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AHRC-STM-051-2014

March 24, 2014

A Statement by the Asian Human Rights Commission

SOUTH KOREA: Unlimited punishment for holding different thoughts and ideas

It is widely reported that Acts relating to national security created in various names throughout in Asia have been used, not to protect national security per se, but to oppress persons holding different ideas, or opinions, or critical of policies of the government. It is also a recognised trend that human rights defenders have been especially targeted by these Acts. As far as that of South Korea is concerned, the misuse of the National Security Act due to vague and wide provisions has received wide criticism both locally and internationally. However, another piece of legislation that has earned comparatively less attention in this regard is the 'Security Surveillance Act'. The Act raises another serious question, not only on the freedom of opinion, expression and consciousness, but also the deprivation of fair trial.

The purpose of this act is to *"maintain national safety and social peace by taking security surveillance disposition against a person who has committed a specific crime in order to prevent the risk of repeating a crime and to promote his return to normal social life"* (Art 1). A person subject to this disposition is *"the one who has been punished by imprisonment without prison labour or heavier, the total term of which is three years or more, and has served the said punishment in whole or in part, for crimes subject to security surveillance or concurrent offenses herewith"* (Art 3).

If a person is under security surveillance he shall report within seven days from the date he receives a notice of this disposition: *"1. Place of register, residence, name, date of birth, and resident registration number; 2. Family, cohabitants, and associates; 3. Occupation, monthly income, and the financial status of the person subject to security surveillance and his family; 4. Educational, and career background; 5. Religion and membership in organisations; 5. Place of work, and contact telephone number; 6. The competent police station where the report on the person subject to security surveillance disposition is made, and the date of report, and; 8. Other matters prescribed by Presidential Decree"* (Art 18(1)).

In addition, the person shall report, on the last day of every third month beginning with the month in which the person received such notice, shall report *"1. Major activities for a three-month period; 2. Personal details about other persons subject to security surveillance disposition whom the person under security surveillance has communicated with and met, and the date, place and details thereof; 3. Matters relating to trips made during a three month period (including matters concerning a trip that has been suspended after making a report), and; 4. Matters directed by the chief of the police station to report on security surveillance"* (Art 18(2)). If a person under security surveillance intends to move his residence, he shall report in advance new place of residence, expected date of moving and reason of moving, if intending to travel overseas, he shall report in advance his intended country of travel, purpose and period of travel, associates and travel documents, and if intending to travel for ten or more days, he shall report his intended place of travel, purpose and period of travel, his associates (Art 18(4)). If he fails to report, he shall be punished by imprisonment for not more than 2 years or by a fine not exceeding one million Korean won (Art 27(2)).

It is reported as of August 2013, there are about 2,000 persons subject to security surveillance and over 40 persons are under security surveillance as shown by the table given below:

	2008	2009	2010	2011	2012	2013
Number of Person subject to security surveillance	3,184	2,962	2,773	2,593	2,383	2,256
Number of Person under security Surveillance	50	45	43	41	45	43

(Source: document submitted by Ministry of Justice to a legislature Mr. Seo Gi-ho during the period of inspection of the administration in 2013)

Another serious aspect of this Act is that the person is either subject to, or under security surveillance is deprived of a fair trial. The decision of security surveillance disposition is not made by the court of law but by the Minister of Justice, at the request of a public prosecutor, and the period, which is two years, may be renewed through a resolution of the Security Surveillance Disposition Review Board (Art 5). This period of surveillance may be renewed without limitation. Therefore, a person may find himself forever under the security surveillance. In addition, the Act itself criminalises a person who fails to report details described above by the administrative decision not by the judiciary.

In fact, the Constitutional Court, established in September 1988 through the constitutional amendment followed by nation-wide democracy movement, as well as lessons learned from the failure of the Supreme Court to provide protection of democracy, human rights and rule of law, has dealt with this very Act on its constitutionality in 1997 and 2003. Unfortunately, the Constitutional Court decided that the Act is not unconstitutional. In a report released by the National Human Rights Commission of Korea in 2003, a person subject to security surveillance is the one who has refused his 'thought conversion' or has not regretted a criminal offence in violation of the National Security Act.

Now, the Court is invited again to adjudicate whether or not the Security Surveillance Act is unconstitutional by Mr. Kim who has been under security surveillance for the last 8 years. By taking it into consideration, the Asian Human Rights Commission (AHRC), first of all, appreciates the courage of Mr. Kim who decided to take his case for the constitutional judicial review and the efforts made by human rights groups in support of Mr. Kim in this regard.

The AHRC is deeply concerned that the Security Surveillance Act has been enacted for the purpose of depriving of freedom of opinion and expression and has been used to criminalise a person on ground of a different thought. It is also of the view that the Act severely limits the holding of a political opinion and curtails the freedom of movement as well. The Act seems to be nothing more than to limit and punish dissenting thoughts, which is far beyond from the value of democracy and shall pay unimagined cost for restoring the value at the end.

The AHRC reiterates its position that a person who is alleged to have committed an offence shall be adjudicated in the court of law and not by the administrative decision. Imposing punishment by administrative decision, in fact, considerably hampers the power of the judiciary and undermines the separation of powers, which is one of established principles of democracy and the rule of law. Unless the Constitutional Court restores this principle, the country has only an illusion of democracy. It is now time for the court to restore the value and principle in order not to repeat the past administrative role that the Supreme Court served during the military and authoritarian regime in the past.

From Mr. Kim's point of view, the ceaseless surveillance for the last eight years only results from his holding a different thought or idea. The value and principles aforementioned does not apply to him. The right to fair trial excludes his case. At least to him, it is nothing but same as far as one is punished for holding different views, thoughts or ideas regardless of regime difference. Such security surveillance regime prevailed in the oppressive regime in the

past shall now be lifted from a country like South Korea if the society wishes to move forward to a larger freedom and democracy. Otherwise, in contemporary competition of ideology conflicts between two countries, only fear got the best of fundamental core value.

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***About AHRC:** The Asian Human Rights Commission is a regional non-governmental organisation that monitors human rights in Asia, documents violations and advocates for justice and institutional reform to ensure the protection and promotion of these rights. The Hong Kong-based group was founded in 1984.*