



The Truth Foundation

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Report of the Truth Foundation regarding the Right to a Remedy for Gross Violations of Human Rights and the Right to a Fair Trial

Foreword

The Truth Foundation was established by victims of torture perpetrated by the Korean state with the money they received as reparation. The mission of the Truth Foundation includes the prevention and investigation of torture and state-sponsored violence, the support of the physical and mental rehabilitation of victims, as well as the support of, and alliance with, other torture victims in Asia.

The Truth Foundation welcomes the Human Rights Committee's ("HRCtte") review of the Fourth Periodic Report of the Republic of Korea ("Korean Government Report"), scheduled for October 2015, and submits this report in the hope that it will help the HRCtte conduct an objective review of the human rights situation in Korea and bring about positive change.

The Truth Foundation supports the separate report being submitted by Korean NGOs and aims to supplement their report regarding the right to reparation through a fair trial for the victims of gross human rights violations. The Truth Foundation hopes that the HRCtte review of the Korean Government Report will provide an impetus for Korea to respect and safeguard human rights as prescribed by international human rights law, including the International Covenant on Civil and Political Rights ("ICCPR"). In particular, the Foundation hopes the Korean Supreme Court will reverse its unjust and prejudicial interpretations of the law that restrict or extinguish the rights of victims of gross human rights violations. To this end, the Truth Foundation submits some suggested questions that may be posed by the HRCtte to the Korean government.

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Right to a Remedy for Gross Violations of Human Rights and Right to a Fair Trial

- Related Articles of the ICCPR: Article 2, Article 4, Article 6, Article 7, Article 9, Article 14

1. Introduction

In Korea, the state of civil and political rights of citizens has been deteriorating since 2008. The judiciary bears significant responsibility for this situation because it has failed to abide by the principles of a fair trial and it has issued rulings that have actually undermined the rule of law.

As pointed out in the UN Basic Principles on the Independence of the Judiciary, judges in Korea are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens. Therefore, the right to a fair trial conducted by an independent and impartial judge is the logical premise that safeguards all human rights. However, since 2008 there have been numerous instances that give grounds to suspect that the right to a fair trial by an independent and impartial judiciary is being infringed, and this is a key factor in the erosion of democracy, human rights and the rule of law.

The case (*2008 GA-HAP 68581*) cited in Paragraph 234 of the Korean Government Report is clearly representative of this erosion. Kim Sang Han, the victim in this case, was sent to North Korea in 1960 on a special mission by Korean intelligence under the threat that if he did not do so, he would be punished for engaging in left wing activities. (The Korean government at the time often used criminals, who were coerced or lured by promises of an amnesty, for such missions to North Korea which violated the armistice.) However, the Korean government later fabricated a spy ring case, called the *Inhyeokdang* Incident, in which they announced that Kim Sang Han was a North Korean spy and that he had returned to North Korea, after organizing *Inhyeokdang* (the People's Revolutionary Party) per North Korean instructions. Because Kim Sang Han had disappeared, his family could only believe the Korean government announcement. They were thus branded a North Korean spy family and had to endure the social stigma, as well as surveillance by Korean security services. As the Korean Government Report noted, the trial court and the appellate court did order compensation of KRW 2.8 billion (approximately USD 2.6 million). But, subsequently in February 2014, the Supreme Court reversed the lower courts' order in its ruling (*2011 DA 9815*), its position being that the state does not need to pay compensation for fabricating spy cases.

As shown by this case, the Korean Supreme Court has been issuing rulings in which the victims' right to reparation for gross human rights violations is being seriously restricted or extinguished. A more disturbing problem is that in issuing these rulings

that go against the ICCPR, the principles of international human rights, Korean law and even its own precedents, the Supreme Court fails to provide any logical basis for doing so. These rulings go beyond infringing the rights of victims of gross human rights violations. They undermine the public's trust in the fairness of the judiciary and the rule of law, and they are being perceived as a sign of acceptance towards the policies and enforcement actions of a government that does not respect human rights.

2. Korean History and Investigations of Gross Human Rights Violations

Following the division of the Korean peninsula in 1948, countless human rights violations were committed by the state during the Korean War and the many decades under dictatorial regimes. The Korean government hid the truth about these violations and branded the victims and their families as North Korean spies or North Korean sympathizers (“reds”) who were out to overthrow the Korean government, oppressing them legally, politically and in fact.

In 1998, for the first time in the Republic of Korea's history, there was a peaceful transfer of power from a ruling party to the opposition and the human rights situation began to change. The new government began to gradually investigate gross human rights violations, and the most comprehensive investigation was conducted by the Truth and Reconciliation Commission (“TRC”) which was established by a special law in 2005. The TRC, based on the South African model, started out with a clear limitation. This limitation, premised on the firm opinion of the Supreme Court and the Constitutional Court, was that the statute of limitations in criminal proceedings had expired and that no one could be prosecuted, no matter what type of state crime was involved, regardless of whether it was a massacre, assassination, or torture. Working within these confines, the TRC was able to uncover the truth in a substantial number of cases involving gross human rights violations and after many years victims were able to clear themselves of false charges of being North Korean spies or sympathizers.

The human rights violations uncovered by the TRC were truly diverse in scope, but for the purpose of this report they can be divided into two categories. The first is “factual violations” where the state actually committed acts such as massacres or murder. The second is “violations through legal procedure” such as where an investigative body held innocent citizens in incommunicado detention and tortured them to obtain false confessions that they were North Korean spies, with the court finding them guilty and prescribing punishment. Through such sham legal proceedings a great number of people were sentenced to death, life imprisonment or long prison terms under the National Security Law. After their release, they faced secondary punishment in the

name of “security measures.” These victims and their families were subject to various injustices, including police surveillance, and had to endure isolation as they became social pariahs. In cases where the TRC was able to uncover illegal detention, torture and false confessions, the victims were able to have their convictions overturned in retrials pursuant to the Korean Criminal Procedure Code.

3. Civil Suits and the Statute of Limitations for Gross Violations of Human Rights

Human rights violations committed by the state constitute a tort and the state has a legal obligation to compensate the victims. According to Korean laws that prescribe the state’s tort liability, such as the Civil Code and the National Finance Act, the statute of limitations for the right to claim compensation has run if either one of the following two periods has passed: “3 years from the date the damage and the perpetrator became known” or “5 years from the date the tort was committed.” Furthermore, Article 166, Paragraph 1 of the Civil Code provides that the statute of limitations begins to run from the time that the right can be exercised.

The Korean Supreme Court has interpreted the statute of limitations with certain flexibility in order to provide a remedy for creditors who were unable to exercise their rights due to exceptional circumstances. Under its first theory, in cases where there was an exceptional circumstance that prevented the creditor from exercising its right, the statute of limitations was deemed to run from the time the right could be exercised in accordance with Article 166, Paragraph 1 of the Civil Code. Under its second theory, if the debtor was responsible for the creditor being unable to exercise its right within the statute of limitations period, the debtor was barred from pleading that the creditor’s right has been extinguished due to the running of the statute of limitations, pursuant to the good faith principle under Article 2 of the Civil Code.

Both of these theories can be applied in cases involving victims of gross human rights violations. These victims were unable to even contemplate suing the state to uncover the truth and claim compensation because they lived in fear of the state that continued to hide the truth and oppress them. In particular, those who were convicted of being North Korean spies on trumped up charges had no possibility of claiming compensation unless they first had their convictions overturned in a retrial.

In civil suits brought by victims of gross human rights violations, the Korean Supreme Court had provided a remedy to the victims based on the second theory. The Supreme Court accepted the victims’ claims because the state was barred from pleading that the statute of limitations had run. Pursuant to this theory, the Supreme Court accepted

claims for compensation in civil suits that were each brought within 3 years from either the date the TRC uncovered the truth in the case of “factual violations” or, in the case of “violations through legal procedure,” from the date the victims obtained a not guilty verdict in a retrial for those whose initial convictions had been unlawfully obtained. Although it was wrong to view that the statute of limitations had run while the victims were unable to exercise their rights, the Supreme Court’s position nevertheless permitted a substantial number of victims to receive compensation from the state thanks to the theory that it did apply.

4. Change in the Supreme Court’s Position

In 2013, the Supreme Court abruptly changed its position and began to seriously restrict the right to claim compensation by victims of gross human rights violations. The main points are as follows.

First, on May 16, 2013, in a civil suit for compensation filed by the families of victims massacred by the military and the police, the Supreme Court ruled that the period in which they could bring such a suit is “in principle” 6 months from the date that the TRC uncovered the truth, unless there were exceptional circumstances, which would extend this period to 3 years (*2012 DA 202819*).

Second, the Supreme Court ruled that, in principle, victims who did not petition the TRC for an investigation could not receive compensation (*2012 DA 202819*). Its position was that the state is barred from invoking the statute of limitations defense only in cases where victims had petitioned the TRC, and that with respect to those who did not do so, the state can invoke the statute of limitations defense.

Third, on December 12, 2013, the Supreme Court ruled that those who were falsely convicted in the past and who later obtain not guilty verdicts in retrials have 6 months from the date of the not guilty verdict to file a civil suit for compensation, except that if within this 6 month period a penal compensation claim¹ is made, the civil suit for compensation may be filed within 6 months from the date a decision is rendered on such claim (*2013 DA 201844*).

The abrupt change in the Supreme Court’s position has thus created precedents that deny a remedy to victims who were previously able to receive compensation.

¹ A penal compensation claim is a summary proceeding where a defendant who is found not guilty can obtain certain monetary compensation relative to the number of days incarcerated.

In cases of gross human rights violations where there were many victims, some of them did not petition the TRC for an investigation for various reasons. Some did not know about the TRC. Some were unable to overcome the fear that they had lived under during the decades of oppression and persecution. Some did not submit a petition because other relatives or victims had already done so. But, whatever the reason, it cannot be deemed that they did not want to seek justice and obtain compensation. Given that a special law was passed to uncover gross human rights violations by the state, it is wrong to discriminate victims just because they did not personally submit a petition for an investigation. However, according to the latest rulings by the Supreme Court, only those victims who petitioned the TRC can receive compensation, while those victims who did not do so, cannot.

Generally, victims who had their guilty verdicts in fabricated North Korean spy cases overturned in a retrial filed their civil suits after first obtaining compensation under a penal compensation claim. This is because these victims, who had suffered for decades, wanted to at least obtain some compensation before anything else, and they also needed funds to prepare for the filing of their civil suits. In civil suits, the victims bear the burden of proof and therefore the preparation process takes a lot of time and effort. Because most of these victims are elderly and suffer from poor health due to the after effects of torture and long-term incarceration, preparing for civil cases usually take longer than 6 months. Victims who have been preparing civil suits, relying on past Supreme Court precedents that compensation may be obtained if the filing is made within 3 years from the date they receive a not guilty verdict, are now unable to obtain compensation for the decades of pain and suffering because of the abrupt change in the Supreme Court's position.

5. Problems with the Supreme Court's Rulings

The Supreme Court's rulings, which seriously limit the right to receive reparation by victims of gross human rights violations, contravene not only international human rights law, including the ICCPR, but also Korean law. They even contradict the Supreme Court's own precedents.

The right to a remedy for gross human rights violations is not simply a property right. The right to a remedy (ICCPR Article 2) closely implicates many other rights, the gross violations of which it seeks to remedy, including non-derogable rights under Article 4 of the ICCPR, such as the right to life (Article 6) and the right not to be tortured (Article 7), as well as the right to liberty and security of person (Article 9) and the right to a fair trial (Article 14).

The Supreme Court's rulings violate ICCPR Article 2 and they also violate ICCPR Article 4 because they discriminate against victims of gross human rights violations by treating them worse than ordinary tort victims. Furthermore, they also violate the right to receive a fair trial under ICCPR Article 14 because they fail to cite any logical basis for making a determination that goes against international human rights law, including the ICCPR, Korean law and even the Supreme Court's own precedents. In this manner, the victims' right to life, the right not to be tortured, the right to liberty and security of person and the right to a fair trial are indirectly infringed.

On December 16, 2005 the UN General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ("UN Reparation Principles"). As stated in the preamble, the UN Reparation Principles deal with the meaning of international treaties that prescribe the right to reparation for gross violations of human rights, including ICCPR Article 2.

The UN Reparation Principles declare that gross violations of human rights, by their very grave nature, constitute an affront to human dignity and emphasize that the principles do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law. With respect to the statutes of limitations, the UN Reparation Principles state the following:

6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.

7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.

The human rights conventions (International Convention on the Elimination of All Forms of Racial Discrimination, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, Rome Statute of the International Criminal Court) that are referred to in the preamble of the UN Reparation Principles, including the ICCPR, have all been ratified by the Republic of Korea and they all have the same effect as domestic law. According to these conventions, arbitrary executions and torture committed by the state constitute crimes under international law and gross violation of human rights under international human rights law. Therefore, it should follow that the statute of limitations does not apply to the perpetrators of such acts and to the victims of such acts who file civil suits. Also, even for gross human rights violations that do not constitute a crime under

international law, the statute of limitations should not be applied in an unduly restrictive manner to victims who file civil suits. By applying a six month statute of limitations period for victims of gross human rights violations, which is much shorter than the 3 year period enjoyed even by ordinary creditors, the Supreme Court's rulings violate the UN Reparation Principles and ICCPR Article 2.

The Republic of Korea approved the UN Reparation Principles in all proceedings on their adoption by the Commission on Human Rights, the Economic and Social Council, and the General Assembly. While the Korean government gives its approval to declarations on the importance of human rights on the international stage, at home, it is actively seeking and supporting abnormal legal interpretations that go against international law in order to deny the rights of victims of gross human rights violations and to discriminate against them.

The Supreme Court's rulings are also contrary to Korean law.

As noted above, Article 166, Paragraph 1 of the Korean Civil Code prescribes that "the statute of limitations runs from the time the right can be exercised." However, the Supreme Court, while acknowledging that the victims could not exercise their right to reparation until the TRC uncovered the truth or until they were able to overturn their prior conviction and obtain a not guilty verdict in a retrial, it nevertheless found that the statute of limitations had run and that the victims' rights were thereby already extinguished. This is illogical and also contrary to the Korean Civil Code.

The Korean Supreme Court's conclusion is founded on its peculiar interpretation of Article 166, Paragraph 1 of the Korean Civil Code. The Korean Supreme Court first categorized the impediment that prevented the creditor from exercising its right during the statute of limitations period as being either a "factual impediment" or a "legal impediment" and then applied different rules to them regarding when the statute of limitations starts to run. For a legal impediment, it was deemed to run from the time such impediment is removed and the creditor is thus able to exercise the right. But for a factual impediment, it was deemed to run from the time the tort is committed, without accounting for such impediment (except if there was an objective circumstance such that no one in the creditor's position would have been able to exercise its right). Based on this interpretation, the Korean Supreme Court found that in cases of gross human rights violations of the past, there were all only factual impediments and that the statute of limitations had run without exception, thus extinguishing the rights of the victims.

However, this interpretation by the Korean Supreme Court is wrong for two reasons.

First, it is wrong to view the circumstances of certain victims as suffering from a factual impediment that prevented the exercise of their right. Some were unable to claim reparation from the state because they were imprisoned and legally

disadvantaged after being found guilty of being North Korean spies, based on false confessions obtained through torture and illegal detention. Rather, their circumstances should be deemed a “legal impediment” because the guilty verdict delivered by the court was the product of a legal process and had legal effect.

Second, even in cases of gross human rights violations, such as massacres, assassinations and torture where there were no legal impediments, if the victims were unable to exercise their rights because the state continued to hide the truth and oppress the victims, these cases should fall under the exception for factual impediments provided by the Supreme Court itself. According to this exception noted above, if no one in the creditor’s position would have been able to exercise its right due to an objective circumstance, then the statute of limitations runs from the time such circumstance no longer exists. Therefore, the statute of limitations in these cases should be deemed to run from the time the TRC uncovered the truth, and not when the tort was committed.

According to ICCPR Article 14, the court has an obligation to give a duly reasoned judgment (*Aboushanif v Norway, Communication No 1542/2007*). The right to receive a fair trial entails the right to a reasoned judgment. Providing the reasons for a judgment is an essential role of the judiciary in that it enables the parties to understand and accept the judgment and proclaims generally applicable principles of law. Also, the right to a reasoned judgment is a safety mechanism to prevent arbitrary rulings by the court. The court must apply the law consistently and particularly when the court’s ruling deviates from precedent, it must clearly explain why (*Opinion no. 11 (2008) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions*). This is because the rule of law means ensuring predictability, based on precedents that proclaim legal principles, and maintaining public trust.

While issuing rulings that discriminate against victims of gross human rights violations contrary to international human rights law, including the ICCPR, Korean law, and its own precedents, the Supreme Court does not provide any explanation. This infringes the right to a fair trial under ICCPR Article 14.

6. Specific Examples of Problems with the Supreme Court’s Rulings

The two examples cited below illustrate the inconsistent outcomes that have resulted from the Supreme Court’s rulings that reached different conclusions in like cases, contrary to the principle of justice.

A. Kim Yang-ki Case and Lee Jun-ho Case

The table below shows the inconsistent outcomes experienced by two victims who suffered the same kind of human rights violation and who, at similar times, filed a civil suit for compensation against the state.

	Supreme Court <i>2011 DA 77925</i>	Supreme Court <i>2011 DA 59810</i>
Victim	Kim Yang-ki	Lee Jun-ho
Final not guilty verdict in retrial	2009. 8. 7	2009. 7. 17
Penal compensation claim	2009. 8. 14	2009. 7. 21
Decision on penal compensation claim	2009. 8. 27	2009. 9. 16
Filing of civil suit	2010. 6. 30	2010. 5. 4
Trial court ruling	2010. 11. 24	2010. 11. 11
Appellate court ruling	2011. 9. 14	2011. 6. 23
Supreme Court appeal registration	2011. 9. 21	2011. 7. 25
Supreme Court ruling	2012. 7. 26	2014. 1. 23
Result	Granted compensation	Denied compensation

In each of the two cases, the victims (Kim Yang-ki and Lee Jun-ho) were illegally taken and detained for a long period by the authorities, during which time they both endured excruciating torture. Based on the false confessions thus obtained, they were each sentenced to 7 years in prison and they both suffered the breakdown of their families as they were subjected to “security measures” and other discrimination after their release. Based on the decision of the TRC, they each filed for a retrial and they received not guilty verdicts on July 17, 2009 (Lee Jun-ho) and August 7, 2009 (Kim

Yang-ki). Each of them filed a penal compensation claim and decisions were issued on September 16, 2009 (Lee Jun-ho) and August 27, 2009 (Kim Yang Ki). Thereafter, they each filed a civil suit against the state for compensation on May 4, 2010 (Lee Jun-ho) and June 30, 2010 (Kim Yang-ki) and at the trial court and appellate court, they each received rulings granting compensation. The state appealed against these rulings to the Supreme Court on July 25, 2011 (Lee Jun-ho) and September 21, 2011 (Kim Yang-ki).

In Kim Yang-ki's case, the Supreme Court dismissed the state's appeal, affirming the ruling of the lower court, and Kim Yang-ki was granted compensation on July 26, 2012. However, in Lee Jun Ho's case, the Supreme Court did not issue a ruling for more than two and half years and then denied Lee Jun Ho's claim for compensation on January 23, 2014. The reason for the denial was that the civil suit for compensation had been filed about a month and a half after the six month period from the date of the decision on the penal compensation claim. However, in Kim Yang-ki's case, he had filed his civil suit for compensation about 4 months after the six month period from the date of the decision on the penal compensation claim. Yet, because the Supreme Court had issued its decision early in Kim Yang-Ki's case, he was granted compensation.

Although Kim Yang-ki and Lee Jun-ho both suffered the same kind of gross human rights violations, and both undertook the same legal steps at similar times, one was granted compensation and the other was denied. The Supreme Court panel that was assigned Kim Yang-ki's case issued its ruling promptly, applying the theory accepted at the time and granted compensation. Meanwhile, Lee Jun-ho, who had filed his civil suit earlier and whose case went up to the Supreme Court earlier, had his case decided much later as the Supreme Court panel assigned to his case delayed issuing its ruling and then denied compensation by reaching a conclusion that contradicted its own precedents. The principle of justice which dictates that like cases be treated alike was therefore violated.

B. Jung Young Case

In 1983, Jung Young, together with his wife and younger sibling, was illegally held and tortured by the KCIA and forced to falsely confess that he was a North Korean spy. Although his wife and younger sibling were released, Jung Young was indicted and found guilty, as a result of which he was imprisoned for 15 years. Based on the findings of the TRC, Jung Young received a not guilty verdict in a retrial and after receiving penal compensation he, together with his wife and younger sibling, filed a civil suit against the state. The trial court and appellate court both ruled that the state owed compensation to them, but the Supreme Court held that the lower courts' rulings

were in error (2013 DA 215973). Jung Young had received his not guilty verdict on January 13, 2011 and he had made his penal compensation claim on January 19, 2011, but because when he filed his civil suit on March 22, 2012 more than six months had elapsed from July 11, 2011, which was the date of the decision on his penal compensation claim, the Supreme Court denied his claim for compensation. However, with respect to Jung Young's wife and younger sibling, the Supreme Court ruled that they were entitled to compensation because they had filed their civil suit within 3 years from May 2009 when the TRC had issued its findings. Jung Young, his wife and younger sibling were all illegally taken together. Together they were detained, tortured and forced to make false confessions. On March 2012, which was within 3 years from May 2009 when the TRC issued its findings, the three of them filed their civil suit together. But the Supreme Court ruled that while Jung Young's wife and younger sibling were entitled to compensation, Jung Young, who additionally spent 15 years in prison and had to undergo two additional legal steps of a retrial and a penal compensation claim process, was not entitled to compensation because he had not filed his civil suit within 6 months from the decision on the penal compensation claim. The Supreme Court has taken family members who are victims of state violence and has treated more harshly the member who was made to suffer even more and subjected to even more legal bureaucracy. Can this be called justice or the rule of law?

7. Suggested Questions for the Korean Government

(1) The Korean Civil Code provides that the statute of limitations starts to run when the right at issue can be exercised and, in the case of gross human rights violations committed by the state, the victims could not exercise their right to reparation because of continued state oppression and concealment of the truth or because of wrongful convictions handed down by the courts. Yet, is it true that the Korean Supreme Court has ruled that the victims' right to reparation expired because the statute of limitations has run? If the statute of limitations only starts to run when a right can be exercised, then what is the logical basis for ruling that it has run during the period in which victims could not exercise their rights?

(2) Is it true that the circumstance of not being able to file a civil suit for compensation because a prior guilty verdict was delivered in a fabricated North Korean spying case in which the victim was tortured, was interpreted by the Korean Supreme Court as being an "factual impediment," and not a "legal impediment"? What is the logical basis for this interpretation when a guilty

verdict delivered by a court is a legal judgment, of which the legal effect is criminal punishment?

- (3) Is it true that until May 16, 2013 the Korean Supreme Court barred the state from pleading the statute of limitations defense, and thereby interpreting that the victims of gross human rights violations could obtain a remedy if a civil suit is filed within 3 years from the date the TRC uncovered the truth or from the date victims received a not guilty verdict in a retrial? What is the reason for the Supreme Court reducing this period to 6 months in their rulings of May 16, 2013 and December 12, 2013? What is the logical or policy basis for this change in the direction of restricting the right to a remedy for victims of gross human rights violations?
- (4) Do the recent rulings of the Korean Supreme Court regarding the right to a remedy for victims of gross human rights violations conform to the principles of Paragraph 6 and Paragraph 7 of the UN Reparation Principles? How does the Korean Supreme Court interpret the UN Reparation Principles and ICCPR Article 2 regarding the right to a remedy for victims of gross human rights violations?
- (5) Having approved the adoption of the UN Reparation Principles, how does the Korean government apply these principles with respect to the right to a remedy for victims of gross human rights violations? In civil suits brought before the courts by victims of gross human rights violations what position has the government taken on the statute of limitations? Has the Korean government advised the court that the Korean government approved the adoption of the UN Reparation Principles and that these principles must be considered in interpreting the law? If not, what is the reason for not doing so?
- (6) The TRC was established by the Korean government pursuant to a special law and it went on to uncover many past instances of gross human rights violations. In light of this, what is the basis for the Supreme Court's discriminatory interpretation that only victims who petitioned the TRC are entitled to compensation while victims who did not submit a petition are not entitled?
- (7) In the case of the victim Jung Young and his family who were all illegally detained and tortured, they all filed their civil suit within 3 years from the date the TRC issued its findings. Yet, while his family was granted compensation,

Jung Young was denied solely for not filing within 6 months from the date of the decision on the penal compensation claim, even though Jung Young additionally suffered 15 years of imprisonment and also had to undergo a retrial and a penal compensation claim process. What logical or policy basis can justify such a discriminatory outcome?

- (8) In the cases of Kim Yang-ki and Lee Jun-ho, who suffered the same gross human rights violations and who filed civil suits for compensation at similar times following similar procedures, one (Kim Yang-ki) was granted compensation and the other (Lee Jun-ho) was denied depending on the happenstance of which Supreme Court panel each was assigned. What is the principle under Korean law that justifies this result? In order to avoid such an inequitable outcome in Lee Jun-ho's case, why did the Supreme Court, in changing its interpretation, apply such new interpretation retrospectively and not just prospectively?

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