

Real Name Verification of Internet News Site Case

[161 KCCG 595, 2008Hun-Ma324, 2009Hun-Ba31 (consolidated), February 25, 2010]

The Constitutional Court, in a 6 to 2 opinion (One Justice did not participate in this case), found constitutional Article 82-6 Sections 1, 6, and 7 of the former Public Official Election Act that imposes the duty on the Internet News Site to implement technical measures to identify the real name of one whose message expressing support for or opposition to political parties or candidates is posted on the message board or chat room of its homepage during the election campaign period and to delete messages posted without the verification of real name. (The Internet News Site is referring to Internet newspaper business operators defined in the Act on the Freedom of Newspapers, etc. and Guarantee of Their Functions, persons who run and manage Internet homepages, which are used to report, furnish or transmit articles that are covered, edited and written through the Internet with the aim of propagating reports, commentaries, public opinions and information, etc. pertaining to politics, economy, society, culture and current events and any other persons who run and manage the Internet homepages that perform the functions of the press similar to those of the former, hereinafter the same shall apply.)

Background of the Case

1. The complainant in 2008Hun-Ma324 case was refused to post her comment of support for or opposition to a political party or candidate on message board of an Internet News Site during the election campaign period for the election of members for 18th National Assembly held on April 9, 2008 due to the failure to follow the verification process of real name. The complainant filed this constitutional complaint on April 8, 2008, arguing her freedom of expression guaranteed by Article 21 of the Constitution was infringed by Article 82-6 Sections 1, 6, and 7 of the former Public Official Election Act (“POEA”) that hinder her from posting comments on the message board of

the Internet News Site during the campaign period without the verification of real names.

2. The petitioner in 2009Hun-Ba31, a corporation running an Internet News Site, was ordered to implement the technical measure to verify real names on its homepage stipulated in Article 82-6 Section 1 of POEA by the Chair of the competent Election Commission with regard to the 17th Presidential Election held on December 19, 2007. The petitioner did not follow the order, and was charged the administrative penalty of ten million won due to her disobedience to the order. The petitioner filed an objection with ordinary court and during the objection case was pending filed a motion to request for the constitutional review of Article 82-6 Sections 1, 3 through 7, and Article 261 Section 1 of POEA. After the motion was denied, on February 26, 2009, the petitioner filed this constitutional complaint pursuant to Article 68 Section 2 of the Constitutional Court Act.

Provisions at Issue

1. 2008 Hun-Ma 324 Case

The former Public Official Election Act (revised on February 29, 2008 by Act No. 8879, but before revised on January 25, 2010 by Act No. 9974)

Article 82-6 (Identification of Real-Names on Message Boards or Chat Rooms, etc. of Internet News Site)

(1) Every Internet News Site shall take technical measures to identify real name of those who post message in the methods of identifying real names that are provided for by the Minister of Public Administration and Security or credit information business operator (hereafter in this Article "credit information business operator") under Section 4 of Article 2 of the Use and Protection of Credit Information Act when it allows anyone to post his messages expressing his support for or opposition to candidates of political parties during the election campaign period on the message board and chat room, etc., of its homepage. Provided, that in cases where the Internet News Site has taken measures to identify the person himself pursuant to Article

44-5 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., it shall be deemed that the technical measures to identify real name have been taken.

(6) Every Internet News Site shall delete the message without delay, in case where a message expressing the intention of supporting or opposing any political party or any candidate without the sign of "real name verification" is posted on the message board and the chat room, etc. of its homepage.

(7) Every Internet News Site shall promptly comply with the request of any political party, any candidate and the competent election commission to delete the message referred to in the provisions of Section 6 above.

2. 2009 Hun-Ba 31 Case

The former Public Official Election Act (revised on August 4, 2005 by Act No. 7681, but before revised on February 29, 2008 by Act No. 8879)

Article 82-6 (Identification of Real-Names on Message Boards or Chat Rooms, etc. of Internet News Site)

(1) Every Internet News Site shall take technical measures to identify real name of those who post message in the methods of identifying real names that are provided for by the Minister of Government Administration and Home Affairs.

Summary of the Decision

1. Majority Opinion of Six Justices

The specific scope of Internet News Sites is defined in the related provisions and decided and published by the Deliberative Commission of the Internet Election News established and run by the National Election Commission, which is the independent organ based on the Constitution. In this regard, it cannot be assumed that Internet News Site has doubt whether it is obliged to verify real name or not and that anyone with sound common sense and general legal awareness cannot know whetherher message falls into the

category of ‘the support or opposition message’ or not. Therefore, the rule of clarity is not violated. In addition, it does not violate the principle against prior censorship because Internet users, at least, can post their messages according to their own will without the process of the real name verification.

The contested provisions satisfy the legitimacy of purpose and the appropriateness of means because it prevents the social loss and side effects, which arise out of the distortion of public opinion by a small group, and promotes the fairness of the election. The principle of the least restrictive means is also satisfied on the grounds that the fast circulation of malicious propaganda or false facts may distort information due to the nature of the Internet, that the distorted information may not be rectified during the short election campaign period, and that the sign of ‘real name verification’ only will be appeared on the Internet without indicating real names of Internet users. Therefore, the contested provisions do not violate due process of law, and does not infringe the freedom of expression by violating the principle against excessive restriction and the freedom to perform the occupation.

Further, the freedom of conscience or privacy would not protect the posting of messages supporting for or opposing to a political party or candidate on the public message board or chat room of Internet News Sites if the message is voluntarily posted. The obligation to keep and submit real name verification sources stipulated in related provision (POEA, Article 82-6 Section 3) does not intend the collection of personal identity information, accordingly the contested provisions do not restrict the right to self-determination on personal information.

Therefore, this constitutional complaints with regard to the abovementioned Provisions at Issue are denied.

2. Dissenting Opinion of Two Justices

Far from achieving the legislative purpose of the fairness of the election, the

contested provisions hinder the fairness of the election instead through interrupting free forming of public opinion that founds democracy and regulating anonymous expression including valuable one in advance in a comprehensive way.

The scope of 'Internet News Site' may be expanded to infinity, and the scope of restricted sites too broad in that supporting or opposing messages can be regulated solely because of the possibility of posting. In particular, despite supporting messages are not generally relevant to slander or defamation, demanding verification of real name for 'supporting messages' for candidates as opposing messages does not conform with the legislative purpose that intends to prevent the election related crimes such as slander or defamation and excessively restricts the freedom of expression as well. Moreover, the contested provisions violate the principle of least restrictive methods because they restrict anonymous expression itself based on regarding the people as potential criminals by the prior and preventing regulation, placing too much weight on the technical expediency such as investigation convenience or efficient election management, even though there are less restrictive methods as follows: the message board on the Internet can be divided into the real name part and the anonymous part and then a warning message can be put up on the anonymous part; there are existing sanctions such as defamation or slander against candidates; and the person posting messages can be identified ex post. Further, it cannot be found that the balance between legal interests would be achieved, because the disadvantages from the restriction of freedom of anonymous expression would weigh over the public interest of the fairness of the election, considering that election campaign period is important for the freedom of expression on politics and guaranteeing the freedom of expression is the significant constitutional value founding democracy. Therefore, the contested provisions violate the Constitution by infringing the freedom of expression violating the principle against excessive restriction.