



SOUTH KOREA

The Republic of Korea

Author: Buhm-Suk Baek, Kyung Hee University Law School

Buhm-Suk BAEK is a professor at the Kyung-Hee University Law School in Korea. He is a member of the Advisory Committee to the UN Human Rights Council and was the Rapporteur of the UN Human Rights Council Report "Possible impacts, opportunities and challenges of new and emerging digital technologies with regard to the promotion and protection of human rights" A/HRC/47/52 (2021). He is also a Commissioner of the Sentencing Commission, Supreme Court of Korea and has served as an advisor to various government agencies and NGOs dealing with human rights issues in Asia.

Country Summary

With restrictions to freedom of expression imposed during the pandemic lifted, three laws are still raising concern over their chilling effect on speech: The National Security Act includes provisions that could be used to restrict political pluralism and freedom of expression. After decreasing between 2017 and 2019, the number of persons accused of violating the National Security Act increased by 57.7% to 41 in 2021 and then decreased to 15 in 2022. The offenses of defamation and insult contained in the Criminal Code have been systematically used by public figures and corporations to silence criticism and accusations against them, stifling voices of whistleblowers or victims. It is estimated that there are over 60,000 complaints and accusations of criminal defamation and insults each year. The Communication Deliberation System allows the blocking and removal of online content on the request of the person concerned, acting as a means of administrative censorship of the Internet. More than 450,000 Internet postings are blocked annually under this system. The Public Official Election Act allows the removal of online content during election period: The National Election Commission demanded the deletion of 53,716 online postings during the 2020 general election and 86,639

online postings during the 2022 presidential election. Four laws prohibit civil servants from expressing their political opinions and belonging to a political party.

Introduction

From 2015 until 2022, the Republic of Korea has faced various challenges in promoting and respecting the freedom of expression. Being categorized as a medium-approval country for free speech, according to Justitia's Free Speech Index,⁴⁶⁶ and 47/180 in Reporters Without Borders 2023 Index.⁴⁶⁷ The country has had to deal with partial restrictions on freedom of expression due to the COVID-19 pandemic. These restrictions were initially implemented to prevent the spread of the virus and included national quarantine guidelines and social distancing policies. While the restrictions have now been lifted, there are still alarming issues such as National Security Acts, criminal defamation law, the communication deliberation system, and hate speech that could potentially hinder the quality of freedom of expression in the Korean community. During the 2021-2022 presidential election campaign, Korean society witnessed the escalation of gender conflict, including hatred and violent rhetoric against women and controversy over the abolition of the Ministry of Gender Equality and Family. The politicization of gender equality has exacerbated hatred against women and anti-feminist sentiments among young men, deepening gender conflict.⁴⁶⁸ In a 2016 NHRCK Survey Research on Realities of Hate Expression and Regulation Measures, 94% of sexual minorities, and 79% of people with disabilities have experienced hate expression against them online.

I. Legislation

National Security

There has been concern that Article 7 of the National Security Act⁴⁶⁹ violates the basic human rights including the freedom of expression as the provision is prescribed in a way that is excessively ambiguous and abstract. The fourth Concluding Observations of the UN Human Rights Committee in 2015⁴⁷⁰ and the 2016 report of the UN Special Rapporteur on peaceful association and assembly⁴⁷¹ stated that there is a possibility of abuse of the National Security Act and restriction of political pluralism and freedom of expression due to this provision. Since early 2000, the National Human Rights Commission of Korea (NHRCK) has recommended to the government to abolish the National Security Act as the Act might restrict the freedom of thought and conscience as well as expression. However, the government did not accept the

⁴⁶⁶ <https://justitia-int.org/report-who-cares-about-free-speech-findings-from-a-global-survey-of-free-speech/>

⁴⁶⁷ <https://rsf.org/en/index>

⁴⁶⁸ By the end of 2021, complaints filed with the NHRCK alleging adverse impact discrimination against men accounted for 60 per cent of the total number of complaints about sex discrimination. This trend is steadily increasing. (in Korean) <https://www.yna.co.kr/view/AKR20211127043100004>

⁴⁶⁹ https://elaw.klri.re.kr/eng_service/lawView.do?hseq=26692&lang=ENG

⁴⁷⁰ CCPR/C/KOR/CO/4 (2015), paras.48-49.

⁴⁷¹ A/HRC/32/36/Add.2 (2016), para.79.

recommendation.⁴⁷² In 2016, the NHRCK recommended to the Korean government to devise measures including revising Article 7 to prevent abuse of the act and prevent human rights violations in the National Action Plan (NAP, 2017-2021).

The number of people accused of violating the National Security Act decreased steadily to 73 in 2015, 27 in 2017 and 15 in 2019, but increased by 57.7% to 41 in 2021 and 15 in 2022.⁴⁷³ This is an increase in the number of offenders violating the National Security Act as a result of a joint investigation by the National Intelligence Service (NIS) and the police, prior to the transfer of the anti-communist investigation function from the NIS to the police in 2024. There is a strong possibility that the number of people charged with violating the National Security Law will increase in the future.

Defamation

Under the Criminal Act,⁴⁷⁴ the offense of defamation and insult is punishable by imprisonment for expressing facts or feelings (swear words) that may harm the social status of others. This excessive criminal punishment system has often been abused by political and economic powers, such as public figures and corporations, to silence voices of criticism and accusations against them. In addition, even telling the factual truth can lead to criminal defamation charges, which severely stifles the voices of whistleblowers or victims, including those involved in the MeToo movement. It is estimated that there are over 60,000 complaints and accusations of defamation and insult each year.⁴⁷⁵ In the third (2017)⁴⁷⁶ and fourth (2023)⁴⁷⁷ cycles of the Universal Periodic Review (UPR) recommendations, there were recommendations to abolish the criminalization of defamation and insult, which restricts freedom of expression and threatens citizens with criminal punishment in order to resolve them through civil proceedings, but these were not implemented.

Regulation of Online Content (The Communication Deliberation System)

Article 44-2 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.,⁴⁷⁸ stipulates that, if someone claims that an online posting infringes their rights and requests to block it, the Internet operator shall take measures to block it. This system seriously violates freedom of expression and the right to information on the Internet, as it initially blocks online expressions only upon someone's request, when such

⁴⁷²<https://www.humanrights.go.kr/site/program/board/basicboard/view?boardtypeid=24&boardid=7608328&menuid=001004002001> (in Korean)

⁴⁷³ Status of handling of public security cases by crime type - Violation of the National Security Act (in Korean) e-index.go.kr

⁴⁷⁴ https://elaw.klri.re.kr/eng_service/lawView.do?hseq=28627&lang=ENG

⁴⁷⁵ (in Korean) <https://www.fnnews.com/news/201609280904403919> Data from National Assembly member Keum Tae-sub's office (Source: Ministry of Justice, 2016)

⁴⁷⁶ A/HRC/37/11 (2017)

⁴⁷⁷ A/HRC/53/11 (2023)

⁴⁷⁸ https://elaw.klri.re.kr/eng_service/lawView.do?hseq=38422&lang=ENG

expressions should be protected under the presumption of legality. It is known that more than 450,000 Internet postings are blocked annually under this system⁴⁷⁹ and public figures and corporations use the system as a means of controlling public opinion on the Internet by requesting that large numbers of Internet postings critical of them be blocked.⁴⁸⁰

The Korea Communications Standards Commission (KCSC) is an administrative agency that has a communication deliberation system in place. This system is used to review illegal or harmful information that is posted on the Internet. If such information is found, the KCSC can request that information and communication service providers block it from being accessed based on Article 21 of the Act on the Establishment and Operation of Korea Communications Commission⁴⁸¹ and Article 8 of the Enforcement Decree of the Act.⁴⁸² This system, which acts as an administrative censorship of Internet information, blocks more than 200,000 cases of information every year.⁴⁸³ Not only information with significant and obvious illegality, but also information that requires a high degree of legal judgment, such as defamation, violations of the National Security Act, as well as harmful information are subject to communication deliberation. Such a method has a high risk of potential abuse for censoring public thought or controlling public political opinion. It can largely block the information that should be protected under the freedom of expression only by the assertion of a person or a decision of an administrative body before the court's illegality decision.

Freedom of Expression during the Election Period

Freedom of expression on the offline sphere during the election period is limited by articles 90 and 93(1) of the Public Official Election Act.⁴⁸⁴ During the 2016 general elections, individuals and civil society organizations who expressed their views on candidates and political parties were searched, confiscated and prosecuted for violating the Public Officials Election Law, convicted and fined. Some were even sentenced to five years' disqualification from standing for election. There were also problems with freedom of expression online during the election period. The Constitutional Court of Korea ruled the Internet Identity Verification System unconstitutional in 2012⁴⁸⁵ and the Internet Real Name System unconstitutional during the 2021 election period.⁴⁸⁶ However, any online post or article by a voter could be deleted, blocked or even investigated if the National Election Commission (NEC) deems it a violation of the Public Officials Election Act. The National Election Commission demanded deletion of

⁴⁷⁹ (in Korean) <http://www.mediaus.co.kr/news/articleView.html?idxno=104720> Data from National Assembly member Shin Yong-hyeon's office (Source : Korea Communications Commission, 2017)

⁴⁸⁰ (in Korean) <https://www.opennet.or.kr/19060>

⁴⁸¹ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=55370&lang=ENG

⁴⁸² https://elaw.klri.re.kr/kor_service/lawView.do?hseq=49544&lang=ENG

⁴⁸³ Korea Internet Transparency Report, <http://transparency.kr/>

⁴⁸⁴ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=60172&lang=ENG

⁴⁸⁵ Constitutional Court Decision, 2011Hun-Ma686 (2012)

⁴⁸⁶ Constitutional Court Decision, 2018Hun-Ma456 (2021)

86,639 online postings during the 2022 presidential election and 53,716 online postings during the 2020 general election respectively.⁴⁸⁷

II. Non-Legislative Developments

Freedom of Expression for Public Officials

Unlike ordinary citizens, civil servants are prohibited from expressing their political opinions and belonging to a political party under the Political Parties Act,⁴⁸⁸ the Public Officials Election Act,⁴⁸⁹ the State Public Officials Act⁴⁹⁰ and the Local Public Officials Act,⁴⁹¹ and are subject to criminal sanctions. In addition, the Election of Public Officials Act imposes extensive restrictions on the participation of employees of public institutions and cooperatives in election campaigns, even though they are not civil servants or teachers, but civilians. The duty of political neutrality is imposed on civil servants and employees of public institutions and cooperatives in order to maintain the impartiality of public services. However, those who are subject to the law are excessively prohibited from exercising their right to freedom of expression in their daily lives outside of their duties.

The Regulation of Media

In September 2022, the government refused MBC (Munhwa Broadcasting Corporation) reporters who broadcasted the president's hot mic incident⁴⁹² when boarding the presidential aircraft. Despite the statement by the President of the Republic of Korea about the potential danger of misreporting to diplomatic relations with the United States, the hot mic incident has been controversial among the public as to whether it was misreporting at all, but more importantly, whether it should be considered a case of excessive suppression of the press as a violation of freedom of speech and expression. On the other hand, media organizations and related trade unions took a contrary stance to the government. Eight media and journalists' organizations, such as the Korean Federation of Journalists, issued a joint statement saying that restricting a certain kind of media organization from equal reporting opportunities for criticizing the government's misbehavior is a clear violation of freedom of expression in a democratic country. It is likely that foreign reporters shared a similar concern that a selective measure targeting a particular kind of media organization leads to press suppression and hinders the development of freedom of expression.

⁴⁸⁷ (in Korean) <https://www.opennet.or.kr/21096>

⁴⁸⁸ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=60320&lang=ENG

⁴⁸⁹ https://elaw.klri.re.kr/eng_service/%20lawView.do?hseq=38405&lang=ENG

⁴⁹⁰ https://elaw.klri.re.kr/eng_service/lawView.do?hseq=444&lang=ENG

⁴⁹¹ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=57376&lang=ENG

⁴⁹² <https://en.yna.co.kr/view/AEN20221110001400315>

https://www.koreatimes.co.kr/www/nation/2023/05/120_343623.html?utm_source=KK

Political Satire

In October 2022, the Ministry of Culture, Sports and Tourism of Republic of Korea warned the Korea Cartoon and Video Agency for awarding a high school cartoon that includes satire of the current president.⁴⁹³ It justified the warning by saying that artworks containing political satire or defaming a person's reputation are among the reasons for disqualification. However, the Webtoon Association of Korea, cultural critics and politicians criticized the Ministry of Culture, Sports and Tourism for interfering in private artistic activities, as it is the role of such national institutes to guarantee the autonomy of the public cultural sector. Although members of the Democratic Party submitted a petition to the NHRCK to investigate whether the following issue violates freedom of expression, the petition was rejected for failing to meet the standard of investigation.⁴⁹⁴ Meanwhile, the NHRCK said it would make its views known to the Ministry of Culture, Sports and Tourism, with the intention that freedom of expression should not be restricted for the purpose of political engagement.

III. Enforcement

From 2015 to 2022 there were no major case law developments concerning freedom of expression.

Conclusion

The UN has been concerned about freedom of expression in the Republic of Korea since 2010, as described in the reports by the UN human Rights Council, special procedures, treaty bodies and the UPR. It is worth noting that most of the freedom of expression issues remain unresolved, if not worsened. The ability to engage in public scrutiny and criticism is also an important measure of a country's democratic maturity. Regrettably, the Republic of Korea still faces restrictions on open criticism, revealing its democratic immaturity, for example, as criminal defamation law implicitly serves as a political tool to stifle and intimidate the press and individuals.

⁴⁹³ <https://en.yna.co.kr/view/AEN20221005007900315>

⁴⁹⁴ https://imnews.imbc.com/replay/2023/nwdesk/article/6477643_36199.html (in Korean)