



CARDOZO

Benjamin N. Cardozo School of Law

LARC @ Cardozo Law

CICLR Online

Journal Blogs

11-30-2022

South Korean Court's Landmark Decision Against North Korea

Hyesoo Hahn

Cardozo International & Comparative Law Review, hhahn@law.cardozo.yu.edu

Follow this and additional works at: <https://larc.cardozo.yu.edu/ciclr-online>



Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Hahn, Hyesoo, "South Korean Court's Landmark Decision Against North Korea" (2022). *CICLR Online*. 65. <https://larc.cardozo.yu.edu/ciclr-online/65>

This Blog Post is brought to you for free and open access by the Journal Blogs at LARC @ Cardozo Law. It has been accepted for inclusion in CICLR Online by an authorized administrator of LARC @ Cardozo Law. For more information, please contact larc@yu.edu.

South Korean Court's Landmark Decision Against North Korea

By: Hyesoo Hahn



During the Korean War, about 50,000 to 70,000 South Korean soldiers were taken prisoner of war (POW) by North Korea and its allies.[1] While North Korea claimed that most South Korean POWs expressed to remain in North Korea and repatriated only 8,343 POWs,[2] 80 South Korean POWs who escaped from North Korea told a different story. Most testified that they were never asked whether they want to return to South Korea,[3] and some testified that they were forced to say they want to remain in North Korea.[4] Held captive against their will, 50,000 South Korean POWs were sent to North Korean mines, such as Aoji coal mine, and toil in the mines for more than three decades or until death.[5]

In July 2020, former POWs, who escaped to South Korea, won a landmark case against North Korea and Kim Jong-un. The plaintiffs were two former POWs: Plaintiff A was taken POW by North Korea in 1951 and escaped to South Korea in 2001, and Plaintiff B was taken POW in 1953 and escaped in 2000.[6] The plaintiffs claimed that they were held captive in North Korea and were enslaved in coal mines despite the armistice, which North Korea agreed to return all POWs who wished to return to South Korea.[7] Finding that North Korea is a juristic person under the civil act[8] and Kim Jong-un is the

successor of Kim Il-sung and Kim Jong-il, who authorized the unlawful act, the Seoul Central District Court held both North Korea and Kim Jong-un liable for holding the plaintiffs against their will and forcing them to work in the mines. The court ordered North Korea to pay the plaintiffs 21 million won (about \$ 16,200) each in compensatory damages.[9]

However, the joy of this long-overdue justice did not last long. On January 14, 2022, the Seoul Eastern District Court ruled that the judgment cannot be enforced against the seized fund of the Foundation of Inter-Korea Cooperation (FIKC).[10] The seized fund of \$ 1.5 million was copyright fees collected by the FIKC on behalf of North Korean broadcasters.[11] Reasoning that North Korea is not a state entity or a juristic person, the court ruled that the fund cannot be considered as North Korean asset.[12]

This judgment marks a striking contrast to a New York court's decision on the case of Otto Warmbier. Otto Warmbier, an American student, was arrested and detained in North Korea for "allegedly taking down a poster with a political slogan supporting the North Korean leader." [13] Upon release and returning to the US, Otto died within less than a week due to severe brain damage.[14] The Warmbier family was awarded a total of \$ 501million in damages.[15] While payment by North Korea was an issue, the Warmbier family was able to collect part of their awards in seized North Korean assets.[16] Finding the Korean Kwangson Banking Corporation as an agent of North Korea, the Northern District Court of New York, in 2021, directed the State Comptroller to turn over the seized funds from the bank to the Warmbier estate.[17]

While the Seoul court's judgment is being appealed, the landmark decision opened the floodgate to private litigations against North Korea. Many of the cases were ruled in favor of plaintiffs,[18] and more are expected to follow. The amount of damage awards that North Korea should pay is currently a total over 800 million won (about \$ 560,000). And, whether the plaintiffs would be able to collect money will depend on the appellate court's decision.

The Seoul Eastern District Court's very reasoning run against the Supreme Court and the Constitutional Court's long-held decision on recognizing North Korea as juristic person.[19] In addition to its faulty reasoning, it is a well-known fact that North Korean broadcasters, such as Korean Central TV, are state-owned, and thus the copyright fee, collected by FIKC, clearly can be considered the asset of North Korea and its leader, Kim Jong-un.[20] Furthermore, there is a possibility that the FIKC's fund is a violation to the UN's North Korea sanctions.[21] Therefore, the appellate court should reverse and allow plaintiffs to collect from the FIKC's fund.

Hyesoo Hahn is a Staff Editor at CICLR.

[1] 강제납치·유괴 [Abduction and Kidnapping], 통일부 북한인권포털 [Ministry of Unification N. Kor. Hum. Rts. Portal], https://www.unikorea.go.kr/nkhr/current/rights/kidnap_/0003/ [https://perma.cc/H8NR-LECW] (last visited Oct. 30, 2022).

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Left behind: North Korean coalmines fuelled by South's POWs*, France 24 (Nov. 12, 2020, 3:44 AM),

<https://www.france24.com/en/live-news/20201211-left-behind-north-korean-coalmines-fuelled-by-south-s-pows>

[<https://perma.cc/6M82-TJ9R>].

[6] Seoul Jungang Jibangbeobwon [Seoul Cent. Dist. Ct.], July 7, 2020, 2016Gadan5235506 (S. Kor.).

[7] *Id.*

[8] Minbeob [Civil Act] art. 35 (S. Kor.). The reason why the court considered North Korea as “juristic person” is because North Korea is not recognized as a state entity under the Korean Constitution. *See* Daehanminkuk Hunbeob [Constitution] art. 3 (S. Kor.) (“The territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands”).

[9] Seoul Jungang Jibangbeobwon, July 7, 2020, 2016Gadan5235506; Eun-Young Jeong, *Former South Korean POWs Awarded Damages in Case Against North’s Kim Jong Un*, Wall St. J. (July 7, 2020, 8:01 AM),

<https://www.wsj.com/articles/south-korean-pows-awarded-damages-in-case-against-norths-kim-jong-un-11594123313>

[<https://perma.cc/5K4A-V6XZ>].

[10] Seoul Dongbu Jibangbeobwon [Seoul E. Dist. Ct.], Jan. 14, 2022, 2022Gadan154367 (S. Kor.).

[11] Mike Ives & John Yoon, *‘Not in This for the Money’: Why Some Families Sue North Korea*, N.Y. Times (June 22, 2022),

<https://www.nytimes.com/2022/06/22/world/asia/north-korea-lawsuits-compensation.html> [<https://perma.cc/L469-USGD>].

[12] 한도형[Dohyeong Han], *국군포로, ‘경문협 추심금 청구’ 소송 1심 패소*[*POW loses in trial court to collect awards against FKIC’s seized asset*], Radio Free Asia (RFA) (Jan. 14, 2022), https://www.rfa.org/korean/in_focus/k011422dh1-01142022072011.html [<https://perma.cc/WV77-GQB5>]; Ives & Yoon, *supra* note 11.

[13] *Warmbier v. Democratic People’s Republic of Korea*, 356 F. Supp. 3d 30, 38 (D.D.C. 2018).

[14] *Id.* at 40

[15] *Id.* at 60.

[16] Adela Suliman & Michelle Ye Hee Lee, *Family of Otto Warmbier, American who died after detention in North Korea, awarded \$240,000 in seized assets*, Wash. Post (Jan. 19, 2022, 7:41 AM),

<https://www.washingtonpost.com/nation/2022/01/19/otto-warmbier-north-korea-damages/> [<https://perma.cc/35WR-HXUB>].

[17] *Id.*

[18] *See* Ives & Yoon, *supra* note 11 (saying that the Seoul court ordered North Korea to pay \$39,000 in damages to the family members of a victim abducted to North Korea in 1950); *see also Court Orders N. Korea to Compensate S. Korean Victims of 2002 Naval Battle*, Kor. Broad. Sys. (KBS) (Aug. 24, 2022, 7:54 PM),

https://world.kbs.co.kr/service/news_view.htm?lang=e&Seq_Code=171950 [<https://perma.cc/WA9R-C8DD>] (saying that the Seoul court awarded about \$14,000 in damages each to family members of eight soldiers killed or wounded during the 2002 inter-Korea naval clash).

[19] Dohyeong Han, *supra* note 12.

[20] *Id.*

[21] 이지은[Jieun Lee], *하태경“문정부, 5년간 대북제재 위반... 경문협 자산 동결 안해”* [Congressman Ha “Mun Administration violated sanctions against North Korea for 5 years by not freezing the asset of FIKC”], Asia Econ. (Oct. 14, 2022, 2:10 PM), <https://www.asiae.co.kr/article/2022100414103349814> [<https://perma.cc/N5T8-EAAK>].