

**[Collecting and computerizing fingerprints and using them for investigation purposes]**

Constitutional Court Decision 99Hun-Ma513 and 2004Hun-Ma190 (consolidated), decided May 26, 2005

Regarding the constitutionality of collecting and keeping prints of all ten fingers of all citizens 17 years of age or above and using them for investigation purposes.

Facts

To receive a resident registration card, citizens seventeen years of age or above must submit the prints of all ten fingers. The fingerprint information collected through the procedure is sent to the Commissioner General of the National Police Agency (NPA); the Commissioner General keeps and computerizes the fingerprint information and uses it for criminal investigation purposes.

The complainants argued that such exercise of governmental power is unconstitutional as it violates the right to control one's own personal information.

Legal issue

Is it constitutional to collect and keep prints of all ten fingers of all citizens 17 years of age or above and to use them for investigation purposes?

## Reasoning

The Court issued a decision to reject the complaint with a six-to-three vote finding collection and computerization of fingerprint information and using it for investigation purposes and their statutory basis constitutional for the following reasons.

### Majority Opinion of Six Justices

A. The right to control one's own personal information is a right of the subject of the information to personally decide when, to whom or by whom, and to what extent his or her information will be disclosed or used. It is a basic right, although not specified in the Constitution, existing to protect the personal freedom of decision from the risk caused by the enlargement of state functions and info-communication technology.

Fingerprints, which reveal the uniqueness and identity of an individual, are personal information that makes possible distinguishing an information subject from others. Therefore, collection of personal fingerprint information by mayors, county heads, or chiefs of wards, and storage and computerization, and use of fingerprints for investigation purposes by the Commissioner General of the National Police Agency all restrict the right to control one's own personal information.

B. The Resident Registration Act prescribes fingerprints as one of the matters to be recorded on the resident registration card. The Act on the Protection of Personal Information Maintained by Public Agencies can be

interpreted as allowing the Commissioner General of the NPA to be provided with, computerize, and use for investigation purposes - matters under the jurisdiction of the NPA - not only personal information already processed by the computer of public agencies but also the original information data not yet processed by the computer. In such original information data, fingerprint information is included. Therefore, collection, storage, computerization, and use of fingerprints all have statutory bases.

C. The purpose of collecting and maintaining the prints of all ten fingers of nationals 17 years of age or above - to enhance the accuracy and perfection in identification process - is legitimate. Also, the fingerprinting system does not violate the principle of minimum restriction considering the following: 1) Storing only the fingerprints of specific persons such as criminals weakens the identification function; 2) Collecting only the fingerprint information of one hand risks making identification impossible due to damage, etc., and lessens accuracy; and 3) Among the methods for identification, fingerprint information is the most accurate, simple, and efficient method.

Even if one is provided with fingerprint information, it is impossible to evaluate the personal whereabouts of the subject of the information; identify the subject of the information without professional ability; and distort the information. The public good attained by using fingerprints stored and computerized by the NPA Commissioner General for identification purposes such as in criminal investigation activities, in identifying the bodies at the sites of massive crimes or accidents or the bodies of unexplained death, and in preventing surreptitious use of others' personal information is greater than the substantive disadvantage suffered by the information subject due to the

fingerprinting system.

## Conclusion

Therefore, the fingerprinting system cannot be seen to infringe on the complainants' right to control one's own personal information in violation of the rule against excessive restriction.

### \* Dissenting Opinion of Three Justices

A. The Resident Registration Act is only the basis for recording fingerprint information on the resident registration card. It does not provide a statutory basis for the NPA Commissioner General to collect and store the original fingerprints. Also, the Act on the Protection of Personal Information Maintained by Public Agencies is a law established to protect basic human rights of individuals from infringements on their personal information already lawfully retained by the public agencies, when the information is used and processed by computers. It does not regulate matters such as the legitimacy of original information data before being processed by computer.

Therefore, collection, storage, computerization, and use of fingerprints by the NPA Commissioner General all lack statutory bases and are against the principle of statutory reservation in restricting basic rights, the constitutional principles of free democracy, and the rule of law.

B. It is difficult to acknowledge the need to collect the prints of all ten fingers instead of one in order to keep record of movement of population and to

promote proper management of administrative affairs.

Considering the investigation purpose, the NPA can collect and store fingerprint information of only those who have criminal records or propensities and use it for criminal investigation. However, it is currently using ordinary citizens' request for issuance of resident registration cards as an opportunity to store and computerize the prints of all ten fingers of the citizens. Fingerprint information stored in such a way is used for criminal investigation purposes without any restriction on its scope, subject, and term of use. This cannot be seen as a minimum restriction on the right to control one's own personal information. Moreover, the current fingerprinting system can be abused to monitor a specific person's action under the cover of criminal intelligence-gathering or crime prevention.

Therefore, the fingerprinting system infringes on the complainants' right to control one's own personal information in violation of the rule against excessive restriction.