

Case on Identity Verification System on Message Boards of Public Institutions

[2019Hun-Ma654, December 22, 2022]

In this case, the Court held that Article 44-5, Section (1), Item 1 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. does not infringe a fundamental right of Complainant. The relevant clause provides that Public Institutions that intend to install and operate a message board on information and communications networks shall take necessary measures, as prescribed by Presidential Decree, including preparation of methods and procedures for verifying the identity of users of the message board.

Background of the Case

On June 19, 2019, Complainant intended to publish his opinions on the “Korean National Human Rights Commission’s Free Discussion Board,” “Seoul’s Dongjak District’s Free Message Board,” and other online message boards of a public enterprise, quasi-government agency, local government-invested public corporation, and local government public corporation. However, he could not immediately publish his opinions on the message boards because the operator of each message board was taking measures to verify the identity of its users.

On June 21, 2019, Complainant filed the constitutional complaint in this case, arguing that his fundamental rights were infringed by Article 44-5, Section (1), Item 1 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc., which provides that a State agency, local government, public enterprise, etc. that intend to install and operate a message board on information and communications networks shall take necessary measures, as prescribed by Presidential Decree, including preparation of methods and procedures for verifying the identity of users of the message board.

Subject Matter of Review

The subject matter of review in this case is whether Article 44-5, Section (1), Item 1 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. (amended by Act No. 9119 on June 13, 2008) (hereinafter referred to as the “Provision at Issue”) infringes a fundamental right of Complainant.

Provision at Issue

Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. (amended by Act No. 9119 on June 13, 2008)

Article 44-5 (Identity Verification of Users of Message Boards)

(1) If any of the following persons intends to install and operate a message board, he or she shall take necessary measures, as prescribed by Presidential Decree (hereinafter referred to as “Identity Verification Measures”), including preparation of methods and procedures for verifying the identity of users of the message board:

1. A State agency, local government, public enterprise, or quasi-government agency under Article 5 (3) of the Act on the Management of Public Institutions, or a local government-invested public corporation or a local government public corporation under the Local Public Enterprises Act (hereinafter individually referred to as a “Public Institution” or collectively as “Public Institutions”);

Summary of the Decision

1. Fundamental rights restricted

The Provision at Issue requires a user of a message board to provide

data for identity verification when publishing information on the message board. It thereby restricts freedom of anonymous expression—a type of freedom of expression that allows message board users to express and disseminate their ideas and opinions anonymously, without revealing their identity to anyone.

2. Whether freedom of anonymous expression has been infringed

Identity Verification Measures, under the Provision at Issue, minimize the adverse effect due to, *inter alia*, the anonymity of information and communications networks, and thus, serve the purpose of ensuring and strengthening the accountability in using message boards of Public Institutions. Identity Verification Measures also discourage users of message boards from engaging in acts including verbal abuse, defamation, and spreading illegal information, thus serving the purpose of fostering a sound internet culture. For these reasons, the Provision at Issue has legitimate purposes and is an appropriate means of achieving those purposes.

The message boards regulated by the Provision at Issue are, in terms of their nature, a place where issues of public nature are usually discussed. This space requires a stronger responsibility as a member of the community because its users can be anyone, and this tends to be more so in such space than message boards installed and operated by entities other than Public Institutions. Where data embodying verbal abuse, defamation, illegal information, etc. are published on the message boards installed and operated by Public Institutions, this may undermine the credibility of those message boards, resulting in harm to their users and interruption of normal operation of Public Institutions. Therefore, there is a high need to maintain the public nature and credibility of the message boards installed and operated by Public Institutions, through Identity Verification Measures, which *ex ante* ensure accountability and soundness. It does not seem unduly burdensome to ask users to verify their identity as a condition of

using the message board. Therefore, the Provision at Issue satisfies the least restrictive means test.

The degree to which the fundamental right is limited by the Provision at Issue is not substantial in light of the following factors: that the use of message boards is not the only way for anonymous expression directed at Public Institutions; that Public Institutions cannot be considered to have a general statutory obligation to install and operate message boards; that the Provision at Issue limitedly applies to the message boards installed and operated by Public Institutions. In contrast, there is a significant public interest in fostering a sound internet culture by preventing verbal abuse, defamation, and distribution of illegal information on the message boards installed and operated by Public Institutions. Therefore, the Provision at Issue satisfies the balance of interests test.

Accordingly, because the Provision at Issue is in compliance with the rule against excessive restriction, it does not infringe the freedom of anonymous expression of Complainant.

Summary of Dissenting Opinion of Four Justices

If data including verbal abuse, defamation, or illegal information are published on a message board, a number of actions can be taken, including deletion of the data by a message board administrator; issuance of an order requiring a message board administrator or operator to refuse, suspend, or restrict transmitting illegal information; and holding the user civilly or criminally liable for publishing the data in question. Through these means, it is possible to achieve the legislative purpose of fostering a sound internet culture. Depending on the objective or character of a message board installed and operated by Public Institutions, there may be occasions where freedom of anonymous expression needs to be limited, such as when a Public Institution runs a message board where complaints or petitions can be posted. In such cases, however, a statutory basis can

be formed, as the provisions of the Act on Complaint Processing or the Petition Act, in such a way that permits identity verification that fits specific purposes. Therefore, the Provision at Issue fails the least restrictive means test.

Anonymous expression enables individuals to freely manifest and disseminate their thoughts and ideas without succumbing to explicit or implicit external influences, and makes it possible to criticize the State authorities or the prevailing opinions of society. This, in turn, opens the possibility for the views of politically and socially marginalized groups to be considered in policy decision-making by the State. In this respect, anonymous expression cannot be separated from the content of freedom of expression. Further, anonymous expression on the internet forms public opinion that is free from social class, status, age, and gender, based on the speed and interactivity of internet communication. This promotes a more equitable reflection of the will of the people and contributes to the development of democracy. Considering the democratic implications of freedom of anonymous expression, this freedom should be even more strongly protected in public areas regulated by the Provision at Issue than in areas that are not. However, under the Provision at Issue, identity verification is a prerequisite for publishing information on all message boards installed and operated by Public Institutions. This fundamentally blocks the opportunity for those who have not verified their identity to express themselves on message boards operated by Public Institutions, and increases the likelihood that those who wish to manifest their ideas or opinions on such boards will engage in self-censorship regarding the content, tone, etc. of their expression. As such, we cannot help but find that the Provision at Issue is an undue limitation of freedom of anonymous expression. Thus, the Provision at Issue fails the balance of interests test.

In conclusion, the Provision at Issue violates the rule against excessive restriction, and thus, infringes the freedom of anonymous expression of Complainant.