

*Case on Access to Election Information by Persons with Disabilities, etc.*

[2017Hun-Ma813, August 28, 2020]

In this case, the Court held that (1) the prohibition imposed on Complainant Yoon ○○ against watching the 19th presidential election interviews and debates on television at the time when he was receiving military training from the Korea Army Training Center; (2) the part concerning “within the page limit for booklet-type election campaign bulletins imposed by Section 2” in the main text of Article 65 Section 4 of the Public Official Election Act, requiring the number of pages of braille-type election campaign bulletins to be within the page limit for booklet-type election campaign bulletins; and (3) Article 70 Section 6, part of Article 71 Section 3 concerning Article 70 Section 6, Article 72 Section 2, and Article 82-2 Section 12 of the Public Official Election Act, prescribing Korean sign language or a caption to be discretionary in making an election broadcast do not violate the Constitution.

**Background of the Case**

1. Complainant Yoon ○○, while he was receiving military training at the Korea Army Training Center, requested for watching the 19th presidential election interviews and debates on April 23 and 27, 2017, and Respondents, the platoon leader and the company commander of the Korea Army Training Center, prohibited such request (hereinafter referred to as “Watching Prohibition of this case”). Complainant Yoon ○○, arguing infringement of his right to vote and equality, filed this constitutional complaint on July 21, 2017.

2. Complainant Kim □□, who is visually impaired, filed this constitutional complaint on July 21, 2017, claiming that Article 65 Section 4 of the Public Official Election Act, requiring the number of pages of election campaign bulletins in braille to be within the page

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limit for booklet-type election campaign bulletins, has violated the Complainant’s right to vote and equality.

3. Complainants Kim △△ and Ham ▲▲ are hearing impaired and filed this constitutional complaint on July 21, 2017, arguing that Article 70 Section 6, Article 71 Section 3, Article 72 Section 2, and Article 82-2 Section 12 of the Public Official Election Act have violated the right to vote and equality of the Complainants as they do not require Korean sign language or captions mandatory in airing the broadcast advertisement, broadcast speech of candidates, etc., broadcast of candidates’ campaign speeches supervised by broadcasting facilities and interviews and debates supervised by the Election Debate Broadcasting (hereinafter referred to as “Election Broadcast Programs of this case”).

**Provisions at Issue**

The subject matter of this case is whether (1) the Watching Prohibition of this case; (2) the part concerning “within the page limit for booklet-type election campaign bulletins imposed by Section 2” in the main text of Article 65 Section 4 (hereinafter referred to as “Provision on Election Campaign Bulletins of this case”) of the Public Official Election Act (amended by Act No. 15551, Apr. 6, 2018); and (3) Article 70 Section 6, part of Article 71 Section 3 concerning Article 70 Section 6, Article 72 Section 2 of

the Public Official Election Act (amended by Act No. 6265, Feb. 16, 2000), and Article 82-2 Section 12 of the Public Official Election Act (amended by Act No.7681, Aug. 4, 2005) (hereinafter collectively referred to as "Provisions on Korean Sign Language or Captions of this case") violate the fundamental rights of Complainant Yoon ○○, Complainant Kim □□, and Complainant Kim △△ and Ham ▲▲, respectively.

Public Official Election Act (Amended by Act No. 15551, Apr.6, 2018)

Article 65 (Election Campaign Bulletins) (4) Any candidate may prepare election campaign bulletins of one kind (hereinafter referred to as

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"election campaign bulletins in braille") for visually impaired electors (referring to visually impaired persons who are registered pursuant to Article 32 of the Act on Welfare of Persons with Disabilities; the same shall apply hereafter in this Article) within the number of pages of booklet-type election campaign bulletins under Section 2, other than the election campaign bulletins referred to in Section 1: Provided, That a candidate running in a presidential election, an election of National Assembly members of local constituency, or an election of the head of a local government shall prepare and submit election campaign bulletins in braille; however, such election campaign bulletins may be substituted by print-ready barcodes whose contents are converted into voice or braille output.

Public Official Election Act (Amended by Act No. 6265, Feb.16, 2000)

Article 70 (Broadcast Advertisements) (6) the candidate may, in making a broadcast advertisement under Section 1, air the finger language or a caption for the electors with a defective auditory sense.

Article 71 (Broadcast Speech of Candidates, etc.) (3) The latter part of Article 70 (1), Article 70 (6), and (8), shall apply mutatis mutandis to broadcast speeches of the candidates, etc.

Article 72 (Broadcast of Candidate's Campaign Speeches Supervised by Broadcasting Facilities) (2) In making a broadcast of the candidates' campaign speeches under Section 1, sign language or a caption may be aired for the hearing impaired electors.

Public Official Election Act (Amended by Act No. 7681, Aug.4, 2005)

Article 82-2 (Interviews or Debates Supervised by Election Debate Broadcasting Committee) (12) When the Election Debate Broadcasting Committee of each level holds the interviews or debates, it may conduct a superimposed broadcasting or a sign language interpretation for the hearing impaired electors.

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### Summary of the Decision

#### 1. Watching Prohibition of this case

The Watching Prohibition of this case was rendered as part of military training to nurture those assigned to supplementary service as military resources and help them adjust to military life. Given the facts that (1) allowing the presidential election interviews and debates to be watched would have posed a high possibility of interference with the military training, considering the time of broadcasting; (2) no

television was furnished in the trainees' dormitory at the Korea Army Training Center; and (3) Complainant Yoon ○○ was able to acquire election information through other means, it is difficult to say that the Watching Prohibition of this case infringes upon the Complainant's right to vote and equality.

## 2. Provision on Election Campaign Bulletins of this case

There are only about 40 braille libraries functioning as braille publication facilities and about 20 of which are located in the capital area. Unlike the booklet-type election campaign bulletins, the costs of preparing braille-type election campaign bulletins are borne by the State. The Provision on Election Campaign Bulletins of this case was introduced taking into account the practical difficulties caused by the lack of braille publication facilities and persons who engage in braille translation or correction, and the possibility of the State taking excessive financial burden relating thereto.

The legislators have the freedom to legislative formation through which various ways can be explored to guarantee the right to access to election information for individuals with visual disabilities. The legislators amended the Public Official Election Act on August 13, 2015 to require a candidate or a political party running in a presidential election, etc. to prepare and submit election campaign bulletins in braille

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or substitute them with print-ready barcodes. This is a considerably improved legislation in terms of expanding opportunities for persons with visual disabilities to obtain election information. Also, adopting the above method instead of increasing the number of pages of braille-type election campaign bulletins does not seem to go beyond the limitations of legislative discretion.

In addition, given that the Public Official Election Act stipulates that essential issues shall be included in the braille-type election campaign bulletins and that there are many other means for the visually impaired to obtain election information, the Provision on Election Campaign Bulletins of this case does not violate the right to vote and the right to equality of Complainant Kim □□.

## 3. Provisions on Korean Sign Language or Captions of this case

The Provisions on Korean Sign Language or Captions of this case prescribe the airing of Korean sign language or captions as a discretionary matter, in consideration of the facts that the decision on airing Korean sign language or captions depends on the substantial capability of broadcasting business operators to secure staff, equipment, technical level, etc.; and that prescribing it as a mandatory matter may incur excessive election costs and impose restrictions on the freedom of broadcasting and programming of a broadcasting business operator and on the freedom of election campaign of a candidate or a political party.

Making it compulsory to provide election information for hearing-impaired persons, particularly with captions, has mostly been realized in a normative sense by means of the Broadcasting Act, the Act on Welfare of Persons with Disabilities and the Act on the Prohibition of Discrimination against Persons with

Disabilities, Remedy against Infringement of Their Rights, Etc. (hereinafter referred to as the “Act on the Prohibition of Discrimination against Persons with Disabilities”) and subordinate statutes thereof. For example, a terrestrial broadcasting business entity or a program provider that engages in general

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programming or specialized programming of news reports are required, among the Election Broadcast Programs of this case, to broadcast speeches of candidates, candidate’s campaign speeches supervised by broadcasting facilities, and interviews or debates supervised by Election Debate Broadcasting Committee with closed captions.

Broadcasting in Korean sign language and captions has continuously and gradually improved to provide hearing-impaired persons with more opportunities to obtain election information. The aforementioned Acts established different targets and timelines for providing broadcasts for persons with disabilities based on the types and sizes of broadcasting business entities, conditions for producing broadcasting programs for persons with disabilities, demand for viewers, the characteristics of broadcasting channels, and the types and costs of broadcasting for persons with disabilities, thereby continuously increasing the portion of programs for persons with disabilities from 2012 to 2016. Also, Korea Smart Sign Language Broadcasting Service which was developed in 2014 and has been in service since 2019 allows users to adjust the size and placement of the sign language screen or delete it. At least all interviews and debates supervised by the Election Debate Broadcasting Committee during the recent general election campaigns have been broadcast with Korean sign language.

Also comprehensively considering the fact that there are many other means for the hearing impaired to obtain election information, the Provision of Korean Sign Language or Captions of this case is not deemed to violate the right to vote and equality of Complainant Kim △△ and Ham ▲▲.

### Summary of Dissenting Opinion by Three Justices

#### 1. Standard of Review

A proportionality test with strict scrutiny should be carried out in this

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case as the right to vote holds a significant value in a representative democracy.

#### 2. Provision on Election Campaign Bulletins of this case

Persons with visual disabilities may experience difficulties in getting election information through visual means. They also have limited access to auditory information as it requires using a specific medium or going to a specific place, or it can only be heard once. Accordingly, persons with visual impairment are likely to find it harder to obtain a broad and deep background knowledge about politics in general, such as political party platforms, political philosophies and ideologies of candidates, and political realities, compared to individuals without such disabilities.

The only means for visually-impaired voters to get election information regardless of time or space and without help from others or assistive devices, among election campaign methods permitted in all public official elections under the Public Official Election Act, is the braille-type election campaign bulletins

and they contain essential election information. Therefore, they are essential means for persons with visual disabilities who find it difficult to access other types of election information to collect political information on political parties or candidates in a comprehensive and systematic manner.

As braille cannot adjust the font size and has a unique characteristic of writing every consonant and vowel independently from one another unlike general letters, it requires about 2.5 to 3 times more number of pages than general letters. Therefore, limiting the number of pages of braille-type election campaign bulletins within that of booklet-type ones would inevitably lead to not being able to contain all contents included in booklet-type election campaign bulletins.

As increasing the page limit of braille-type election campaign bulletins does not necessarily mean forcing a candidate to prepare a greater number of pages thereof, it does not impose impossible obligations on the candidate when considering realistic conditions such as the availability of

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braille publication facilities and persons who engage in braille translation or correction. The issue with securing facilities, staff, and costs necessary to prepare and mail braille-type election campaign bulletins can be resolved by providing the visually-impaired with various options to choose from when receiving election campaign bulletins, such as mailing election campaign bulletins by post, downloading an electronic version thereof, etc.

In light of the Act on the Prohibition of Discrimination against Persons with Disabilities which imposes on candidates for public election and political parties the obligation to convey information about them to persons with disabilities on an equal basis with persons without disabilities and the Braille Act which stipulates that where any visually impaired person makes a request, the relevant public institution shall provide him/her with braille documents the contents of which are the same as the corresponding documents in general letters, the cost of preparing and mailing braille-type election campaign bulletins borne by the State cannot be considered excessive to the point of having to give up on ensuring the visually-impaired equal access to election information.

Article 34 Section 5 of the Constitution provides that “citizens who are incapable of earning a livelihood due to a physical disability, disease, old age or other reasons shall be protected by the State under the conditions as prescribed by Act.” Nevertheless, people with disabilities have long been considered as a group of a minority or the socially weak, and such inequality and discrimination have only been consolidated as they were excluded from policy decision-making processes. Given the constitutional significance of substantially guaranteeing the right of the visually-impaired to vote, including the right to know about political information and opinion of candidates for public election and political parties, and public interest of the development of democratic politics, the Provision on Election Campaign Bulletins of this case runs counter to the principle against excessive restriction and thus infringes upon the right to vote of Complainant Kim ○○.

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3. Provisions on Korean Sign Language or Captions of this case

There are different types of individuals with hearing disabilities such as those who use Korean sign language as their first language and have difficulty understanding the Korean language and those who cannot use Korean sign language but are able to understand the Korean language. Korean sign language is the common language for hearing-impaired Koreans and has equal status as the Korean language. As people who have acquired the Korean language as their mother tongue have to study anew a foreign language, persons with hearing disabilities who use Korean sign language as their first language consider learning the Korean language the same as learning a foreign language.

People with hearing disabilities cannot get election information through auditory means and particularly those who have difficulty reading and understanding the Korean language cannot even get such information through election campaigns using visual means or print media. Accordingly, there is a great need to provide Korean sign language or captions when broadcasting election programs through television, a universal medium. To ensure that all people with hearing disabilities get election information, they should be broadcast with both Korean sign language and captions. It should be especially noted that the broadcast of election programs is almost the only means for the hearing-impaired who use Korean sign language as their first language and have difficulty understanding the Korean language to acquire election information.

Even considering other laws, captions in the Election Broadcast Programs of this case, except for broadcast advertisements, are the only ones provided as mandatory by terrestrial broadcasting businesses or program providers that engage in general programming or specialized programming of news reports. However, given that the Election Broadcast Programs of this case may be provided through CATV broadcasting businesses and others, and that the broadcast of such programs with Korean sign language is indispensable, the broadcast of aforementioned captions alone does not seem to provide sufficient

election information for the hearing-impaired.

Since broadcasting business entities which are obliged to provide a certain portion of broadcasts for persons with disabilities under the existing law have already secured staff, facilities and technical level required to broadcast Korean sign language or captions, imposing on them the obligation of airing the Election Broadcast Programs of this case with Korean sign language or captions does not seem to put too much financial burden on the State or an excessive restraint on the freedom of broadcasting and programming of a broadcasting business operator and on the freedom of election campaign of a candidate or a political party.

The topics covered in the Election Broadcast Programs of this case may become a subject of public discussion and decisively influence the perception of the general public. Without presumption that people with hearing impairment are able to understand the Election Broadcast Programs of this case, the issue of discrimination against them is highly unlikely to be covered in such programs. The

Provisions of Korean Sign Language or Captions of this case isolates individuals with hearing impairment from policy–decision making processes.

Therefore, the Provisions of Korean Sign Language or Captions of this case violate the rule against excessive restriction and thus infringe upon the right to vote of Complainant Kim △△ and Ham ▲▲.