



Decisions

Home > Decisions > **Major Decisions**

Major Decisions

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Case Search

12 Landmark Cases on Social Integration

25 Landmark Cases (Cartoons)

Caseload Statistics

[Rights of Freedom]

[Full Opinions] Punishment of Insult as Criminal Offense Case

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Punishment of Insult as Criminal Offense Case [2012Hun-Ba37, June 27, 2013]

Questions Presented

1. Whether the portion concerning "insult" in Article 311 of the Criminal Act penalizing insult (amended by Act No. 5057, Dec. 29, 1995) (hereinafter referred to as the "Provision") is void for vagueness (negative)
2. Whether the Provision infringes on the freedom of expression (negative)

Summary of the Decision

1. Insult as a crime is an abstract judgment or an expression of derogatory emotion unaccompanied by factual statements that can undermine one's social reputation. Given the interest, legislative purpose, etc. of criminalizing insult, it does not appear to be significantly difficult for an ordinary citizen with common sense and conventional legal mind to foresee what kind of acts are banned, and there is no concern for arbitrary interpretation by law enforcement agencies. Thus, the "insult" stated in the Provision is not void for vagueness.

2. If an expression insulting someone's character is made publicly, the victim's social value will be degraded and his/her life and development as a member of society can be affected. Therefore, the act of defamation using insulting words definitely needs to be prohibited. Additionally, considering that insult is, among others, punishable only upon the victim's complaint and has relatively low statutory maximum, and that courts generally seek adequate balance between the freedom of expression and the protection of reputation by appropriately applying Article 20 of the Criminal Act on "justifiable act", the Provision does not infringe on the freedom of expression.

Dissenting Opinion of Justices Park Han-Chul, Kim Yi-Su, and Kang Ilwon

The scope of elements of "insult" in the Provision that constitute a crime is excessively broad, and negative or derogatory expressions against a person amount to insult as they are likely to undermine one's social reputation. In the same vein, not just hateful cursing of someone humiliating enough to tear down his/her character, but satirical, humorous literary expressions that use ridicule to expose and criticize the world, twisted and negative intentions taking the form of polite expressions, newly coined words on the Internet that are somewhat violent, etc. are also punishable as a crime of insult. Consequently, even the expressions that warrant the protection of the Constitution can be regulated.

Criminal punishment of insult limits the possibility of raising issues in social communities and addressing them constructively through free exchange of different views and criticism. If some negative languages or critical expressions on sensitive political, social issues used in political, academic debates or communications are considered insult and regulated accordingly, political and academic statements will be threatened and the possibility of open debates will be restrained, weakening the essential function of the freedom of expression.

In addition, the exercise of the state's authority to punish crime should be confined to the minimum if it is to be prescribed by criminal law; merely an abstract judgment or a derogatory expression can be regulated through self-correcting mechanism of the civil society or imposition of civil liability; and criminalizing insulting words or behaviors does not meet the international human rights standards either. Taking these into consideration, the Provision fails to observe the rule against excessive restriction and thus violates the freedom of expression.

The Provision at Issue

Criminal Act <Amended by Act No. 5057, Dec. 29, 1995>

Article 311 (Insult)

A person who publicly insults another shall be punished by imprisonment or imprisonment without prison labor for not more than one year or by a fine not exceeding two million won.

Relevant Provisions

Article 21, Article 37(2) of the Constitution

Cases for Reference

1. 17-1 KCCR 812, 821-822, 2002Hun-Ba83, June 30, 200521-1(B) KCCR 545, 560-561, 2006Hun-Ba109, etc. May 28, 200922-2(B) KCCR 368, 377-378, 2009Hun-Ba27, November 25, 2010
2. 17-2 KCCR 311, 319, 2002Hun-Ma425, October 27, 2005

Parties

Complainant

Jin Xxxxx-kwon
 Representative: Yi-Gong Lawyers
 Attorney in Charge: Huh Jin-min

Underlying Case

2010Do10130, Supreme Court, on insult and violation of the Act on Promotion of Information and Communications Network Utilization and information Protection, etc. (defamation)

Holding

Article 311 of the Criminal Act (amended by Act No. 5057, Dec. 29, 1995) does not contravene the Constitution.

Reasoning

I. Case Introduction and Subject Matter of Review

A. Case Introduction

1. The complainant was prosecuted on charges of insult and violation of the Act on Promotion of Information and Communications Network Utilization and information Protection, etc. (defamation) for making posts insulting a person on his Daum blog as well as the members' page of the xxxx Party website, and also for defaming a person by publicly disclosing false information for purpose of libel on the xxxx Party website, and was sentenced to 3 million Korean won in fine by a district court (2009Kodan6302, Seoul Central District Court). He filed an appeal with the court of appeals but had it denied (2010No615, Seoul High Court), and when he took this case to the Supreme Court, the appeal was denied again on December 22, 2011 (2010Do10130, Supreme Court).

2. The complainant, with his appeal pending before the Supreme Court, filed a motion with the Court requesting constitutional review by the Constitutional Court of Article 311 of the Criminal Act that outlaws insult, arguing that the provision is void for vagueness under the vagueness doctrine and that it infringes on the freedom of expression (2011ChoKi245, Supreme Court). However, as the motion was denied on December 22, 2011 and the decision of rejection was served on December 26, he filed the complaint of this case on January 25, 2012.

B. Subject Matter of Review

The matter subject to review in this case is whether Article 311 of the Criminal Act (amended by Act No. 5057, Dec. 29, 1995) is constitutional, and the provision at issue is the following:

Criminal Act <Amended by Act No. 5057, Dec. 29, 1995>

Article 311 (Insult)

A person who publicly insults another shall be punished by imprisonment or imprisonment without prison labor for not more than one year or by a fine not exceeding two million won.

II. Argument of the Complainant

A. The Provision regulates expressions by employing an overly abstract and broad concept of "insult" as an element of crime, which is contrary to the principle of clarity required by the restrictive legislation on freedom of expression and the void for vagueness doctrine derived from the principle of legality.

B. The purpose of punishing insult is to protect one's subjective, inner feelings of his/her reputation that tend to resist insult. Yet, this subjective perception of one's reputation is difficult to measure in an objective manner and is therefore not appropriate to warrant protection by law, so there is no conceivable legitimate purpose. Additionally, enforcing criminal punishment of insult, when there are other options such as social norms or dispute resolution measures, is neither an appropriate means nor satisfies the principle of proportionality. And it is not a possibility that a mere opinion, emotion or abstract judgement unaccompanied by factual statements would pose a clear and present danger to national security, maintenance of law and order, or public welfare.

In conclusion, the Provision violates the rule against excessive restriction that serves as a limit for all legislation restricting fundamental rights as provided for in Article 37(2) of the Constitution, and thus infringes on the complainant's freedom of expression.

III. Review on Merits

A. Fundamental Rights Infringed

Article 21(4) of the Constitution provides that "Neither speech nor the press shall violate the honor or rights of other persons nor undermine public morals or social ethics." This should be considered as a provision that places emphasis on the responsibility and obligation accompanied with the freedom of speech and press and, at the same time, lays down the conditions for restriction on the freedom of speech and press, but not one that imposes a limit on the boundary of the freedom of expression to be protected under the Constitution (21-1(B) KCCR 545, 560, 2006Hun-Ba109, etc, May 28, 2009).

In other words, an expression cannot be excluded from the boundary of protection of the freedom of expression from the beginning just because it contains certain content. Instead, it should be interpreted that "insulting expressions" that may infringe on others' reputation or rights are to be protected as the freedom of speech and press stated in Article 21 of the Constitution, provided that such expressions can be restricted for the purpose of national security, maintenance of law and order, or public welfare pursuant to Article 37(2) of the Constitution (24-2(B) KCCR 141, 152, 2011Hun-Ba137, Nov. 29, 2012).

In conclusion, the Provision restricts the freedom of expression guaranteed by the Constitution by prohibiting insulting statements of certain content through punishment.

B. Whether the Provision Violates the Void for Vagueness Doctrine

1. Meaning of the void for vagueness doctrine

a. The void for vagueness doctrine is particularly relevant when it comes to legislation restricting the freedom of expression. Given that the freedom of expression is indispensable for realizing the ideas of popular sovereignty in this modern democratic society, regulation of freedom of expression through vague norms may intimidate the expressions protected under the Constitution and thereby neutralize the essential function of the freedom of expression that allows for diverse opinions, views, and ideologies and thus the cross-check among them. For this reason, it is required by the Constitution that the law regulating the freedom of expression specify the concept of the restricted expression clearly and in detail.

Meanwhile, the void for vagueness doctrine is also required by the principle of legality. That is, the principle of legality guaranteed under Article 12 and 13 of the Constitution implies that crime and its punishment should be defined by law, and that the void for vagueness doctrine derived from the legality principle should have the elements of crime clearly stated so that anyone can predict what kind of and how acts are punishable by law and decide his/her actions accordingly.

Yet, it is impossible, from the technical perspective, to compose all texts of legal norms with purely technical concepts, and although somewhat broad concept requiring, to a certain extent, supplementary interpretation of judges is employed, it is not necessarily void for vagueness insofar as the interest protected by the penal provision, prohibited actions, as well as the kind and degree of punishment are understandable with general method of interpretation by any person equipped with sound common sense and conventional legal awareness (21-1(B) KCCR 545, 560-561, 2006Hun-Ba109, etc, May 28, 2009).

And whether a legal norm is clear or not can be determined by whether it provides predictability through fair statement of its definition and implication to addressees of the law and whether it prevents arbitrary interpretation or enforcement of law by the competent institution through detailed clarification of its meaning in law. The implication of a legal norm takes concrete shape when its texts are interpreted with its legislative purpose, history, systematic structure, etc., so whether the norm is void for vagueness or not will depend on whether such interpretation method can provide a standard for reasonable interpretation of its meaning (17-1 KCCR 812, 821-822, 2002Hun-Ba83, June 30, 2005; 22-2(B) KCCR 368, 377-378, 2009Hun-Ba27, November 25, 2010).

b. The Provision provides for punishment of those who publicly insult others, as well as restricts the freedom of expression. Therefore, it should comply with not only the void for vagueness doctrine derived from the principle of legality but also from the clarity principle required for legislation restricting the freedom of expression; and the clarity required herein should be understood in the strict sense.

2. Judgment

a. The protected interest in the Provision is social reputation of one's value, or external reputation. The dictionary definition of the word "insult" in the Provision is "to affront or demean," and the criminal law academics also perceive "insult" as an expression of contemptuous intention of someone without factual grounds that include all forms of actions made either in writing or physical movements, not confined to linguistic expressions. Even the

Supreme Court has held that "insult" as a crime implies an expression of abstract judgment or derogatory emotion not backed by facts which merely undermines a person's social reputation (2003Do3972, decided Nov. 28, 2003, Supreme Court, etc.), which presents a standard for objective interpretation on the basis of the aforementioned textual meaning of the term.

b. Whether an expression amounts to abstract judgment or derogatory emotion likely to undermine one's social reputation cannot be determined by an abstract, general standard; it can only be decided specifically and individually by conventional wisdom and sound common knowledge.

c. As stated above, criminalizing insult is aimed at protecting the interest of external reputation as the social evaluation of one's value, and considering the legislative purpose or intent of the Provision, such as, unlike in the crime of defamation, not requiring factual statements as criminal element, it is hard to suspect that an ordinary citizen with healthy common sense and conventional legal awareness would find it significantly difficult to foresee what behaviors are outlawed. In addition, the Supreme Court offers an objective standard for interpreting the meaning of insult, so there is no cause for concern for a law enforcement agency to interpret it arbitrarily.

d. Furthermore, specifically what kind of expression satisfies the criminal element of the Provision is a matter of a court's general interpretation and application of law that should be considered along with multiple factors, including the overall content and context of the expression instead of the literal text of the language, whether it had a contemptuous intent or was merely accidental, whether it is a kind of exaggeration or not, the background and nature of the dialogue or forum that took place, relationship between the offender and the person affected, etc. As it is inevitable that doubts can exist as to which actions meet the legal elements of crime in specific cases given the general and abstract nature of criminal norms, the doubtful situation alone is not sufficient to conclude that the Provision contravenes the void for vagueness doctrine.

C. Whether the Provision Infringes on Freedom of Expression

1. Standard of review in this case

The general personality right derived from Article 10 of the Constitution also includes the right to personal reputation (17-2 KCCR 311, 319, 2002Hun-Ma425, Oct. 27, 2005). And penalizing public insult of others under the Provision is aimed at protecting the external reputation guaranteed by the abovementioned Article 10 of the Constitution. However, the Provision limits the freedom of expression, which results in the conflict of two fundamental rights, namely the right to reputation and the freedom of expression.

In cases as this where two fundamental rights are at odds, all conflicting fundamental rights have to be balanced for the sake of constitutional integrity and coherence so that the function and power of each right can be exercised to its fullest possible extent. Therefore, the focus of review will be whether the Provision serves legitimate purpose consistent with rule against excessive restriction and whether the means to achieve the purpose ensures appropriate proportionality between the restriction of the freedom of expression and the protection of reputation (3 KCCR 518, 528-529, 89Hun-Ma165, Sept. 16, 1991).

2. Legitimate purpose and appropriate means

Although insulting expressions may be part of the right to freedom of expression, a public statement implying contemptuous judgment of a person's character will inevitably undermine his/her social value and the possibility to live and develop in society. Particularly in recent days where media and communication technology is prevalent, an insulting behavior can be easily communicated, and the resulting damage can be much more severe and irrecoverable compared to the past.

Therefore, it cannot be said that there is no need to prohibit behaviors that damage a person's external reputation, which is a social evaluation of one's value, by publicly expressing abstract judgments or derogatory emotions likely to erode one's social evaluation. In this sense, the Provision serves a legitimate purpose, and penalizing insult made in public is an appropriate means to help achieve the legislative purpose.

3. Proportionality of restricting fundamental rights

The Provision does not ban all insulting words or actions regardless of the target individual, place of action, etc.; the prohibition is limited to insulting expressions that are made in public, that is, under recognition of an unspecified number or a majority of people.

In addition, the penalty prescribed in the Provision limits the freedom of expression within the necessary minimum in light of the following: the legislative intent and protected interest in the Provision is important, particularly so when dissemination of insult using the Internet and other information, communication media can have considerable ramifications; insult is punishable under criminal law only upon the victim's complaint; the ceiling of statutory punishment is relatively low as the Provision provides for "imprisonment or imprisonment without prison labor for not more than one year or by a fine not exceeding two million won"; a judge can achieve proportionality between unlawful acts and liability through discretionary sentencing for relatively minor crimes under special circumstances, such as through suspended sentence or suspended execution of sentence.

Furthermore, the Supreme Court held that, even when an article contains an insulting judgment or an opinion, it qualifies as a justifiable act under Article 20 of the Criminal Act and is thus exempt from prohibition if it is not considered inconsistent with the established norms of society when viewed from the perspective of conventional wisdom of the times (2010Do6462, decided Feb. 23, 2012; 2010Do9511, decided Oct. 28, 2010; 2003Do3972, decided Nov. 28, 2003, etc.), thereby applying the Provision in a way that appropriately balances the interest and values gained from the freedom of expression and those from the protection of reputation. This way, the Provision adequately employs the portion concerning "justifiable act" in Article 20 of the Criminal Act in punishing public insult and thus allows for adequate guarantee of the freedom of expression. Therefore, it should not be considered that the Provision lacks proportionality in restricting the fundamental rights.

Meanwhile, as mentioned above, insulting expressions on the Internet or other information and communication outlets can have quite a number of ramifications when disseminated, and, consequently, the concern for damage to personal reputation is growing more than ever. At the same time, even if the Provision permits some restriction on the freedom of expression through punishment of insult, there can be exceptions to the punishment under the Criminal Act when the expression in question is not in conflict with the established norms of society. Therefore, it is hard to conclude that the extent of restriction on the freedom of expression is significantly greater than that of the protection of personal reputation, and that the Provision has failed to balance the conflicting interests between the protection of personal reputation and the freedom of expression.

4. Review of the complainant's argument

The complainant claims that the scope of insulting expressions prohibited under the Provision is too broad and extensive, and therefore even an abstract judgment or a critical statement made in the course of dialogue or exchange of opinions in everyday lives can be penalized on grounds that all such expressions amount to insult, which has been decided by the insulted person's ambiguous, subjective feelings about his/her own reputation. The complainant, in this context, argues that the Provision breaches the rule against excessive restriction.

Yet, the Provision is intended to protect external reputation, which is social evaluation of one's character and value, instead of a subjective feeling one has for his/her own reputation (87Do739, decided May 12, 1987, Supreme Court). For insult to constitute a crime, the least requirement is *mens rea*, or the consciousness that one made an insult, if not the purpose or intention of offence. Moreover, whether a certain expression or action is derogatory of one's reputation or not should not be decided by one's subjective feelings for his/her own reputation; it is to be decided in an objective, reasonable manner with due consideration given to the circumstances, subject of insult, relevance of the statement or action in question, etc. Therefore, whether an expression fulfills the criminal element set forth in the Provision is merely a matter of conventional interpretation and application of law to be determined by the competent court in consideration of the precise circumstances involved in individual cases. The fact that an expression challenged by the complainant has the possibility of constituting an element of crime alone does not mean that the Provision violates the rule against excessive restriction.

IV. Conclusion

For the reasons stated above, the Provision does not violate the Constitution. And the holding of the Court, to which Justices Park Han-Chul, Kim Yi-Su, and Kang Ilwon filed a dissent below, is so decided.

V. Dissenting Opinion of Justices Park Han-Chul, Kim Yi-Su, and Kang Ilwon

We believe that the Provision violates the rule against excessive restriction and thus infringes on the freedom of expression, and submit the following dissenting opinion:

A. Broadness of the Expression Regulated

The scope of criminal element of "insult" as provided in the Provision is too broad. The Supreme Court interprets that "insult" is "an expression of abstract judgment or derogatory emotion not backed by facts which is likely to undermine one's social reputation (2003Do3972, etc., decided Nov. 28, 2003, Supreme Court). According to this standard, an expression containing negative or derogatory contents can possibly erode one's social reputation and therefore constitutes an insult. The majority opinion of this case states that the Provision only regulates the insulting expressions made in public or under recognition of an unspecified number or a majority of people. Yet this only confines the circumstances under which the insult takes place, such as the subject of insult and place of action, and does not limit the precise content of the "insult" subject to penalty. As the criminal element of insult is very extensively applied, "criticism" of others also becomes an insult and is subject to criminal punishment.

In this vein, even satirical, humorous literary expressions that use ridicule to expose and criticize the world, twisted and negative intentions taking the form of polite expressions, newly coined words of somewhat violent nature that are widely used on the Internet are also punishable as a crime of insult. The "unheard of nobody (dubbojab)" at issue in this case is a shortened form of "unheard of and unseen nobody," which is a new online word that refers to a person or thing that is not well known. These kinds of a newly coined online terms are one of the interesting cultural phenomena widespread among netizens, and a slight degree of violence and awkwardness in expression does not necessarily constitute an insult.

The restriction on free expression should be confined to actions likely to cause specific harm to society or seriously damage an individual's feeling about his/her own reputation. Specifically, punishment should be limited only to abstract judgments and emotional expressions that will evidently inflict clear, big damages. One of the examples requiring punishment could be hateful expressions associated with sex, religion, disability, country of origin, etc. (US Code Title 18 Part 1 Section 245(b)(2) and French Press Law Article 33 Section 3, 4) and those inciting hatred and violation against certain groups (German Criminal Code Section 130). This could be extended to lewd and obscene words involving character assassination and disparagement solely intended to humiliate others that, by their very utterance, tend to incite an immediate violence (refer to the US fighting words law). Since the Provision can regulate even a simply negative, critical judgment or emotional expressions that merit constitutional protection, instead of just limiting ones that cause concrete harm to society or seriously undermine one's feelings for his/her reputation, the area subject to regulation is too extensive.

B. Intimidation of Free Expression

The scope and definition of insult subject to punishment under the Provision is too broad, and this intimidates acts of expression. Punishment of insult as a criminal offense restrains the possibility to raise and constructively resolve issues in social communities through free exchange of views and criticism. If some negative languages or critical statements on sensitive political, social issues used in political, academic seminars or debates constitute insults and are thus regulated, political, scientific acts of expression will be restrained and opportunities of open debate will decline, damaging the essential function of the freedom of expression. Particularly in a modern democratic society founded on ideologies of plurality and relativism of values, the state making judgment on whether to permit an expression or not based on a too broad definition of insult may distort or politically abuse the free market of press and ideas.

Although the majority opinion states that the freedom of expression can be appropriately protected under Article 20 of the Criminal Act concerning "justifiable act," allowing for ex post facto exception to prohibition alone cannot prevent the intimidation of free expression. The criminal procedure against insult from criminal charge, prosecution, and then to trials intimidates not only the offender but also the ordinary citizens who watch the process in real time. In an environment where Internet websites, blogs, social media, etc. have become part of our everyday lives, criminal punishment of insult also has an enormous restraining effect on the free expression of society as a whole.

C. Appropriateness of Criminal Punishment

The state's authority to punish crime is the most powerful authority enjoyed by the state and, for those subject to penalty, it is a cruel enforcement. Therefore, the exercise of such authority should be limited to the minimum when it is prescribed in criminal law. Issues that can be resolved in moral or social domains should be left up to morals or members of society. A mere abstract judgment or an expression of scornful emotion could be regulated through self correcting-mechanism of civil society or imposition of civil liabilities.

In recent days, the dissemination of insulting expressions in cyberspace have huge repercussions, and it is understandable that regulation is required. However, a large number of malicious acts of expression in cyberspace are mostly committed by juveniles by accident or on impulse; regulating all such acts as criminal offense may unnecessarily turn many people including juveniles into criminals. In fact, minor cases of insult in cyberspace can be prevented to a great extent through alternatives, such as deleting or removing the expression in question or blocking the offender's access to Internet bulletin boards, so there are cases where sanctions through criminal punishment is not required.

According to the 2012 Annual Report of the Prosecutor's Office, in 2000 the number of cases filed involving insult amounted to 1,858 and 532 individuals were indicted, and in 2011 a total of 11,839 cases were filed and 6,260 were prosecuted. There could be many reasons for the 10 fold-increase in the number of prosecuted individuals within 11 years, but, above all, increased acts of expression on the Internet should have resulted in easier, more frequent insults without facing each other in person, which probably has led to more charges of insult. This change indicates that people overall are no longer able to or cannot afford to accept critical, negative opinions or emotional expressions used against themselves.

As "insult" may also include minor insulting behaviors, abstract judgments, or derogatory expressions, penalizing all these expressions as criminal offence excessively limits the freedom of expression.

D. International Human Rights Standards

Criminal punishment of insult, in some respect, does not meet the international human rights standards either. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), an international human rights treaty to which Korea is a party and thus has the same effect as domestic law pursuant to Article 6(1) of the Korean Constitution, provides for the freedom of expression. General Comment No. 34 on Article 19 (freedom of opinion and expression) adopted by the Human Rights Committee established under the ICCPR stated that the mere fact that a form of expression of opinions, not factual arguments, is considered insulting is not sufficient to justify the imposition of penalties. The General Comment also calls on the State parties to consider decriminalization of defamation and states that, in any case, the application of criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. The Special Rapporteur for Freedom of Opinion

and Expression also said that criminalization of defamation represents a limitation on the freedom of expression and suggested decriminalizing defamation, saying that criminal punishment cannot be justified as long as people can sue for damages from defamation through the civil code.

E. Legislation and Cases

The origin of insult crime goes back to the contempt of God in the Roman Empire and *l' se-majesté* in Europe, the crime of violating majesty, and many countries around the world currently have provisions classifying insult as criminal offence. However, it has been abolished in part or has become practically insignificant in a great number of countries for reasons that such prohibition prevents free criticism and overly restricts freedom of expression in a democratic society.

The U.S. Supreme Court held in a case that it is unconstitutional to criminalize defamation even when statements are not "false" nor made with "actual malice" as it limits criticism and free debate and discussions. Under the U.S. jurisprudence, "fighting words" are not one of the expressions protected by the Constitution, but they fall under a narrowly limited category of speech. The Supreme Court struck down a law that prevented "insulting or fighting words which by their very utterance tend to incite an immediate breach of the peace" and another legal provision that prohibits "swearing others by using intimidating, defamatory, and insulting languages," stating that the provisions involve excessively broad range of speech and thus may conflict with the freedom of speech protected under the Constitution.

Looking into the civil law countries, Article 231 of the Penal Code of Japan provides for punishment of insults, but the offenders only get a slap on the wrist—misdemeanor imprisonment without work or a petty fine. And insult is the only crime penalized by misdemeanor imprisonment without work or a petty fine under the Penal Code. Section 185 of the German Criminal Code penalizes insult, but it is known to be rarely punished in practice. The punishment of insult in Germany is initiated by *Privatklage*, or private prosecution led by the victim, instead of the prosecutors, and the extreme complexity and trouble involved in the procedure tends to prevent its abuse. Since 2000, France has been imposing only fines for insulting a person except for certain cases specified otherwise, and in 2004 abolished the offence of insulting a foreign head of state. Latin American penal codes used to prohibit insults, threats, and violence aimed at public officials in duty, but a large number of countries including Chile and Costa Rica have repealed the ban, and the Supreme Court of Honduras and the Constitutional Court of Guatemala have held such penalty for insult unconstitutional.

F. Sub Conclusion

The Provision overly restricts free expression and thus limits free debate and constructive criticism. Therefore, the Provision fails to comply with the rule against excessive restriction and infringes on the freedom of expression, which is in violation of the Constitution.

Justices Park Han-Chul (presiding), Lee Jungmi, Kim Yi-Su, Lee Jinsung, Ahn Changho, Kang Ilwon, Seo Kiseog, and Cho Yongho

Constitutionality of the provision of the Public Health Promotion Act designating Internet Café as non-smoking zone

Constitutionality of imposing criminal punishment on financial company staffs who received money or valuables

List