

the Instant Provision making a criminal punishment on midwives performing an abortion operation on the request or consent of the pregnant woman in the early stage of pregnancy is also an violation of the Constitution. Therefore, in our view, the part of 'abortion' of Article 269 Section 1 and Article 270 Section 1 shall be declared as unconstitutional so long as the 'abortion' is interpreted as include 'the abortion within twelve weeks of pregnancy.'

3. Dissenting Opinion of One Justice (Justice Lee Dong-Heub)

While abortion at the early stage of pregnancy shall be permitted with respect to the right to self-determination of a pregnant woman, legislative measures to make a pregnant woman take an abortion after careful consideration and, at the same time, preserve safe abortion operation shall be taken.

14. Identity Verification System on Internet

[24-2(A) KCCR 590, 2010Hun-Ma47, 252(consolidated), August 23, 2012]

The Constitutional Court, in this case, held that Article 44-5 Section 1 Item 2 of the Act on Promotion of Information and Communications Network Utilization and Information Protection and Article 29 and Article 30 Section 1 of the Enforcement Ordinance of the same Act, which regulate so-called identity verification system by imposing duties of adopting means to confirm identity of internet message board users and maintaining those users identity information on the service providers installing and operating those boards of the website under which a message user can upload information on message boards only after he or she goes though identity verification process, violate the rule against excessive restriction and, thus, infringe on the complainants' basic rights such as freedom of expression, right of self-determination on private information and freedom of press.

Background of the Case

(1) By imposing duties of adopting means to confirm identity of internet message board users' and maintaining those users identity information on the service providers installing and operating those boards of the website where the average number of users reaches or exceeds 100,000 per day, Article 44-5 Section 1 Item 2 of the Act on Promotion of Information and Communications Network Utilization and Information Protection and Article 29 and Article 30 Section 1 of the Enforcement Ordinance of the same Act regulate so-called identity verification system under which a message user can upload information on those boards only after he or she goes though identity verification process.

(2) Accordingly, message board operators had to take measures for identity verification process so that users can be confirmed their identity, which denied those users from uploading information anonymously. In response, the complainants filed this case with the Court, asserting that that such identity verification scheme infringes on the freedom of speech of information and communications service providers who operate such message board and intend to form and distribute public opinions based on those users' opinions freely expressed on such board.

Provisions at Issue

The question presented to the Court is whether the statutory provisions at issue, Article 44-5 Section 1 Item 2 of the Act on Promotion of Information and Communications Network Utilization and Information Protection (revised by Act No. 9119 on June 13, 2008, hereinafter, the "Information Communications Network Act") and Article 29 and Article 30 Section 1 of the Enforcement Ordinance of the same Act (revised by Presidential Decree No. 21278 on January 28, 2009) (hereinafter, collectively referred to as the "Instant Provisions"), are unconstitutional and the contents of the Instant Provisions is as follows:

Act on Promotion of Information and Communications Network Utilization and Information Protection (revised by Act No. 9119 on June 13, 2008)

Article 44-5 (Verification of Users Identity of Open Message Boards)

(1) A person falling under any of the following subparagraphs shall, if it intends to install and operate an open message board, take necessary measures as prescribed by Presidential Decree (hereinafter referred to as "measures for verifying identity of users"), including preparation of a method and procedure for verifying identity of users of the open message board:

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2. A provider of information and communications services who falls under the criteria prescribed by Presidential Decree, where the average number of users of each type of information and communications services rendered by it reaches or exceeds 100,000 persons per day.

Enforcement Ordinance of the Act on Promotion of Information and Communications Network Utilization and Information Protection (revised by Presidential Decree No. 21278 on January 28, 2009)

Article 29 (Measures for Users Identity Verification) the part of "necessary measures as prescribed by Presidential Decree" of Article 44-5 Section 1 of the Act on Promotion of Information and Communications Network Utilization and Information Protection refers to all the following items:

1. Taking steps to verify the identity of message board users through ways including meeting in person, using facsimile or requesting to licensed certification authorities, other third parties or government agencies providing such identity verification service;

2. Adopting technologies for the prevention of leakage of identity verification information with respect to such verification process and information storage;

3. Maintaining identity verification information for the period from the date of information uploaded to the date when 6 months pass by after such information is deleted or removed from message board.

Article 30 (Scope of Service Providers Subject to Duty to Take Measures for Identity Verification)

(1) The person "who falls under the criteria prescribed by Presidential Decree" of Article 44-5 Section 1 Item 2 of the Act on Promotion of Information and Communications Network Utilization and Information Protection shall be the provider of information and communications services where, during immediately preceding 3 months, the average number of service users reaches or exceeds 100,000 per day.

Summary of the Decision

I. Court Opinion

1. Legitimacy of legislative purpose and appropriateness of means used

Identity verification scheme pursued by the Instant Provisions is for restraining on illegal acts such as defamation in regarding to uploading information on internet-site message boards and securing basic data in other to identify persons committing such illegal acts for the cases where harms and damages are caused by such illegal posting so that sound and healthy internet culture can be promoted. Thus, we find that these purposes of the Instant Provisions are legitimate and the means adopted are proper to achieve those purposes.

2. The least restrictiveness

However, we find that the identity verification scheme sought by the Instant Provisions amounts to such an excessive restrain as follows that it shall not be regarded as the least restrictive one.

A. In the event that a person is damaged by the illegal information posted on internet message board, identity verification of the penetrator uploading that illegal information can be substantially conducted by tracing or confirming internet addresses. In addition, remedy for victims can also be fully obtained by blocking distribution or diffusion of illegal information - deleting information or taking temporary measures in terms of illegal information by service provider (Article 44-2 Section 1 and 2 of the Information Communications Network Act) or denial, suspension or making temporary restriction on handling illegal information against message board manager or operator (Article 44-7 Section 2 and 3 of the Information Communications Network Act) or post-crime compensation or criminal punishment.

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B. 'Message board users' subject to identity verification include not only 'the person uploading information' but also 'the viewers of uploaded information,' who are not likely to commit illegal acts, and the scope of service provider of information and communications subject to identity verification plan is determined on the calculation of the number of users which is made based on vague and inaccurate criteria. Thus, by broadly expanding the scope of its application without taking account of the nature of internet communication, identity verification scheme at issue leaves too much room for law enforcement authorities to make arbitrary enforcement of relevant laws.

C. Meanwhile, the deadline for maintaining identity verification information is six months after the uploading period of information ends, which may cause that identity verification information to be stored by service providers for indefinite period unless they do not delete such information from the message boards.

3. Balancing of legal interests concerned

Freedom of expression is one of the fundamental values in our Constitution and, thus, limitation on that freedom is allowed only when the public interests to be achieved by that restriction is obvious. However, in the instant case, it is hard for us to find evidence showing that, after the implementation of identity verification scheme, the number of illegal information such as defamatory one posted on internet sites has been meaningfully decreased. Rather, it is hard for us to find that the Instant Provisions have actually achieved public interests they initially pursued because various problems have occurred in the course of implementation of those provisions: domestic internet users have been fleeing overseas; and there has been difficulties in implementing of the Instant Provisions and relevant laws due to disputes on discriminatory enforcement of those laws favoring foreign business entities over domestic ones or arbitrary enforcement. Furthermore,

with the advent of new communication means including mobile message board and SNS, the public interests sought by identity verification scheme are to be achieved in a very limited range of internet space.

On the contrary, being worried about regulations or punishment due to the disclosure of their identities under the identity verification scheme, domestic internet users are more likely to give up their freedom of expression. Pursuant to such scheme, foreigners or Korean nationals residing overseas without resident registration number are blocked from using internet message boards and the message boards operators competing with other operators with new communication means are unfavorably restricted in carrying out day-to-day business. Moreover, there is a high chance that private information of message board users is stolen and exploited.

Therefore, we find that the Instant Provisions do not strike balance between legal interests concerned because the disadvantage on message board users and service providers of information and communications cannot be considered to be less important than the public interests sought by those provisions.

4. Conclusion

For the forgoing reasons, we conclude that the Instant Provisions regulating identity verification scheme have a chilling effect on people's expression of opinion itself and, thus, becomes restriction on the expressions guaranteed by the Constitution, which amounts to an obstacle to free formation of public opinions – a basis for democratic society. Therefore, the Instant Provisions violate the rule against excessive restriction and thus, infringe on the complainants' basic rights - freedom of expression, right of self-determination on private information and freedom of press.

15. Statute of Limitation and Filing Method of Immediate Appeal

[24-2(B) KCCR 84, 2011Hun-Ma789, October 25, 2012]

The Constitutional Court, in this case, held that Article 405 the Criminal Procedure Act prescribing the three-day statute of limitation for filing immediate appeal and Article 406 of the Criminal Procedure Act not having a special provision recognizing the mailbox rule for the instance of filing immediate appeal by registered mail neither infringe on the appealing person's right to trial nor violate his or her rights to equality.

Background of the Case

(1) Complainant filed a request for the institution of prosecution by the court with the Gwangju High Court on around May 26, 2011 but he was served on a decision of dismissal by the court on September 19, 2011. In response, on September 21, 2011, the complainant sent an application for immediate appeal by registered mail and that application arrived at the court on September 23, 2011.

(2) The court dismissed the complainant's application for immediate appeal on the ground that such application was made after the filing deadline stipulated in Article 405 of the Criminal Procedure Act. Against the dismissal, the complainant filed this constitutional complaint with the Constitutional Court on December 7, 2011.

Provisions at Issue

The question presented to us is whether provisions at issue, Article 405 and 406 (hereinafter collectively referred as the "Instant Provisions") of the Criminal Procedure Act (enacted by Act No. 341 on September 23, 1954), infringe on the complainant' basic right and the contents of the Instant Provisions are as follows: