

Case on Defamation against the President

[2009Hun-Ma747, December 26, 2013]

In this case, the Constitutional Court of Korea held that the respondent's non-institution of prosecution against the complainant shall be voided for its violation of the complainant's rights to equality and to the pursuit of happiness. The respondent arbitrarily exercised his prosecutorial power when it put an allegation on the complainant for committing statutory defamation under the former Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.

Background of the Case

1. On October 19, 2009, the respondent exempted prosecution against the complainant on the charge of a violation of the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.(defamation) (Seoul Central District Prosecutors' Office, 2009 Hyung-Je26869; hereinafter the "Non-institution of prosecution"). The summary of the facts of the allegation is as follows.

"The complainant defamed the victim, the President of the Republic of Korea, when he publicly announced a false statement by posting a video on his internet blog that included a false statement about the victim, purposely to disparage the reputation of the victim."

2. The respondent decided Non-institution of prosecution in considering that 'although the facts support the allegation, the complainant is a first-timer who did not himself produce the video but posted the video on his personal blog visited by only a small acquaintance, which is currently shut down.'

3. According to the investigation records, the complainant was questioned limitedly about (1) the part stating that 'the victim is a criminal who has 30 prior convictions' (hereinafter the "Prior Conviction Statement") and (2) the part stating that 'the victim purchased large-scale land in a district where development is expected' (hereinafter the "Land Purchase Statement"). This indicates that the respondent decided Non-institution of prosecution based on the conclusion that the two Statements above were false.

4. The complainant filed this constitutional complaint on December 23, 2009, seeking to lift the Non-institution of prosecution based on the argument that it violated the complainant's rights to equality and to the pursuit of happiness.

Statutory Basis

The provision, which was applied to the facts of the allegation in this case and used as the statutory basis for the Non-institution of prosecution, is Article 70(2) of the former Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. (amended as Act No. 8778 on December 21, 2007, but before revised as Act No. 9119 on June 13, 2008; the provision took effect on December 14, 2008), which states as follows.

Former Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. (amended by Act No. 8778 on December 21, 2007, before amended by Act No. 9119 on June 13, 2008)

Article 70 (Penalty) (2) A person who commits defamation of another person by publicly announcing a false statement using an information and communications network for the purpose of disparaging the reputation of the other shall be punished by imprisonment with prison labor for not more than seven years, by suspension of qualification for not more than ten years, or by fine not exceeding 50 million won.

Summary of Decision

1. Standard of review on the freedom of expression and the protection of reputation in matters concerning public figure and public interest

The freedom of expression and the protection of reputation are fundamental rights that provide the basis for human dignity and the pursuit of happiness, and also the foundation for democracy. Discerning which one between the two fundamental rights should be given more weight, therefore, falls within the boundary of constitutional review. Depending on the whether the victim of the defamatory statement is a public or a private figure and whether the statement is a matter of public concern or a matter in a purely private area, there should be a difference in constitutional standard of review. Restrictions on defamatory statement against a public figure concerning his/her public activities should be relatively more relaxed. This does not mean that a statement about a public figure

or a matter of public concern should enjoy unlimited freedom. An attack against an individual that is malicious or substantially lacks reasonableness, both based on a clearly false statement exceeding the acceptable level of exaggeration in the ordinary sense, may be subject to restriction.

2. Statement on public official's qualifications, ethics and integrity

Some matters concerning a public official's private personal life, even if they have no direct connections to the public official's public activities, may fall within the scope of public concern in certain cases. Matters relating to a public official's qualifications, ethics and integrity would hardly be considered to stay within the sphere of purely private life, even when the contents concern his or her personal private life. These matters can offer information necessary for the public to criticize and evaluate social activities of the public official and, depending on the contents, might have relevance to his or her official duties. Therefore, questions and criticisms on such matters should be allowed.

3. Responsibility for defamation by an act of posting the statement of a third person

There should be a legal assessment on the act of posting under the constitutional principle of self-responsibility, if we are to recognize the responsibility for defamation in the act of posting the statement of a third person. The types and forms of the act of posting the statement of a third person are very diverse and may arise from various circumstances. If such act, viewed from the totality of the circumstances, is merely referring to or introducing the material, the responsibility for defamation should be denied. On the contrary, if the circumstances show that the person who posted it has actually used and controlled the material to the extent that it is akin to an act of making a statement of the same contents as that of the third person, then the responsibility for defamation should be found.

4. Conclusion on this case

The facts about prior convictions and possessions of land property of the victim, who was the President of the Republic of Korea, fall within the scope of public concerns about a public figure. Applying the principle that criticisms on matters of public concern should be broadly allowed to protect the freedom of expression, and considering the totality of the circumstances, we cannot conclude that the complainant in this

case acted purposely to defame the victim when he posted the video that mainly contains criticisms against the victim's policies. Moreover, the complainant had no interest to know whether the statement was true or false and seems to have believed that the important part of the statements reflects objective truth. We thus cannot conclude that he had knowledge about falsehood of the statement. The Non-institution of prosecution against the complainant was decided based on a serious error in fact and law, constituting an arbitrary exercise of the prosecutorial power. Therefore it infringes on the complainant's rights to equality and to the pursuit of happiness.