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Press Statement

MINBYUN Welcomes But is Unsatisfied with the Constitutional Court's Decision of Incompatible with the Constitution on the Protection of Communication Secrets Act Article 6, Clause 7

Today, the Constitutional Court ruled Article 6 Clause 7 of the Protection of Communication Secrets Act as incompatible with the constitution for its infringement of the principle of proportionality due to its clause which fails to state limitations on the frequency and total period of communication-restrictions.¹ Also the Court maintained that there is no way to limit communication-restriction and that privacy invasion is severe because the victim may not be aware of the restriction for a long time. Although the Constitutional Court ruled that the article is incompatible, so the court ordered that the law be provisionally applied until December 31st, 2011 in order to prevent a gap in the law.

According to Article 1 of the Protection of Communications Secrets Act, the purpose of the Act is to “protect the secrets of communication and further freedom of communications by confining its contents its objects and requiring it to go through a strict process of law with regard to limitation on secrets and freedom of communications and conversations” (Article 1). On the other hand, while Article 6, Clause 7 of the same act states that “..Provided, That if the requirement for permission under Article 5(1) are still valid, a request for extending the period of communication-restricting measures may be filed..” it does not limit the extension periods or the frequencies of communication-restriction, thus effectively incapacitating the purpose of the Protection of Communications Secrets Act.

¹ **"Incompatible with the constitution"**: This conclusion means the Court acknowledges a law's unconstitutionality but merely requests the National Assembly to revise it by a certain period while having the law remain effective until that time (<http://English.court.go.kr>).

We welcome but are not fully satisfied with the Constitution Court's decision because the Constitution Court did not rule unconstitutionality that the Clause lost its effect immediately but rule Incompatible with the Constitution. As two justices' opinion insisting the same clause simply as unconstitutional, if there is a need of communication-restriction by law enforcement agencies for investigation purpose, they can request a communication-restriction for not exceed 2 months and if they need to extend a period they can re-request a communication-restriction newly under the current law so that there is no gap in the law. However, the decision to provisionally allow the use of the law until next year permits unlimited extension of communication-restrictions by law enforcement agencies, thus severely violating basic rights.

We strongly request that the National Assembly should reform the system following the Constitutional Court's decision so that no one is indiscriminately watched by the government. Also, law enforcement agencies should respect the decision's purpose and change any and all investigation processes which violate individual rights. The Court should strengthen legal restrictions concerning unlimited communication-restriction extension claims.

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