

## **[Lawmaker's disclosure of teachers' trade union members case]**

Supreme Court Decision 2014Da77970 decided October 15, 2015

Regarding disclosure of members of Teachers Organizations and Trade Union at the National Assembly member's home page without obtaining the consent of data subjects

### Facts

On September 15, 2008, the Ministry of Education, Science and Technology (the "Ministry of Education") decided to include the number of members who had joined the teachers organizations or trade union in the School Information Disclosure system established at the end of 2008. Upon hearing the operation of the said system, Representative Cho Jun-hyuk demanded the Ministry of Education to provide the list of members affiliated with the Korean Teachers and Education Workers' Union (KTU or Jeon-Gyo-Jo) under the Enforcement Decree of the Act on Special Cases Concerning the Disclosure of Information by Education-related Institutions (the "Education Information Disclosure Act").

On March 12, 2010, the Ministry of Education inquired to the Ministry of Government Legislation whether it could legally provide the list of teachers who joined KTU to the members of the National Assembly. The official interpretation was that the information regarding teachers affiliated with teachers organizations or trade union shall be prohibited from being disclosed without any prohibitive penal provisions and cannot be construed as personal information related with

fundamental rights.

Representative Cho promised to publish the list of KTU-affiliated teachers on the Internet as soon as he received the list from the Ministry of Education. On March 22, 2012, upon hearing Cho's remarks, the KTU leadership filed an application with the Seoul Central District Court to enjoin the collection and submission of the said list against the Minister of Education and the Minister of Justice, only to fail.

In this regard, on March 26, the Ministry of Education prepared and submitted the list to Representative Cho, who promised to publish the said list on the Internet by April 10 at the latest.

Upon hearing the disclosure target day, KTU and its 16 member-teachers filed a lawsuit with Seoul Southern District Court to prevent Representative Cho from publishing the list, and on April 15, succeeded to receive the court injunction to prohibit publishing on the Internet or on the press. On April 19, notwithstanding the court order, Representative Cho and his colleague members of the National Assembly published the controversial list on his home page.

Again KTU instituted the application for the prohibitive injunction against Representative Cho who proceeded to disclose the said list in violation of the previous injunction. So the court ordered Representative Cho, in case of violation of the court order, to pay to the plaintiffs the charge for compelling the execution up to 30 million won a day.

On April 28, KTU filed a lawsuit with Seoul Southern District Court for

damages against Representative Cho and DongA Ilbo who denied to take down the list from the website. On June 21, the court dismissed the objection of Representative Cho.

In this regard, on July 29, the Constitutional Court rejected the complaint of Representative Cho that such prohibitive court order could infringe upon the authority of the member of the National Assembly by holding there was a vaguest possibility.

#### Legal Issues

Which prevails of the two fundamental rights - the secret and freedom of the private life and freedom of association of teachers affiliated with a trade union, or the right to know of citizens, the right to study of students and the right to education of parents?

#### Reasoning

In case of a conflict between the legal interest of personality encroached on by publishing personal information without the consent of a data subject and the legal interest of expression protected by publishing personal information freely, it should be taken into consideration whether the individual is a public figure; whether such personal information is of public nature and public interest; what is the purpose and procedure of collection of such personal information; how much considerable and necessary the use of personal information is; what is

prevailing when comparing the interest preserved by personal information protection with the interest improved by expression, and so on. Then the illegality of the action concerned shall be decided in the end.<sup>1)</sup>

The right to self-determination of personal information, which derives from human dignity and value, and the right to pursue happiness under Article 10 of the Constitution and the freedom of privacy under Article 17 of the Constitution, means the right of a data subject who may determine when, to whom and to what scope to make his/her personal information known and used. Such personal information as protected by the said right shall mean the whole information which makes an individual identifiable by characterizing the personal identity including individual body, belief, social position, status, etc. It does not limit the information to one's interior private data but includes publicly accumulated information and already disclosed personal information.

In principle, any investigation, collection, storage, use, etc. of such personal information shall amount to restriction of data subject's right to self-determination of personal information.<sup>2)</sup>

#### Conclusion

The Supreme Court upheld the decision of the court below<sup>3)</sup> by claiming that the investigation, collection, storage, use, etc. of personal information amount to

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1) See Supreme Court en banc Decision 2008Da42430 decided September 2, 2011; Supreme Court Decision 2012Da49933 decided July 24, 2014.

2) See Supreme Court Decision 2012Da49933 decided July 24, 2014; Constitutional Court en banc Ruling 2003Hun-Ma282, 425 (consolidated) decided July 21, 2005.

3) Seoul High Court Decision 2013No64887 decided October 10, 2014.

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