

[Recommendation to National Assembly and Government Ministry to draw up legal criteria for installation and use of surveillance devices NHRC Resolution May 10, 2004¹⁾]

Background

Since K Gu District Office and the K Gu Regional Police Office began installing five “crime prevention” CCTV units across Non-hyeon district in December 2002, the NHRC has turned attention to the issue of possible privacy rights violation by such unmanned surveillance systems. Through December 2003 public hearings on “Crime Prevention CCTVs and Human Rights,” the National Human Rights Commission (NHRC) reviewed probable privacy rights violations and reform measures relating to the use of such surveillance systems.

In May 2004, K Gu installed and maintained – for efficient crime prevention and investigation – some 230 CCTV units in K Gu area. The cameras were not installed under the relevant law enacted by the National Assembly, but rather under the discretionary authority of local government or individual police station chiefs. Further, newer devices are equipped with greater capabilities. NHRC concluded that the more needs for the installation and use of such unmanned surveillance systems, the more possibilities that citizens’ fundamental rights are increasingly at risk.

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

Recommendation

NHRC issued a recommendation to the speaker of the Korean National Assembly and the Minister of Government Administration and Home Affairs to develop legal criteria on the installation and use of unmanned surveillance systems such as CCTVs used by local governments and the National Police Agency for crime prevention and investigation.

The following aspects have drawn concern for violating human rights:

1. Depending upon how the CCTV is installed and used, there is the possibility that CCTV installed and administered by government organs in public areas to prevent and investigate crime can violate not only portrait rights, but also infringe upon personal privacy of citizens in that the government would be able to come into possession of, tape and save information such as where individuals are at what time, with whom and so forth. Thus, it could represent government intrusion into the private lives of its citizens, with the possibility of violating such fundamental rights as i) portrait rights and personal information rights (protected by Article 10 of the Constitution) and ii) the right to a private life, freedom of movement and family (Article 17 of the Constitution, Article 17 of the International Covenant on Civil and Political Rights).

2. Because of such possible restriction of basic rights, the fact that local government and police station chiefs are currently relying on personal discretion in installing and administering such unmanned monitoring devices instead of following legislation enacted by the National Assembly raises warning flags.

When basic rights are restricted, the Constitution provides that i) the state must follow due process (Article 12), and ii) such restrictions must stem from the violation of an actual law (Article 37).

3. Further, when a law that would allow for and regulate the use of unmanned monitoring devices is enacted, if the wording fails to be specific and clear, such a law could place needless restrictions on the free exercise of basic rights. Thus, in order to increase the efficiency with which crime investigations are carried out, ordinary and principled measures should be reviewed and strengthened before turning to unmanned monitoring devices and only as a supplementary measure and in cases where using such electronic methods are truly necessary.

Thus, NHRC recommendation included several major points. First, that guidelines used internationally and in other countries be consulted. Second, that a law—including provisions for who can install such devices, where, which kinds of devices, how such monitoring should be administered and under what procedures, and supervision of the use of such devices – called the “Act on the installation and use of CCTVs and other unmanned monitoring devices” should be enacted. Last, that the law on public organ’s protection of personal information should be revised.