

[Recommendation on DNA Identification Act to the Constitutional Court

Date : July 26, 2011]

The National Human Rights Commission (NHRC) presented its opinion¹⁾ to the Constitutional Court in relation to the Constitutional Court case 2011Hun-Ma28, etc., concerning that the Act of Collection and Use of DNA Identification Information (hereinafter the “DNA Identification Act”) may be applied in ways that restrict the right to self-determination of personal information.

Firstly, it concerned of the possibility that the constitutional prohibition of excessive restriction would be violated. Article 5 of the DNA Identification Act provides that DNA data and samples could be collected and stored for the purpose of identifying repeat criminal offenders, especially who have committed serious crimes. However, the clauses of the Article include criminal offences such as intrusion and criminal damage to property without any provision of procedure for considering criminal motives, severity and inclinations. In other words, DNA data collection could be applied indiscriminately to all the offences listed in the Article, even in some criminal cases that there is no risk of repeat offences.

Secondly, it may breach the constitutional presumption of innocence. Article 6 provides that the public prosecutor and the judicial police may order DNA data collection of criminal suspect-arrests. The DNA profiling serves the purpose of

1) <http://www.humanrights.go.kr/english/activities/view_01.jsp>

identifying repeat criminal offenders; thus criminal suspect-arrests should be presumed innocent until proven guilty.

Thirdly, it may violate the essence of legal principle of warrant in proceeding DNA collection. Article 8 provides that the public prosecutors have to seek a warrant to proceed DNA collection from a judge but relevant provisions for a judge to assess the legality of DNA collection is absent. It also states that DNA data could be collected and stored under consent but Article 8(3) does not specify any duty to provide the necessary information.

Furthermore, Article 13 states extensive period of DNA retention to death without any provision for assessing the possibility to remove the profiles from DNA database in case of non-repeat criminals.

The indiscriminate and excessive DNA collection in the application and retention period could be used in ways that inviolate a right of privacy with respect to the personal information.