

Abolish Truth Defamation and Criminal Defamation ! Abolish Administrative Censorship!

**Freedom of expression in the Republic of Korea is at risk !
We need strict recommendations from the UN Human Rights Committee**

1. Criminal Defamation and Insult Laws

Korean Criminal Law stipulates that crimes of defamation and insult shall be punished up to imprisonment for stating facts or feelings (swear words) that may harm the social status of others.

The central problem with the criminal defamation and insult laws is that criticism against state policies or opinions about illegal or unlawful acts, political satire, parodies, as well as articles, commentaries, and even product reviews are punishable.

This excessive criminal punishment system has often been abused by political and economic powers such as public figures and corporations to suppress the voices of criticism and accusations against them. Indeed, the President's Office, the Minister of Justice, the Minister of the Interior Safety, and the head of the Korea Communications Commission, have filed criminal complaints to the police and prosecutors against journalists who raised criticisms against them.

It is estimated that there are about 80,000 criminal complaints of defamation and insults per year (Defamation 36,000 / Insult 44,000, as of 2020). It is not just the penalties that are disproportionate. For the pretext of investigating the crimes of defamation, searches, seizures and arrests are often conducted with the end result of causing disproportionate privacy violations and chilling effects.

The most serious problem is, even stating a factual truth can lead to punishment (also up to imprisonment) for defamation. This "Truth Defamation" clearly violates ICCPR Article 19. (General Comment 34, para. 47, "All such laws, in particular penal defamation laws, should include such defences as the defence of truth...").

Since defamation can be deemed committed regardless of whether the statements are true or false, any expression critical of others is subject to the risk of criminal liability, and therefore criminal complaints are made excessively by the supposed victims. There

is an exemption provision that excludes statements “if the statements were made solely for public interest,” but it is very abstract and unclear. No one guarantees whether the exemption provision will be applied, thus it cannot offset the prior chilling effect on expression.

The biggest problem with truth defamation is that it greatly stifles the voices of whistleblowers or victims, including those participating in the MeToo movement. There are numerous cases where perpetrators and wrongdoers harass the accusers by threatening or filing criminal complaints of defamation against them. An activist who disclosed the identity of parents that refused to pay the child support is also being indicted and put on trial for this crime.

Those in power, perpetrators, and others facing criticism can abuse the law of defamation as a means of private retaliation, threatening the democratic public forum, and impeding the development of social trust based on facts.

It was recommended that the criminal defamation law be abolished, and the defense of truth be absolute, i.e., not be subjected to any further requirements such as public interest by the UN Human Rights Committee (2015) and the UN Special Rapporteur on Freedom of Expression (2011), but it was not implemented.

2. Broad and excessive internet censorship by administrative body

Korea Communications Standards Commission (KCSC), an administrative agency, can deliberate and take down online contents according to the vague and overbroad standard of “when it is necessary for nurturing sound communication ethics” (Korean Communication Commission Establishment Act, Article 21, Item 4), under which the commission has blocked more than 200,000 cases of websites, webpages, and social media postings annually. The information to be blocked includes even information that requires meticulous legal judgment such as defamation and violation of the National Security Act. Some information is not unlawful, but has been still taken down for “violation of social order”.

“Women on Web”, a website providing information on abortion pills, has also been blocked on the grounds that it is an illegal medicine site. This is violating women’s right to access information about abortion pills in Korea, where abortion pills have not been introduced.

In addition, the standard of harmful information is overly broad and abstract, which inevitably leads to excessive censorship. In particular, the standard called “violation of social order” has often been politically abused in reviewing anti-government expressions. Recently, KCSC has branded internet articles from press media that raised suspicions about the current president as “Fake News” and is attempting to deliberate them using this “violation of social order” standard.

KCSC bills itself as a private, independent organization. However, the courts have ruled that KCSC is an administrative body. Furthermore, KCSC members are appointed by

the President and the National Assembly. And it has a pro-government structure in which the government and ruling party have a majority.

Administrative censorship on online content has been ruled unconstitutional in Spain, Philippines, France, and the United States due to the risk of abuse by the incumbent governments and the chilling effects arising out of non-judicial takedowns.

The National Human Rights Commission of Korea, the UN Human Rights Council, and the UN Special Rapporteur on Freedom of Expression have already recommended the authority of moderation on online information be transferred from the KCSC to a private self-regulatory organization. Nevertheless, no change was made.

3. The recent crackdown on press freedom by the Yoon administration

The President's Office, the Minister of Justice, the Minister of the Interior Safety, and the head of the Korea Communications Commission have filed criminal complaints against journalists who raised criticisms against them, and have also used administrative censorship to attack media freedom.

Recently, the heads of broadcasting and internet regulatory agencies (KCC, KCSC) newly appointed by President Yoon have declared “the War on Fake News.” The administrative agency (KCSC) will even deliberate on press articles distributed on the internet and, if they are illegal or harmful contents, take them down. They also announced that they would introduce stronger regulations, such as shutting down any media outlet that published fake news even once. They asserted “Fake news is a serious crime that disrupts national discipline”, and cited a report that has raised suspicions of corruption against President Yoon as examples in their press releases. The prosecutor's office conducted a search and seizure on the media company that released this report. The KCSC is attempting to take down this report on the internet, insisting the “violation of social order” standard, while its broadcasting regulation section has already imposed fines on broadcasting channels that cited that report for “violation of fairness.”

The Yoon administration's suppression of dissident press and public opinion is possible due to Korea's Criminal Defamation system and administrative censorship system as described above. Thus, we are asking the Human Rights Committee to recommend the decriminalization of defamation and the abolition of administrative agencies' authority to censor the Internet, on top of repeating its recommendation to abolish “truth defamation”.

Additionally, as the government's regulation on “Fake News” or “Disinformation” can be abused as a means of suppressing dissident public opinion, please express your concern about the Korean government's move to strengthen “Fake News” regulations. We also hope that recommendations will contribute to improving the structure of media regulation organizations (KCC, KCSC) in a way that ensures political independence.