

Case on Election Campaign by Teacher via Social Networking Service

[2016Hun-Ma1071, February 27, 2020] * First Draft

In this case, the Court ruled that a mere act of simply sharing other's posting on 'Facebook' account cannot be regarded as an 'election campaign' under the Public Official Election Act. The Court also found that whether the act of posting is to be concluded as an 'election campaign' should be determined by not only considering the contents of the posting but comprehensively examining the circumstances insinuating that it displays explicit intention of helping a specific candidate win or lose the election.

Background of the Case

The Public Official Election Act bans public officials from engaging in any 'election campaign', and those violating it are subject to criminal punishment. The Complainant is a public official serving as a public school teacher, who shared an online post (news and video) on a personal Facebook account telling that a specific candidate was lying, before the 20th General Election.

The Complainant was charged for unlawfully engaging in an election campaign by sharing such post. However, the respondent, who is also a prosecutor suspended the prosecution against the Complainant on September 13, 2016, explaining that the act of posting is considered as the election campaign that is banned for public officials to be engaged in pursuant to the Public Official Election Act but the criminality is minor. The Complainant filed this complaint to seek invalidation of the suspension of prosecution, arguing that this measure given by the prosecutor is unfair and infringes upon the Complainant's right to equality and right to pursue happiness.

Legal Ground of Suspension of Prosecution

Public Official Election Act (amended by Act No. 9974, January 25, 2010)

Article 255 Section 1 Item 2; and, Article 60, Section 1 Item 4

Summary of the Decision

1. Meaning of ‘Election Campaign’ under the Public Official Election Act

Regarding the ‘election campaign’ under the Public Official Election Act, the Supreme Court ruled that it shall mean an active and planned activity that is carried out with objective intention of helping a certain candidate win or lose in a specific election. Accordingly, even when a teacher, who is banned from engaging in an election campaign under the Act, expresses his/her political opinion or belief through social networking services such as Facebook and the content is regarded relevant to the election, such act should not be concluded as the part of election campaign just for those reasons (Supreme Court, Case No. 2017DO2972, November 29, 2018).

In this regard, to decide whether a person’s simple act of sharing online news articles or others’ posts on a social networking service account constitutes a ‘election campaign’, the contents of the posts as well as other circumstances that may suggest actions with explicit intention of helping a certain election candidate win or lose in a certain election such as the volumes of posts in the social media account; whether there were posts similar to the ones at issue; whether the account is created close to the election day and excessive number of people were add to friends while posts with similar contents are uploaded exceptionally or continuously, should be examined comprehensively.

2. Judgment on This Case

The Complainant shared the online article regarding a certain candidate for the upcoming general election was telling a lie on a personal account, but did not mention any additional comments toward it. By considering the contents of the post shared by the Complainant, total number of Facebook friends (4,583), and a mere fact that the Complainant uploaded one more posting about the aforementioned candidate on the same day on a personal Facebook account, it is hard to conclude that such act is amount to the ‘election campaign’, which is an active and planned action with the objective intention of helping a certain candidate to win or lose in a certain election.

Therefore, the suspension of prosecution granted to the Complainant on the premise that the Complainant’s action is part of the ‘election campaign’ was resulted from arbitrary judgment on evidence, insufficient investigation and misunderstanding on the law.

Consequently, the right to equality and right to pursue happiness of the Complainant are infringed upon and, thus, the suspension of prosecution shall be nullified.

* This translation is provisional and subject to revision.