[Publicized information about a public figure case]

Supreme Court Decision 2014Da235080 decided August 17, 2016

Regarding unauthorized collection and provision of personal information to a third party which failed to constitute a tortious action on account of already publicized information about a public figure

Judgment of the Court below: Seoul Central District Court Decision 2013Na49885 decided November 4, 2014

Facts

Plaintiff is a professor of law. He argued that Defendants including an Internet portal have collected personal information about him and provided the said information to many unspecified users without obtaining his consent. He filed a lawsuit for damages because Defendants are responsible for the violation of his right to self-determination of personal information.

Legal issue

Is the collection of already publicized personal information about a public figure and posting of the said information on the website illegally violating data subject's right to self-determination of personal information?

Reasoning

The personal information which has been already disclosed directly by a data subject or indirectly by a third party is deemed to be collected and provided to a third party with the consent of the data subject within a certain scope at the time of disclosure. In this case where the said personal information seems to be processed within the scope of consent of the data subject in an objective manner, the data subject's demand for a separate consent on ground the scope of consent was not expressed outwardly must be contrary to the intention of the data subject, and costly in obtaining meaningless consent as for the personal information controller as well as the data subject.

On the other hand, while the personal information controller collects and processes the publicized information pursuant to Article 20 of the Personal Information Protection Act, the data subject shall be informed, upon his/her request, of the source of collected personal information; the purpose of processing of such information; and the data subject's demand for suspension of the processing of such information under Article 37 of the same Act. Therefore, the data subject's right to self-determination of personal information would be guaranteed by a posteriori control like this.

Consequently, when the already publicized personal information has been collected, used, provided and processed ostensively with the consent of the data subject within the scope objectively acknowledged, his/her separate consent shall not be required. So the absence of data subject's consent shall not be deemed in violation of Articles 15 and 17 of the Personal Information Protection Act. In

this case, whether the processing of information is conducted within the scope of data subject's consent shall be decided in an objective manner by taking into account the nature of disclosed personal information; types and objects of such disclosure; the data subject's intention or purpose of such disclosure presumed herefrom; the type of processing of information by the personal information controller; any change of the scope of such disclosure from the initial status; the relationship of provision of the information with the initial purpose of such disclosure, etc.

In general, a professor teaching at a college has a tendency to exercise his/her influence to a significant extent to the public realm, compared with other professions, while he/she is engaged in publishing theses, etc; involvement in academic associations and other organizations, participation in the decision-making process of the State and local governments. In particular, a professor of law is playing an important role in fostering lawyers. As a result, Plaintiff must be a public figure and his work shall be subject to extensive monitoring and criticism of the public.

In this case, the personal information has been collected from publicized sources including the homepage of the faculty of law, list of professors of law, the university guide, etc. and is nothing to do with sensitive data nor unique identification information. It belongs to the professional information of Plaintiff as a professor of law or public figure.

The academical and vocational information of Plaintiff is the personal information in a public nature in which a person or entity who intends to

request a research project to him/her, or a student or parent who intends to study at college are interested to a minimum extent.

With regard to the personal information from the sources as being accessible by ordinary citizens, the right to be informed shall be ensured for the benefit of the personal information controller and consumers of such information. The freedom of expression based upon the said right to be informed shall be the legal interest to be protected by the processing of personal information. In addition, the freedom of business is guaranteed as the freedom of occupation by the Constitution. The use of personal information for profit is naturally allowed as such freedom of occupation. Insofar as the social needs for easy access to information exist out of the commercial database accumulated by Defendant, it is highly expected to see the increase of economic efficiency of the society as a whole by compensating such social needs.

Conclusion

Taking into consideration comprehensively the above-mentioned reasons, the legal interest achieved by Defendant, who has collected the personal information of Plaintiff and provided the said information to a third party for profit, must be superior to the private interest of Plaintiff achieved when the data subject may prevent such information from being processed. Accordingly, Defendant's activity shall not be deemed to be illegal in violation of the Plaintiff's right self-determination of personal information.

So the judgment of the lower court holding Defendant LawnB to lose the suit shall be reversed and remanded to the collegiate division of Seoul Central District Court. Plaintiff's appeal against other Defendants shall be dismissed.