at risk if returned to North Korea. Article 47 of the Criminal Code states that:

"A citizen of the Republic who defects to a foreign country or to the enemy in betrayal of the country and the people . . . shall be committed to a reform institution for not less than seven years. In cases where the person commits an extremely grave offence, he or she shall be given the death penalty . . ."

See also "*Human rights violations behind closed doors*" (ASA 24/12/95, issued in December 1995) for Amnesty International's position on this provision.

International is also concerned Lee Yen Sen may face ill-treatment in North Korea, as has reportedly been the case with other forcibly returned North Koreans.⁵ Amnesty International also believes that the ill-treatment Lee Yen Sen was reportedly subjected to in 1971 and his dispatch as a logger in 1972 to the USSR because he was a “politically distrusted” person are indications that Lee Yen Sen may face human rights violations in North Korea. The fact that Lee Yen Sen publicly wrote about the ill-treatment he was subjected to in 1971 may lead to further punishment against him in North Korea.

Amnesty International therefore believes that Lee Yen Sen’s forcible return to the DPRK by the Russian authorities is a clear violation of the principle of *non-refoulement*, as stated in the Convention relating to the Status of Refugees, to which the Russian Federation acceded in March 1993.

Amnesty International does not oppose the decision by the Russian authorities not to look into Lee Yen Sen’s request for political asylum before his release in itself, but believes that in such cases, the Russian authorities should guarantee that the person involved is not sent back to his country of origin before a final decision has been made on the request for asylum. In the case of Lee Yen Sen, the Commission on Citizenship of the Russian Federation, to which the request for asylum was made and which took the decision not to look into his request until his release, should have made sure that Lee Yen Sen was not sent to North Korea until the request had been considered and a decision taken.

Amnesty International believes that the decision not to consider Lee Yen Sen’s request for asylum until after his release may have been taken in order to be able to send him back to North Korea before his release, thereby making it impossible for Lee Yen Sen to request asylum in the Russian Federation. Amnesty International bases this concern on the fact that, as far as Amnesty International is aware, no asylum seeker from outside the former Soviet Union has been granted refugee-status since the Russian Federation acceded to the Convention relating to the Status of Refugees in 1993. Amnesty International has received many reports stating that asylum seekers had great difficulty gaining access to the asylum procedures. If Lee Yen Sen’s request for asylum was deliberately delayed in order to make it impossible to request asylum in the Russian Federation, Amnesty International strongly condemns such practice and urges that it should not occur in future.

⁵ See also “*Human rights violations behind closed doors*” (ASA 24/12/95, issued in December 1995).

Recommendations

Amnesty International calls on the Russian authorities to undertake the following steps:

- ◆ Start an independent and impartial investigation into the process which led to the *refoulement* of Lee Yen Sen. This investigation should in particular seek to establish the reasons why the consideration of Lee Yen Sen's last request for asylum was delayed; whether the Commission on Citizenship was consulted about Lee Yen Sen's transfer to the DPRK to serve the remainder of his prison sentence there; and whether the authorities which implemented the transfer sought information from other agencies about the status of Lee Yen Sen's application for asylum;
- ◆ Take all the measures necessary to ensure that the rights of all refugees and asylum seekers in the Russian Federation are respected. This should in particular include measures to ensure that asylum seekers are never returned to their country of origin before a fair refugee status determination procedure has been completed (before their applications for asylum have been considered and an official refusal to recognize them as refugees has been given, and they have had the right to appeal against this decision in a court of law). Measures should also be taken to ensure that the Convention on the Consignment of Prisoners is not used for the *refoulement* of refugees;
- ◆ Seek amendments to the Convention on the Consignment of Prisoners in order to prevent the *refoulement* of refugees and asylum-seekers on the basis of this Convention in future. An amendment could be the inclusion of a form of consultancy procedure with the individual whose transfer is being discussed by the involved states;

Amnesty International calls on the North Korean authorities to undertake the following steps:

- ◆ Publicly account for the whereabouts of Lee Yen Sen, in particular by informing Amnesty International of his place of detention, of the conditions in which he is held and of the date of his release;
- ◆ Ensure that the conditions in detention are in line with the Standard Minimum Rules for the Treatment of Prisoners and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.