

**Supreme Court Decision 2014Do15290 Decided December 27,
2016 【Insult: Violation of the Act on Promotion of Information
and Communications Network Utilization and Information
Protection, Etc. (Defamation)】**

【Main Issue and Holding】

Whether the State or a local government can be a victim of defamation or insult (negative)

【Summary of Decision】

By punishing the offense of defamation or insult according to criminal law, the legal interest the relevant offense is meant to protect is a person's external reputation, i.e., the social evaluation of a person's value. Therefore, the State or a local government, as public authorities with the responsibility of and obligation to either protect or realize the fundamental rights of citizens, is not the subject but merely the upholder of fundamental rights. Furthermore, matters pertaining to the State or a local government's policy decision-making and performance constantly come under broad public scrutiny and criticism, given that the freedom to express such criticism is sufficiently guaranteed for the State or a local government to normally make policy decisions and undergo tasks. Accordingly, in the relationship between the State or a local government and citizens, the former cannot be the subject of external reputation that is protected via means of punishment, and thus, cannot be the victim of defamation or insult.

【Reference Provisions】 Article 21 of the Constitution of the Republic of Korea; Articles 307 and 311 of the Criminal Act; Article 70 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.

Article 21 of the Constitution of the Republic of Korea

- (1) All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association.
- (2) Licensing or censorship of speech and the press, and licensing of assembly and association shall not be recognized.
- (3) The standards of news service and broadcast facilities and matters necessary to ensure the functions of newspapers shall be determined by Act.
- (4) Neither speech nor the press shall violate the honor or rights of other persons nor undermine public morals or social ethics. Should speech or the press violate the honor or rights of other persons, claims may be made for the damage resulting therefrom.

Article 307 of the Criminal Act (Defamation)

- (1) A person who defames another by publicly alleging facts shall be punished by imprisonment or imprisonment without prison labor for not more than two years or by a fine not exceeding five million won. <Amended by Act No. 5057, Dec. 29, 1995>
- (2) A person who defames another by publicly alleging false facts shall be punished by imprisonment for not more than five years, suspension of qualifications for not more than ten years, or a fine not exceeding ten million won. <Amended by Act No. 5057, Dec. 29, 1995>

Article 311 of the Criminal Act (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. <Amended by Act No. 5057, Dec. 29, 1995>

Article 70 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. (Penalty Provisions)

(1) A person who commits defamation of another person by disclosing a fact to the public through an information and communications network purposely to disparage his/her reputation shall be punished by imprisonment with labor for up to three years or by fine not exceeding 30 million won. <Amended by Act No. 12681, May 28, 2014>

(2) A person who commits defamation of another person by disclosing a false fact to the public through an information and communications network purposely to disparage his/her reputation shall be punished by imprisonment with labor for up to seven years, by suspension of qualification for up to ten years, or by fine not exceeding 50 million won.

(3) The public prosecution may not prosecute a person who committed a crime under paragraph (1) or (2) against the victim's will explicitly manifested. [This Article wholly amended by Act No. 9119, Jun. 13, 2008]

【Defendant】 Defendant

【Appellant】 Defendant

【 Judgment of the court below 】 Seoul Central District Court Decision 2014No2406 decided October 24, 2014

【 Disposition 】 The judgment of the court below is reversed, and the case is remanded to the Seoul Central District Court.

【 Reasoning 】 We examine *ex officio* the grounds of appeal by the Defendant charged of defamation, which is a violation of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. (hereinafter "Act"), or for insulting Goheung County.

A. By punishing the offense of defamation or insult according to criminal law, the legal interest the relevant offense is meant to protect is a person's external reputation, i.e., the social evaluation of a person's value. Therefore, the State or a local government, as public authorities with the responsibility of and obligation to either protect or realize the fundamental rights of citizens, is not the subject but merely the upholder of fundamental rights. Furthermore, matters pertaining to the State or a local government's policy decision-making and performance constantly come under broad public scrutiny and criticism, given that the freedom to express such criticism is sufficiently guaranteed for the State or a local government to normally make policy decisions and undergo tasks. Accordingly, in the relationship between the State or a local government and citizens, the former cannot be the subject of external reputation that is protected via means of punishment, and thus, cannot be the victim of defamation or insult.

B. On the grounds of its stated reasoning, the lower court determined that the Defendant hurt Goheung County's reputation and insulted Goheung County by either posting false information or derogatory messages on Goheung County Office's website for the purpose of slandering Goheung County, and subsequently, upheld the first instance judgment that found the Defendant guilty of both defamation (violation of the Act) and insult among the facts charged in the instant case.

However, in light of the legal principles as seen earlier, Goheung County, as a local government, cannot be the victim of defamation or insult. Nevertheless, on the erroneous assumption that a local government can be the victim thereof, the

lower court held that the offense of defamation and the offense of insult were both established. In so determining, it erred by misapprehending the legal principle regarding victims of defamation and insult, thereby adversely affecting the conclusion of the judgment.

2. We examine the grounds of appeal by the Defendant charged with insulting the Governor of Goheung County.

Based on its stated reasoning, the lower court determined that: (i) the offense of insult was established as the Defendant's aforementioned online postings were derogatory remarks about an individual, the Governor of Goheung County (hereinafter "Nonindicted Party"); and (ii) the Defendant's act could not be deemed permissible in light of socially accepted rules or constituting a ground for precluding illegality. Subsequently, it upheld the first instance judgment that found the Defendant guilty of the offense of insulting the Nonindicted Party among the facts charged in the instant case.

Examining the reasoning of the lower judgment in light of the evidence, the lower court, contrary to what is alleged in the ground of appeal, did not err by either misinterpreting the facts going against empirical and logical rules or misapprehending the legal principle regarding the grounds for barring illegality, thereby adversely affecting the conclusion of the judgment.

3. Of the lower judgment, the part as to the conviction of the Defendant for the offense of defamation and the offense of insult is reversed. *Provided*, inasmuch as the first instance judgment, upheld by the lower court, rendered a single sentence on the ground that the two offenses and the remaining criminal facts were either concurrent or compound crimes under the proviso of Article 37 of the Criminal Act, the lower court's judgment is reversed in its entirety.

4. Therefore, without further proceeding to decide on the remaining grounds of appeal, the lower judgment is reversed, and the case is remanded to the lower court for further proceedings consistent with this Opinion. It is so decided as per Disposition by the assent of all participating Justices on the bench.

Justices	Lee Ki-taik (Presiding Justice)
	Kim Yong-deok
	Kim Shin (Justice in charge)
	Kim So-young