

**[Public prosecution official's improper notification of DNA sampling]**

Rectification Human Rights Violation Committee 1 decision on Public Prosecution's notification of Improper DNA Data Collection

Case : 14Jinjeong0635400 decided September 2, 2015

Facts

Defendant was in charge of DNA data collection at CC District Prosecution Office. Claimant's husband, whose punishment was fixed in February 2014, has been listed on the DNA Human Management System as 20yyDi\*\*\* where his DNA data should be contained under the DNA Identification Act.

In and around March 2014, Defendant called Claimant's husband several times to collect his DNA samples. But he avoided DNA sampling as he had allegedly little time while driving a cargo truck

At last in April 2014, Defendant sent a registered mail regarding DNA data collection, but it was returned because of addressee's absence. Claimant's husband repeatedly did not observe his promise to the Public Prosecution Office

There is an alternative that DNA data may be collected by enforced sampling and collection of DNA data. But it might humiliate Victim in front of Claimant and children. So Defendant sent a mail to Victim's address in July 2014 with a statement "DNA Sampling Wanted". However, it was believed that no one will

pull the envelope with sensitive data inside undisclosed from the mailbox and that an ordinary man cannot recognize the meaning of such statement.

In reality, contrary to the said expectation, Victim's children understood the meaning of statement, and Victim's privacy has been accordingly violated.

### Reasoning

The purpose of the DNA Identification Act is to contribute to crime investigation and crime prevention by securing DNA data of repeat crime-prone culprits. As a matter of fact, the very statement "DNA Sampling Wanted" would show the very sensitive data that the addressee was once a criminal subject to severe punishment, which is in violation of the privacy protected by Article 17 of the Constitution. Article 3(1) of the DNA Identification Act provides "The State shall prepare a policy necessary for maintaining the human dignity and protecting privacy of each person from being invaded in the course of collecting DNA samples and managing and using DNA identification information."

Under the DNA Identification Act, DNA samples are collected with a warrant issued by a judge or without a warrant if the person subject to collection of DNA samples consents to the collection. In this case where Claimant's husband could not be reached by telephone several times, Defendant had only to get in touch with him by mail. It seemed to be an appropriate performance of his job.

However, though ordinary person does not understand the meaning of DNA

sampling correctly, it must be in violation of the privacy protected by Article 17 of the Constitution to write down “DNA Sampling Wanted” on the envelope of mail taking into account the following:

DNA sampling seems to be related with crime in a negative way;

The mailbox at Victim’s residence shows structurally the content of mails to a third party, and the ordinary mail increases the possibility of such exposure as expected;

The possibility is rising that other family members living together take a glance of the envelope of mail;

Defendant has an alternative that he may request a warrant issued by a judge in case where the mail fails to be reached by Victim.

In consequence, it is not proper to hold Defendant responsible individually for the above-mentioned breach of privacy. Rather, this case had better to be informed to other officials in charge of DNA sampling and data collection in order to prevent occurrence of similar cases.

## Conclusion

Pursuant to Article 44(1) i of the National Human Rights Commission Act, the Rectification Human Rights Violation Committee 1 of NHRC hereby recommends the Public Prosecutor General to distribute this case to the officials in charge of DNA data collection to prevent any violation of human rights.

