



MINBYUN-Lawyers for a Democratic Society

5F, Sinjeong B/D, 1555-3, Seocho-dong, Seocho-gu, Seoul, Republic of Korea, P.O. 137-070
Tel (82 2) 522 7284 Fax (82 2) 522 7285 <http://minbyun.jinbo.net> m321@chollian.net

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Press Statement

MINBYUN Highly Welcomes the Decision Declaring the Framework on the Act on Telecommunication That Punishes False Communication Unconstitutional

On the 28th of December 2010, the Constitutional Court ruled that Article 47 Section 1 of Telecommunication Acts, which reads "Those who undermine public interest by disseminating false information should be sentenced 5 years of imprisonment or be fined 50 million won," was found unconstitutional.

The Court added that the legal provision being both a legislative restriction against freedom of expression and a penalty provision at the same time, can not confirm (a) which expressive behavior undermines public interest (since the concept of 'public interest' is quite vague) nor (b) which type of 'false communication' is prohibited while false communication is generally accepted. Therefore, it contradicts the principle of clarity in strict meaning.

This case of legal provision originated from the Telecommunication Acts of 1961. However, it was first applied in the summer of 2008 during the pan-national Candlelight Vigil, which was held to urge the renegotiation of US beef imports when the government took issue with the contents on the internet which supported the Vigil.

The provision had been a dead letter for the past 50 years, until it was reenacted through the Candlelight Vigil, the Minerva Case, and the case of the president of Seoul District Court. Due to its obscurity and overly broad context, its application had been determined by the will of certain legal executors'.

A free democratic nation should, be an 'open market of ideas', not the unilateral 'government' that decides whether certain ideas and opinions are right or wrong, worthy or worthless. Even though some ideas might be harmful to our society, their corrections should be made in that open market of ideas through ideological debates by the people.

Historically, the dissemination of false information or demagogies has arisen in an era of dictatorship and oppression when telling the truth was forbidden. Still, the problem of eradicating the dissemination of false information and its malaise can possibly be resolved through open discussion that allows for diverse opinions, a process which eventually will bring the expansion of the freedom of expression.

Today we highly welcome the Constitutional Court's decision reaffirming the importance of freedom of expression, saying that the principle of clarity in a strict meaning can be applied to limit the freedom of expression.

Sun- Soo KIM

President

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