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FOR THE SAKE OF HUMAN RIGHTS

An introduction to
100 selected cases of
recommendations
made by the NHRCK

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– an introduction to 100 selected cases of recommendations made by the NHRCK

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National Human Rights Commission of Korea

On the occasion of the publication of the English version of 'For the sake of human rights – an introduction to 100 selected cases of recommendations made by the NHRCK'

As an old Korean saying goes, 'A decade is long enough for the scenery to change.' 2011 marked the 10th anniversary of the launch of this commission. We at the NHRCK have reflected on what we have done in the last decade and have resolved to make another leap forward in our assignment. As part of such efforts, we are publishing this book.

This book will show you what we have done to improve the Government's human rights-related policies and their handling of cases associated with human rights violations and discrimination.

We sincerely hope that this book will serve as a reminder of the importance of human rights-related matters in society and how people should work together for the betterment of this sublime goal.

Your support and encouragement will be indispensable to us at the NHRCK as we seek to carry out our assignment in the most rational and mature manner possible over the coming decade. Thank you.

May 2012
Byung-chul Hyun 현 병 철
Chairperson
National Human Rights Commission of Korea(NHRCK)

On the occasion of the publication of the Korean version of 'For the sake of human rights – an introduction to 100 selected cases of recommendations made by the NHRCK'

The steady fall of dripping water can wear a hole in a rock. A mighty ocean is composed of uncountable drops of water. Similarly, the many people who have worked long and hard on behalf of human rights have managed to secure its position as a universal value for all human beings. Many steady, if small, steps have been taken to make the world a place in which all people can live equally.

The course taken has been one of trial and error. At first, from the perspective of human rights, particularly the rights of the less privileged, seeking improvement was like trying to break a rock with an egg. But the fight was never abandoned. As a result of our strenuous efforts, human rights are now regarded as a universal value for all humans.

But there is no end to this road as an endless stream of issues concerning human dignity and worth stretches before us all wherever we live.

Since its launch in November 2001, the National Human Rights Commission (NHRCK) has made a multitude of recommendations to all kinds of public and private authorities. As a result, the human rights situation has improved incrementally in Korea. The launch of the NHRCK served as a clear turning point in human rights-related issues in this country. It made people change their opinions about human rights. People began to embrace a refreshingly new attitude that was distinct from the past, when human rights were seen as merely a utopian ideal. Now, they look upon human rights as a part of everyday life.

In the formation of policies or laws, state institutions now think of human rights first. Human rights are now a priority. It is now regarded as common sense to listen to the opinions of the less privileged or minority groups. All people have had their eyes opened concerning their own rights.

We are happy to publish this book on the occasion of the NHRCK's 10th anniversary to introduce the top 100 cases that led to human rights-related recommendations made by the commission. The extent of the NHRCK's contribution to the area of human rights and the positive social changes it has brought about in Korea will be laid bare. Some of the recommendations made by us have yet to be fulfilled. Their fulfillment still requires more efforts by all of the parties concerned. It is hoped that this book will serve as a reminder of the importance of human rights in all societies. We at the NHRCK will continue to carry out our duties as guardians of human rights in this country. Thank you.

November 25th 2011
Byung-chul Hyun 현 병 철
Chairperson
National Human Rights Commission of Korea(NHRCK)

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Foreword

A recommendation made by the NHRCK

The NHRCK formulates its recommendations in the following three areas: the Government's human rights-related policies and cases associated with human rights violations and discriminations. It also submits its opinions of court trials, including those handled by the Constitutional Court, where human rights are involved.

Subparagraph 1, Article 19, of the National Human Rights Commission Act stipulates that the NHRCK shall "investigate and research with respect to Acts and subordinate statutes (including bills submitted to the National Assembly), institutions, policies and practices related to human rights in order to recommend improvements or present its opinion thereon." When necessary, the NHRCK may recommend an amendment to, or abolition of, an existing law or the enactment of a new law to State institutions or private organizations.

The NHRCK may also make recommendations concerning the country's joining a human rights-related treaty or execution of a clause in a relevant treaty. Keeping in mind that it can go a long way in improving the human rights situation within a country to sign up to a treaty and carry out activities under it, the NHRCK involves itself in the following: all reports submitted by the Government to the UN under a human rights treaty of which it is a signatory; any review of the human rights treaties the country has not joined or of clauses in existing treaties that were placed on reserve; or urging for the execution of any relevant international treaties.

Article 28 of the said Act stipulates that the NHRCK "may, if requested by a court of the Constitutional Court or if deemed necessary by the NHRCK, present its opinions on de jure matters to the competent division of a court of the Constitutional Court" in reference to a court proceeding strongly tied to the issue of human rights or what the NHRCK has investigated or handled.

In a case involving a human rights infringement, the NHRCK may investigate or ask for a remedial step "where a human right as guaranteed in Articles 10 through 22 of the Constitution has been violated or a discriminatory act has been committed in connection with the performance of duties by State organs, local governments or confinement or care facilities under Article 30 of the said Act."

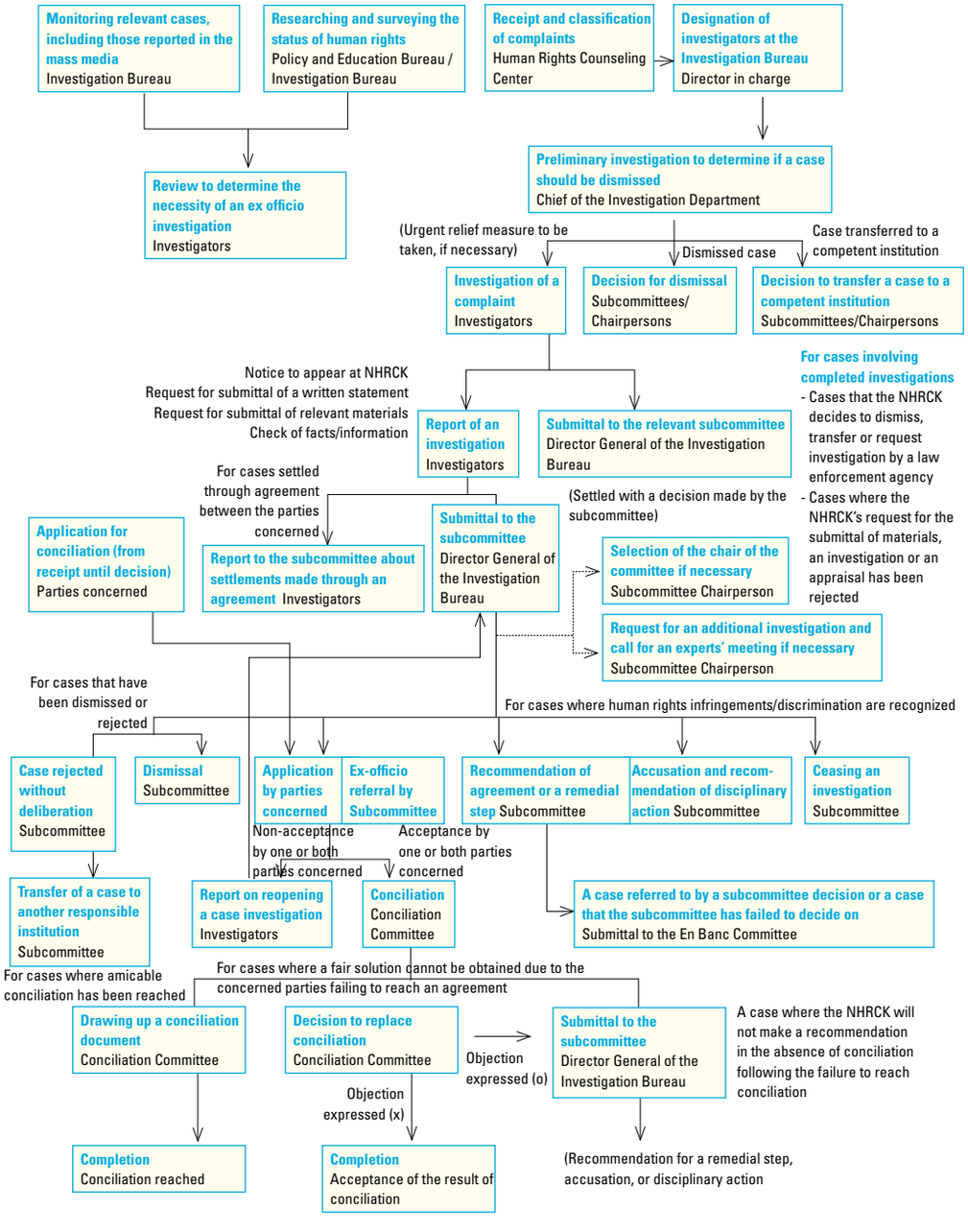
A case that falls in the following categories is not handled by the NHRCK, under Article 32 of the said Act: a court trial, criminal investigation or a procedure to relive one of their rights under any Act currently under way or terminated or a petition that was filed one or more years following the occurrence of the incidents that led to the petition in the first case. However, if the relevant statute of limitation for a case has not expired and the NHRCK decides said case warrants investigation, then the foregoing does not apply to cases.

Another category handled by the NHRCK is cases involving discrimination perpetrated by the State, a local government, a confinement or care facility, a private entity or an individual. An act of discrimination stipulated by the National Human Rights Commission Act refers to an act of imposing a disadvantage concerning employment, goods, services, transportation, land, supply/use of a residence, or education/training at an educational facility or vocational training facility for a reason associated with gender, religion, physical status, age, etc.

Sexual harassment also falls under the purview of the NHRCK. Under the said Act, sexual harassment refers to "any worker in a public agency and employer or employee in the private sector that intimidates, mocks, coerces, belittles or bullies others with unappreciated verbal and physical conduct or any worker who confers disadvantages in the workplace on the pretext of disobedience to sexual comments, other demands, etc., by taking full advantage of their superior position or with regard to their duties, etc."

With regard to a case associated with a human rights infringement, discrimination or sexual harassment, the NHRCK starts an investigation based on a complaint submitted by the victim or a party related to him/her (in such a case an investigation is commenced only when the victim consents to it). Even if a petition is not filed, the Commission may initiate an ex officio investigation if it deems that reasonable cause exists to believe that human rights violations or discriminatory acts have been committed and that the has reasonable merit. Upon judging that such a situation exists, the NHRCK recommends a remedial step (including an urgent remedial step) and asks for a punitive measure to be taken against the perpetrator or that said perpetrator be subjected to an educational session to prevent the occurrence of a similar situation. The NHRCK sometimes sues or reports a perpetrator to a law enforcement agency when necessary. It may also ask for help from the

Complaint Resolution Process at the NHRCK



Korea Legal Aid Corporation. (Refer to the table for details regarding the investigative procedure and the remedial steps concerning different forms of human rights infringement, discrimination or sexual harassment.)

A recommendation is made following deliberation by a committee at the NHRCK. The NHRCK operates the following committees: The En Banc Committee comprised of 11 NHRCK members; The Standing Committee comprised of the Chairperson and three standing members; subcommittees comprised of three ~ five members (two Human Right Violation Rectification Subcommittes, a Discrimination Subcommittee, and a Discrimination against the Handicapped Subcommittee). Each committee deliberates on cases being investigated by the Secretariat. Cases are assigned to committees in consideration of their content and urgency. The quorum for a recommendation is the consent of a majority of the committee's members. The passage of a case in the Standing Committee or a subcommittee requires the presence of at least three members and the consent of at least three members present at the meeting.

The NHRCK makes it a rule to inform a complainant in writing of how their complaint has been handled once it has decided to offer a recommendation. It may publicize the recommendation and the result of the action taken by the institution or individual to whom such a recommendation has been issued, with a view to informing the general public of how judgments are made concerning human rights infringement or discrimination cases and what remedial steps were taken. Such a procedure is also thought to be necessary to enhance the level of human rights-related awareness and spread a culture of respect for others' human rights.

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Welcome, human rights!

Why the National Human Rights Commission of Korea was established

Opinions expressed on the Iraq War

1. We strongly oppose the Iraq war and its threat to the life and safety of the people of Iraq
2. We hope the social and political challenges in Iraq will be addressed in a peaceful way, not by using military force.
3. We urge the government and the National Assembly of Korea to support the human rights of those who are the victims of the Iraq war.
4. We recommend that the Korean government's approach to issues relating to Iraq be based on the principles of anti-war, peace, and human rights.

The above statements are opinions on the Iraq War publicized by National Human Rights Commission of Korea (NHRCK) on March 26, 2003. They were in response to Korean President Roh Moo-hyun's support for the Iraq War and his wish to send Korean forces to Iraq. However, questions were raised by the NHRCK over his moves to commit troops. The commission publicized the opinions as a part of fulfilling its role and responsibility as a national organization established to uphold the philosophy and values of the Constitution, which exists to protect people's rights to life and safety and to contribute to global peace. Furthermore, the commission highlighted worldwide criticism of the U.S. and the U.K. for starting the Iraq War, with a unilateral invasion that was not approved by UN Security Council, and that it was an anti-humanitarian threat that could cost thousands of lives.

Under such circumstances, it was unreasonable for anyone to support such a war or to encourage the dispatch of troops. So, no one could be justified in opposing the opinion of the commission. Thus, many fell in line with the Korean Government's stance in supporting the war, claiming that it furthered "national interests."

Controversy erupted after the commission expressed its opinions against the war, with the result that the controversy itself tended to overshadow the commission's humanitarian message. The commission was criticized for being a national organization that had taken a stance of opposition against the country's government and had divided people's opinions. Was this really the case? President Roh, at the center of the whole issue, had a more balanced view.

"A nation is a single entity. But its unity cannot be obtained by standardization and uniformity. We should admit that the human rights commission has every right to voice its opinions… This is exactly why the commission was created. It is a highly independent agency that does not belong to the executive branch. Expressing its views – contradictory or not - is also considered its unique work."

These remarks are part of what Roh had said at a meeting of senior advisors at the Blue House one day after the NHRCK expressed its views. Roh confirmed for the public record the status and role of the commission as an independent government organization based on Paris Principles●. The commission's expression of its opinions represents an opportunity to consider human rights and deliberate on the existence and status of the commission.

● The Paris Principles refer to the Principles Relating to the Status of National Institutions that were set at the 1st international workshop of national human rights organizations. The Paris Principles were international principles approved by the UN General Assembly on December 20, 1993 (resolution 48:134). The authority, responsibility, structure, and activities of national human rights organizations are included in these principles. They clearly state that the structure and competence of national human rights organizations must be granted by constitutions, or at least by law, so that such organizations can carry out their policies, research, education and promotion—for domestic and international purposes—on an independent basis. If organizations fail to meet the standards of the Paris Principles, they cannot hope to have legitimacy and credibility on the global stage.

Human rights are inalienable under any circumstances

Opposing the creation of the Anti-Terrorism Act

On November 25, 2001, the NHRCK opposed the government's Anti-Terrorism Act right after its launch. It voiced its opposition to the Speaker and to the Head of the Intelligence Committee of the National Assembly on November 30, 5 days after the act's creation. Back in November 23, NIS had already put forward a proposal to prevent terrorism and asked the National Assembly to discuss the matter.

The first hearing of the NHRCK about the anti-terrorism law was held on December 7 of 2001. On February 20, 2002, the commission submitted its opposition to the anti-terrorism act after collecting opinions from various organizations, including the Korean Constitution Society. Then, on April 4, Kim Chang-kuk, first chair of the NHRCK, personally conveyed the commission's objections to Speaker Lee Man-seop.

The Anti-Terrorism Act had been pushed forward on the back of vague fears generated immediately after the 9/11 attack in New York and prior to the 2002 Korea Japan World Cup competition. Major contents in the proposal submitted by NIS included creating anti-terror centers in charge of performing comprehensive terror-related tasks, as well as collecting immigration records, financial transaction records, and the communications of terrorist suspects to prevent or else rapidly respond to a terror threat.

Among the NHRCK's opinions were, first, that the definition of terrorist activities was too vague and this could lead to regulations, procedures and practices on a national level that violate human rights standards according to international human rights law. Second, the existing law enforcement agencies are sufficient in preventing or punishing terrorist attacks, contrary to the opinion of those who justify the bill by saying existing agencies are not able to respond appropriately. Third, there are insufficient grounds to claim that NIS cannot properly fight terrorism without commanding more special forces or creating special criminal codes such as Anti-Anti-Terrorism Act. Fourth, creating a separate anti-terror organization under the NIS goes against the principal of its democratic operation. In particular, it is undesirable for the agency to have authority over investigations and special rights to ask for the mobilization of military forces outside of their original functions.

The NHRCK once again voiced its opposition in November 2003, when a revision of the Anti-Terrorism Act came up, and asserted again that existing laws and institutions can prevent or punish terrorism. It stressed that the Anti-Terrorism Act infringes on principles of law, leaves a room for discrimination against foreigners, and creates the potential for NIS to abuse its power. This opposition was presented from the perspective of the commission's role and responsibility as the protector of basic human rights, even in the midst of conflicts and terrorist concerns.

The government and the National Assembly tried to enact bills for anti-terrorism, but opposition from the NHRCK and civic groups prevent them from being passed. Later, similar bills were introduced only to be stopped by the controversy over potential violations of human rights. The silver lining in this process is that some bills and review reports included details on what can prevent basic human rights violations. It is inevitable that the laws to be proposed in the future will have to take human rights into account.

In conclusion, the strong opposition and objections voiced by the NHRCK made it clear to all that the principle of human rights can no longer be compromised or sacrificed in the name of national interests.

"A hungry child knows no politics"

Recommendation to send humanitarian food aid to North Korea

Survival is a top priority in human rights and that is why the NHRCK recommended on September 30, 2008 that the Ministry of Unification should begin providing humanitarian food aid to North Korea. It also recommended taking all necessary steps to separate food aid from political issues, from global and domestic worries, and to ensure transparency in the process of food distribution.

The commission was concerned that the very survival of thousands of North Korean people was at risk if the North Korean food crisis went unaddressed. This was at a time when domestic and global relief organizations, including WFP, had been shipping food aid to the North since August of 2008, after reports that the food situation had become worse due to huge floods in 2006 and 2007 that affected food production, the suspension of food aid from outside, including from South Korea, the surge in global food prices, and the decrease in food to border areas in the North, which every year suffers from a shortage of 1.25 million tons of food.

The NHRCK's recommendations about the food crisis reiterated what it had already submitted in "Viewpoint of the NHRCK toward the human rights issues in North Korea" on December 11, 2006. In short, the NHRCK had sought to guarantee the basic rights of life of North Koreans by separating political issues from food aid. Of course, the issues threatening peace on the Korean Peninsula have to be dealt with as a priority as well. However, they should not be pursued at the exclusion of the survival rights of the North Korean people. While security is important, the commission stressed that from the perspective of human rights there was no more substantial, desperate, and important issue than that of human life itself.

The global community also recognized the need for more humanitarian aid. UN Special Rapporteur on human rights in North Korea, Vitit Muntarbhorn consistently urge for continuous humanitarian aid and for the transparent monitoring of distribution while he was reporting on the human rights situation in North Korea to U.N. On December 12, 2003, CESCR mentioned

establishing a mechanism that would ensure that vulnerable groups in North Korea had access to international food aid and were given priority in food programs. The Resolution on the Situation of Human Rights North Korea, adopted at the61stUN General Assembly of 2006, went one step further by saying in its preface, "We ask North Korea to allow international relief organizations to stay so that they can provide humanitarian aid in all the areas that need relief."

On October 29, 2011, two years after NHRCK's recommendations, the head of UNOCHA Valerie Amos issued an urgent petition once again calling for the international community to send food relief to North Korea. He said in the petition, "one in five children younger than 5 suffers from malnutrition, which is intolerable. Currently the EU and 15 countries have provided food aid for the North. The countries include Italy, Poland, Australia, Sweden, China, Brazil, India, Ireland, Liechtenstein, Luxembourg, Norway, Russia, South Africa, Swiss, and Finland, which provided a whopping $950,000. He added that the "UN secured only $74M which is only 30% of the target of $218M."

Executive director of WFP Catherine Bertini also issued a strong request to others to join in and send North Korea food aid. She added that South Korea would be able to avoid political complications and secure greater transparency through giving aid through international organizations like the WFP, though it would also be beneficial for the South to give aid directly to the North.

However, until now, the supply of food aid to North Korea has not been a matter of consideration at the government level at all. Now is the time to heed a resounding truth spoken by former president Ronald Reagan: "A hungry child knows no politics"

Improving human rights in North Korea

Comprehensive plans of action on a national level

The NHRCK submitted "Political recommendation to Improve Human Rights in North Korea," which appeared on October 24, 2011, in "Viewpoint of the NHRCK toward human rights in North Korea." Years earlier, on December 11, 2006, the commission had stated that North Korean human rights issues included the human rights of North Korean residents, North Korean refugees in South Korea and other countries, and human rights and humanitarian issues related to abductees and POWs. However, the NHRCK's new submission was a more systemic, substantive and clearer statement than the one of 2006 in terms of the universal concept of human rights. Included in the recommendation were comprehensive action plans to improve North Korea's human rights on the national level.

After conducting research on the "creation of mid- and long-term road maps to improve human rights in North Korea," the NHRCK sought to implement policies to improve North Korea's human rights record through recommendations to the government and National Assembly. In addition, it launched a four member special committee on human rights in North Korea, which conducted 11 discussions, held several public hearings, and hosted a meeting on human rights policies to gain the opinions and advice of experts in private and related agencies.

The 2011 recommendations contain three strategic challenges: first, improving human rights of North Korean residents; second, improving human rights of those who have left North Korea; third, addressing three pending issues on human rights regarding POWs, abductees, and separated families.

A. Means of improving human rights of North Korean residents.

a) Gathering, recording and preserving cases of human rights violations in North in a systemic manner.

b) Building legal and institutional infrastructures, such as "North Korean Human Rights Law," so that policies for human rights in North Korea can be efficiently implemented

c) Ensuring that education and promotion institutions raise awareness of North Korean human rights issues among the public

d) Securing access to information so that North Koreans themselves can change towards improving human rights

e) Operating a consultative body consisting of experts from the government and the private sector.

f) Cooperating with the global community to enhance North Korean human rights and provide humanitarian aid with the prerequisite of transparency in distribution

g) Coming up with measures to strengthen the government's foreign affairs efforts toward improving human rights

B. Improving human rights of those who have left North Korea includes assessing their situation, strengthening protective systems, securing their status under international laws, coming up with steps to streamline the processes of handling their personal belongings and their entry, understanding violations cases against babies born to North Korean women and foreign men, and establishing emergency measures in preparation for a massive exodus from the North.

Along with these, there is a need to raise social awareness of discriminations against North Koreans during their resettlement process, find ways to heal their psychological and physical trauma, and work out more practical programs that help their resettlement in South Korea. Given that females account for 70 to 80% of North Korean defectors, more attention is needed on policies relating to female defectors. In addition, more attention should be given to the development of long-term policies in preparation for unification.

C. POWs, abductees, and separated families are 3 so-called pending issues on human rights. These issues were initially created by the Korean War, during which the separation or abduction of individuals occurred, so this should be rapidly addressed as a national matter. Given the elderly status of the people involved, new approaches are required for rapid solutions from a humanitarian viewpoint and based on public consensus. For this purpose, it is proposed that an organization be created based on the Central Tracing Agency of the Red Cross and as well as an organization dedicated to inter-Korean issues.

A mountain to climb over

Recommendations to abolish the National Security Law

The commission's recommendation on abolishing the National Security Law after the law was reviewed from the perspective of human rights.

Firstly, in the Constitution, Articles 10 and 22 define the basic rights of people. Provision 2 of article 37 says that these basic rights can only be limited by the law if necessary, but even in such cases, the substance of those freedom and rights cannot be violated.

Second, International Human Rights Law. South Korea committed itself to International Human Rights Law on July 10, 1990, when the nation accepted the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights, which is in accordance with the philosophy of the Universal Declaration of Human Rights. So Korea must take the necessary steps to accept the policies of the United Nations Human Rights Committee (UNHRC) and implement them within the country. Provision 1 of article 6 in the Constitution says that agreement and international regulations signed and declared by the constitution are as binding as domestic laws. This is also the case with the protocol on the right to freedom.

On July 29, 1992, the UNHRC assessed the initial report on civil and political rights and recommended abolishing the national security laws. On November 21, 1995, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Avid Hussain, also recommended that Korea abolish its national security laws in his report on a visit to the country. On November 1, 1999, the UNHRC again recommended abrogating Korea's national security laws after reviewing a 2nd report on civil and political rights.

On April 28, 2004, the NHRCK recommended to the judiciary department and the National Assembly that the National Security Law should be abolished. This was the conclusion after it had created a task force of outside experts and conducted systemic in-depth reviews in 2003, following the submission of 40 petitions asking for the abolition of the security law since the commission was founded in 2001.

The NHRCK pointed out that the National Security Law had its basis in laws that were established under Japanese rule and that it also had legitimacy problems in that the question of abolishing the law was even an issue in1953 when it was created. "The current national security law is an unjust law that severely infringes on human rights and the freedom of the people. Indeed, the call of our time is to abolish it," the commission said. This decision was backed by analyses that showed that the existing penal codes could fill any gap left after removing the National Security Law and that a partial revision of the law would not be sufficient to fix its problems.

For example, charges of treason and insurrection can be comfortably handled by anti-state organizations. The commission also judged that Article 10 about the "crime of failure to notify" and article 7 about "praise and encouragement of the North," which were representative in the appropriate articles, not only went against the principle of legality but violated the freedom of expression and conscience. In addition, the commission pointed out contradictory legal systems in situations where the National Security Law and the Inter-Korea Exchange and Cooperation Act applied to the same areas. The commission agreed with the current trend of accepting North Korea as a country in reality, rather than as an anti-state entity.

A bill to abolish and a bill to revise the National Security Law were enacted during the 16th national assembly. But while the then ruling party tried to abolish the law, the opposition at the time was quite strong. Extreme confrontations based on ideological differences occurred, during which the NHRCK often became a target. Typically, discussions on the abolition of the law usually cease when inter-Korean relations turn sour and feelings run high over security risks. However, what is clear is that the National Security Law is a mountain of a problem from the perspective of human rights. We hope that decisions by the commission will play a role in climbing and conquering this problem in the near future.

Ending the death penalty

Expressing views on the abolition of capital punishment

Korea is practically a country that has abolished capital punishment, but technically the death penalty is still a possibility.

In April 2005, the NHRCK expressed its opinion to the Speaker of the National Assembly to the effect that capital punishment violates the right to life, so it must be abolished. This was the result of the committee's assessment of its collected opinions and findings on April 6, 2005, on the abolition of capital punishment, which were guided by the philosophy of the Constitution and the stipulations in article 10 (human dignity and the right to pursue value and happiness) as well as article 37, provision 2 (proportionality principle).

In the commission's view, "Capital punishment is unconstitutional. It violates the rights to human dignity and pursuit of happiness in a country that has a responsibility to guarantee the right to life of its people…Execution, by means of a death penalty, is not just cruel but violates the right to conscience of those who conduct it, including judges, prosecutors, and government employees for correction."

Such a decision stems from analyses of domestic and global trends on capital punishment, from regarding the abolishment of capital punishment as one of the ten key pending issues in human rights, and from conducting research on people's awareness of it.

As for measures that would follow its abolition, there are several options such as reduced time, life imprisonment without parole, imprisonment for an indefinite period, and exceptional capital punishment in time of war. However, the legislature branch will make a decision.

In 2004, 175 law makers from both sides of the debate, including Yoo In-tae from the Uri Party, proposed a bill that requires replacing the death penalty with life imprisonment without parole, adding momentum to the pending bill on abolishing capital punishment. However, this bill only has meaning as the first ever official submission on whether to maintain or to abolish the death penalty.

The NHRCK has always maintained a strong position on the abolition of capital punishment, as shown by its urging the government to support the abolition in the up or down vote of the 2007 UN General Assembly; its submission to the constitutional court on the case of whether the death penalty was constitutional or not in August of 2009; and its opinions expressed on partial revision of the penal code in 2011. Along with these, the NHRCK has continuously conducted activities to influence social opinions, such as the national event to congratulate Korea on its becoming a de facto death penalty-free country on December 24, 2007; the comment made to welcome reduced sentences for 4 criminals on death row in January of 2008; and its opposition to those supporting execution in January, 2009, and March, 2010.

Under the annual report on Death Sentences and Executions in 2010, released in March 28, 2011, by Amnesty International, our country was grouped with the de-facto death penalty-free nations because there has been no capital punishment since 1998. On the other hand, four people were sentenced to death in 2010, making a total of 61 inmates on death row. Also, at the 18th National Assembly, the Liberty Forward Party representative Park Sun-young in 2008; lawmaker Kim Boo-kyum from Democratic Party in 2009; and Grand National Party representative Joo Sung-young in October 2011 enacted bills to abolish the death penalty, which are currently pending in the Legislative and Judiciary Committee.

However, an awkward situation remains. There is a system for capital punishment in place but there are never any executions. There are continuing efforts to abolish the unused system but old discussions just go on and on.

Six years after the commission decided to recommend the abolition of capital punishment, the ethical dilemma has not been settled, and the state can still execute individuals in the name of the public interest. This is so even though capital punishment is clearly a dangerous penalty that violates the principle of a right to life. Its effects as a crime deterrent are unproven and there remains the possibility of misjudgment. We do not see that it is possible for capital punishment system and human rights to exist together.

Penalty Legislation without Legitimacy

Recommendation for the Abolition of Social Protection Act and a Substitution for the Medical Treatment and Custody Act

When giving an example of how a regime without legitimacy could violate or even destroy human rights, the Social Protection Act would come first. The Social Protection Act was a care and custody law enacted in the course of a new junta rising to power in Korea in 1980. The law was introduced by the junta based on Martial Law at the time, number 13, in order to isolate those subject to Three Pure Educations. Its purpose was essentially to isolate repeat and habitual offenders from society. Prisoners with a certain criminal background and at risk of recidivism were subject to care and custody, while those deemed mentally or physically handicapped were subject to medical treatment and custody. And those who had been subject to care and custody but released on parole, plus those subject to medical treatment and custody who had finished their treatment, were subject to probation. However, this law had no legitimacy from the beginning due to the way it was enacted. It was passed, not by the National Assembly, but by the National Integrity Legislative Council. But worst of all, the law violates human rights and is contrary to basic legal rationale.

First of all, the care and custody law violates Article 13 of the Constitution that prohibits a double jeopardy under criminal law and prohibits imposing care and custody restrictions in addition to extra punishments already covered by criminal law for repeat and habitual offenders. In addition, a care and custody law is against the legal process and the right to a fair trial under paragraph 1, Article 12 and Article 27 of the Constitution. While Article 5 of the Social Protection Act gives judges authority to determine whether there is the risk of recidivism, the case of care and custody law effectively allows a Social Protection Committee, entrusted and appointed by the Minister of Justice, to screen and decide what to do. This violates the prohibition of excessive legislation described in paragraph 2, Article 37 of the Constitution. Nonetheless, in the past, care and custody was described in the same way as general sentences and was enforced in the same manner with imprisonment.

Against this backdrop in 2003, the NHRCK spotlighted the Social Protection Act as a major issue with regard to human rights and stated that it should be addressed. The commission conducted a variety of research, study, and debates by way of a task force joined by external experts. The result was clear. The Social Protection Act proved to be a socially unenlightened piece of legislation that failed to fulfill the intention of the new junta. In fact, between 70% and 80% of inmates were no more than property offenders with little to do with the original purpose of "social defense." The recidivism rate of released prisoners within the first three years amounted to 40%, making the slogan "the resocialization of inmates" an empty phrase.

On January 12, 2004, the NHRCK recommended abolishing all of the major systems, such as care and custody, treatment and custody, probation, and so on under the Social Protection Act and proposed instead a bill to treat offenders suffering from a mental illness in sheltered care facilities. Their treatment should also be included as part of their prison term.

In April 2005, after the recommendation made by the NHRCK, the Social Protection Act was finally abolished. Subsequently, the Treatment and Custody Act was enacted and has been enforced. The issue of care and custody, however, is not over. Laws that abolished the Social Protection Act stated that "those decisions on care and custody made before the enforcement of this law shall be effective, and probation based on such decisions shall be enforced based on the Social Protection Act." Because of this, as of October 2009, the number of inmates still subject to care and custody in the third Cheongsong prison stood at77. In addition, it is reported that the number of prisoners who had been sentenced to both imprisonment and care and custody before the year 2005 was a total of 187, including 11 prisoners serving a life sentence.

The last person will not have finished his term of care and custody until 2035. This in effect means the application of a law repealed though a social consensus will actually remain effective for a further 30 years. In fact, thirty years will be longer than the period spanning the introduction and abolition of the Social Protection Act. Thus, the Social Protection Act has cast a long shadow into the future and remains controversial.

Freedom from violations of conscience

Recommendation for the Acceptance of Conscientious Objectors and an Alternative to Military Service

Can obligatory military service and freedom of conscience exist in harmony? The number of those who have served a prison term for refusing military service for reasons of conscience since 1950 has exceeded 20,000. As of April 2011, some 900 conscientious objectors were in prison.

Since its foundation, the NHRCK has received a total of nine petitions to support conscientious objections to military service. Those petitions, for example, included a request for the introduction of an alternative service to save conscientious objectors from prison and a request for an amicus curiae (friend of the court) brief on a case about the constitutionality of the military service law being heard in the Constitutional Court. On October 18, 2004, Mr. Yoon, 24, and Mr. Choi, 23, (given names withheld), both of whom were Jehovah's Witnesses, submitted personal requests to the United Nations Human Rights Council, asking that it direct a request to the Korean Government to come up with a solution to the issue of conscientious objection, since some 700 conscientious objectors being jailed each year. The next year, in 2005, more than a thousand young men would beat the risk of receiving a prison term due to a ruling by the Constitutional Court in August 2004 that put military obligations above freedom of conscience.

Against this backdrop, the NHRCK began an effort to find a solution that would allow a harmonious existence between military obligations and the freedom of conscience. On December 26, 2005, the Council recommended that both the Chairman of the National Assembly and the Minister of National Defense accept conscientious objection to military service and introduce an alternative service.

First, the Council reached a conclusion that conscientious objection to military service constitutes a fundamental human right. Both Article 19 of the Constitution and Article 18 of the International Convention on Civil and Political Rights stipulate that freedom of conscience, along with freedom of religion and academic and artistic freedom, constitute freedom of thought. It is a fundamental right and the basis for freedom of mind, and as such it is a foundation of human dignity. It is an absolute right that shall not be withheld even if the country has a state of emergency. An objection to war and killing others based on one's religious beliefs, worldview, or values is based on an ethical decision and a desire not to go against one's conscience. Allowing them a possibility to abide by such a decision is nothing other than ensuring freedom of conscience. In this context, the freedom not to be forced to violate one's conscience, that is, the freedom to have conscientious objection to military service, is within the scope of the protection of freedom of conscience.

At present, however, the right to conscientious objection to military service in Korea is not stipulated in written form, and there is no choice but to either accept a criminal prosecution or undertake military service. In this context, the NHRCK recommended the introduction of an alternative service as a way of harmonizing freedom of conscience under the Constitution and obligatory military service. As for the issue some people raised about maintaining military security, the conclusion was that this should not serve as a basis for deciding against the introduction of an alternative service, given that Taiwan introduced the choice of alternative service at a time when it was under a security threat, plus the Ministry of National Defense has planned to reduce military force numbers anyway.

Once the right to conscientious objection to military service is accepted and an alternative service is introduced, an organization is needed to fairly assess cases of conscientious objection. In addition, if the period of alternative service is longer than that of active duty, such as in the initial stages of the new system's introduction, the period of service will need to be gradually reduced in accordance with international guidelines.

The purpose of the NHRCK is to promote human rights and find a reasonable alternative to military service in the spirit of the Constitution and international human rights standards. The UN has repeatedly stated that conscientious objection to military service is a legitimate exercise of rights and has strongly requested the introduction of an alternative service in Korea. It is important to note that conscientious objectors are not trying to evade their duty towards national defense. They would just rather fulfill that duty in a different way. There no longer seems to be any excuse for not introducing an alternative service in Korea.

Why a National Human Rights Commission for Labor Issues?

Stance on legislation related to temporary employees

"Why does the National Human Rights Commission talk about labor issues?"

This was a question the media asked after the NHRCK announced its position on two controversial bills regarding temporary workers on April 14, 2005. It was at a time when Korean society still did not recognize the right to labor as part of human rights. But the commission's views on the bills—the Act on the Protection, etc. of Fixed-Term and Part-Time Workers (hereinafter a bill for fixed-term workers) and the Act on the Protection, etc. of Temporary Agency Workers (hereinafter a bill for agency workers)—helped spread the concept of labor rights throughout Korean society.

At the time, the NHRCK had been studying serious violations of the labor rights of non-regular workers, including instability of employment, severe discrimination, constraints against exercising labor's three primary rights, and so on. It concluded that the time had come to properly address the protection of labor rights for non-regular workers and to eliminate discrimination against them. It then proceeded to compile the relevant policies. Eventually, on November 8, 2004, the government asked the commission to review a bill on non-regular workers, which led the commission to announce its position on the matter.

The NHRCK was positive about the government's intention to improve human rights conditions with a new bill, which included a ban on discrimination against temporary workers. However, the commission judged that the government's bill was not enough to reduce the number of temporary workers—over half of the entire workforce—and that it was not enough to protect labor rights and eliminate discrimination against temporary workers. So the commission recommended setting up restrictions that would allow the employment of more fixed-term workers under certain terms in order to curb the proliferation of temporary workers. The commission also recommended a limit to the period whereby employment is classified as fixed-term to prevent abuses and a written stipulation on the principle of equal pay for equal work.

With regard to amendments to the Agency Workers Act, the commission recommended maintaining measures to prevent abuse if the services for dispatched workers were expanded. The commission also recommended keeping the Article classification of "direct employment" to describe when an employer has an agency worker work over the allowed period and ensuring the three primary rights of labor for agency workers.

The NHRCK's position reflects its commitment to ensuring that temporary employment should not become a wide-spread standard mode of employment and discrimination should not be allowed under any circumstances. The commission also advocates guidelines on labor rights, such as those ensuring labor's three primary rights.

Adhering to the principle of labor rights that sees temporary employment as a form of exceptional and limited employment, the commission announced on June 10, 2009, that it is against the bill of the Ministry of Employment and Labor to extend the two-year period of temporary employment. The extension of the period of temporary employment would hinder the momentum created by the temporary workers act to change the status of some workers from temporary to regular. It would also increase the number of temporary workers doing the jobs of regular workers.

As of November 2011, the number of non-regular, casual workers—whose payrolls are about half of those of regular workers—reached six million. This means one out of every three workers is a non-regular worker, and that clearly demonstrates that the issue of temporary work is beyond being just a personal labor-management concern or a problem that only affects a small segment of the community, such as the socially disadvantaged. Temporary employment is an issue affecting all of society. If Korean society had paid more attention to early warnings about this from the NHRCK, based on principles of limited employment and the prohibition of discrimination with regard to temporary employment, the situation would be much different now. Nonetheless, now is the time for the community to follow practices in accordance to the principle of labor rights.

Sport is a Human Right

Recommendations on guidelines for human rights in sports

"We hereby announce that achieving the kind of sports described in the following is the dream of our society to pursue: the kind of sports in which no outmoded human rights violation exists, the kind of sports in which anyone can participate and express themselves, the kind of sports that help people express themselves through movement, that facilitate communications with others, and that promote richness in life."

This is part of the Charter of Human Rights in Sport created by the NHRCK. On December 6, 2010, the commission approved recommendations for guidelines on human rights in sports. The guidelines are as follows: to help promote the protection of human rights in sport; to provide a normative standard for the continuous and systematic progress of related policies; and to support sports-related groups in creating human rights-friendly sporting environments. The guidelines on human rights in sports is divided into four categories, the charter, the prevention of violence, the prevention of sexual violence, and the protection of the educational rights. The NHRCK has recommended to the Minister of Education, Science and Technology, the Minister of Culture, Sports and Tourism, superintendents of education of each city and province, and the chairman of the Korea Sports Council that they adopt and implement the commission's guidelines and make manuals with detailed instructions for implementing the guidelines in sports competitions.

As early as 2007, the commission announced its Recommendation for Policies for Protecting and Promoting Human Rights of Student Athletes. In this it encourages changing current sport policy from an elite-focused policy to a human rights-friendly policy and coming up with measures to protect the human rights of student athletes.

Guidelines for the protection and promotion of sport rights is the result of the promotion of human rights in sports begun by the commission in 2006. They declare that sport is a human right in itself because sport is an activity by which one can express oneself and communicate with others through the use of one's body. They also emphasized the necessity of a set of governmental policies with regard to human rights in sports.

The Guidelines for the Prevention of Violence or Sexual Violence provide a basic framework for the necessary standards in policy making and for measures to prevent violence or sexual violence on a sports field.

Guidelines for the protection of educational rights emphasizes the responsibilities of the government and educational institutions in ensuring that student athletes receive a holistic education rather than simply learning about physical exercise. In addition, the guidelines states that a teacher's status should not be based solely by the result of sports matches. This principle lies at the core of the protection of the educational rights of student athletes.

The guidelines for the three different areas provide standards and recommendations, including a Code of Conduct, the need to set up preventive policies, preventive education at the personal level, incident procedures, policy implementation monitoring and evaluation, and so on. They are designed to help policy makers create standards and instructions to prevent human rights violations in sports.

The NHRCK hopes to see the day when the Charter of Human Rights in Sport takes root so that everyone can enjoy sports, receive rewards for their endeavor, and fulfill their human potential.

"There are People in There!"

Recommendations for Improving the Human Rights of Residents in Facilities Subject to Forced Demolition

"There are people in there!" cried eyewitnesses on January 20, 2009, when a tragic fire engulfed part of a Yongsan redevelopment site and people lost their lives. The Yongsan tragedy was an example of the worst situation that can develop as a result of a forced demolition. Later in March that year, the NHRCK set up basic principles to protect the human rights of residents living in facilities subject to forced demolition and presented these principles to the Minister of Land, Transport and Maritime Affairs, the Minister of Public Administration and Security, and the chief of the National Police Agency.

Forced demolition is an action that comprehensively violates basic human rights as well as the right to decent living standards because it affects political, economic and social rights. In other words, forced demolition can violate not just housing rights, but also a resident's Constitutional right to maintain a residence and to move only when desiring to move. In addition, it can also violate the educational rights of students who are subject to mandatory school transfers because they have to move. And it can violate one's right to labor by making it more difficult to work.

The recognition of serious violations of human rights and international human rights standards can prevent problems associated with forced demolitions. The Maastricht Guideline on Violations of Economic, Social and Cultural Rights (1997) stipulates that countries shall take every measure to prevent forced evictions without proper substitute housing and must undertake development to fulfill their responsibilities as defined by the social rights covenant. The UN Committee on Economic, Social and Cultural Rights expressed regret about the fact that the Korean Government's reports on forced demolitions (1995, 2001) had failed to include the number of victims of the forced demolitions and had failed to give accurate information on the specific circumstances under which the forced evictions had taken place. The UN Committee recommended that the Korean Government should stop forced demolitions, in the absence of the proper provision of housing, and that it should provide decent temporary housing to victims of forced evictions through development undertaken by private businesses.

The NHRCK's specifications on forced demolition include the following. Forced demolition shall only occur after every resident has been evicted. Ample chances for negotiation shall be provided. Reasonable compensation shall be provided. Advanced notice shall be given well before the time of eviction. Civil servants or their representatives shall be present when forced demolitions take place and shall manage the demolition procedure. Forced evictions at unreasonable times such as in the winter or at night shall be banned. Reasonable and effective measures to save the victims of forced demolitions shall be undertaken.

Some might wonder why such common sense principles had to be voiced by the NHRCK. But unfortunately, these internationally accepted principles are being ignored in Korean society.

The NHRCK recommended that the Minister of Land, Transport and Maritime Affairs amend the Act on the Maintenance and Improvement of Urban Areas and Dwelling Conditions for Residents and the Act on the Acquisition of Land, etc., for Public Works and the Compensation. It also recommended that the Minister of Public Administration and Security set up rules to prevent and prohibit violence in the course of executing forced demolitions and to punish anyone who failed to observe these regulations. Finally, it recommended that the chief of the National Police Agency put more effort in to strengthening management and supervision in order to deal with illegal demolition companies and the violence perpetrated by the employees of such companies.

While forced demolition is practiced by the private sector, the government is responsible for protecting its people from unjust forced demolitions and unscrupulous companies. If it fails to take the proper measures to prevent forced evictions, it is tantamount to failing to fulfill its obligations to protect its citizens and ensure a basic right to housing. This also reflects a failure as a nation because forced demolitions are rare or nonexistent in other developed countries where it is considered wrong and reprehensible.

Recommendations for a Plan of National Human Rights

If a country has an organization based on the Paris Principles and established national human rights policies, then it could rightly be said to have a basic framework to protect and promote the human rights of its people. The National Action Plan for the Promotion and Protection of Human Rights (hereinafter referred to as the NAP) is a blueprint for national human rights policy and a comprehensive national human rights plan.

The Vienna Declaration and Programme of Action, which were accepted unanimously at the World Conference on Human Rights held in Vienna in 1993, represent a milestone in the history of human rights. The Declaration recommends that each country establish a human rights organization and a basic plan for its national human rights policy-making. In the following years, it has become a global trend for many countries to form human rights organizations and establish their own basic plans for human rights. After Australia initiated its plan in 1993, many countries followed suit. By May 2005, some twenty countries had established their own plans, and each year we have seen others join them. On May 21, 2001, the United Nations Committee on Economic, Social and Cultural Rights recommended that the Korean Government set up a basic plan for its national human rights policy-making and report on the result by June 30, 2006.

Soon after being established, the NHRCK began supporting a NAP. It explained the necessity of establishing a NAP to the presidential transition committee in January 2003 and again in April of that year and emphasized its necessity to the National Assembly through a special report. In October 2003, in response to the NHRCK's recommendations, the Korean government agreed to establish the country's NAP. Accordingly, the NHRCK drew up a draft recommendation over the period of three years and submitted it to the government in January 2006. To promote human rights in Korea, the commission proposed key initiatives as follows: ensure that the human rights of socially disadvantaged people and minorities are protected; enact laws to establish infrastructure covering social rights and the right to freedom; and improve protection systems. The NAP took shape as a five-year plan from 2007 to 2011 and was divided into three major sections—namely, a section containing a summary and implementation methods, a section on the protection of human rights of socially disadvantaged people and minorities, and a section on the establishment of infrastructure to promote human rights.

In the course of drawing up its recommendations, the NHRCK conducted a survey and held discussions with governmental departments and civil groups, while keeping in mind the standards for universal human rights. Once the Commission had presented its recommendations to the government, it was expected that the government would select a supervisory ministry for the establishment of Korea's NAP. After receiving the NHRCK's recommendations, the government appointed the Ministry of Justice as the supervisory ministry on May 22, 2007, and confirmed the NAP based on the commission's recommendations.

However, the government has since then largely reneged on keeping to the commission's original recommendations. In response, the NHRCK has pointed out that the government's NAP does not provide forward-looking principles to protect human rights and nor has it a schedule other than a mid-to-long term plan over five years. The major issues have ground to a standstill, such as the National Security Law, capital punishment, the acceptance of conscientious objections to military service and the introduction of an alternative service. Moreover, while the commission's recommendations have focused on protecting the human rights of socially disadvantaged people and minorities, it has not included other issues of discrimination, such as insurance for the disabled, employment discrimination in the private sector, a health care system for indigent children, and human rights protection for inmates and sexual minorities.

However, against all odds, it was significant that the government confirmed a comprehensive nationwide human rights policy plan for improving laws, systems, and practices with regard to human rights and presented its blueprint of national human rights policy at home and abroad.

The year 2011 was the final year of the five-year period for establishing the NAP, as set up by the government. So, now is the time for an updated, second NAP. Accordingly, the NHRCK has been preparing a recommendation for a second NAP. The first NAP covered core topics that controversially affected the very nature and history of unresolved issues in our society. Based on the achievements and limitations of the first NAP, the commission hopes the second NAP will cover human rights issues that have now become a part of the vocabulary of everyday life.

2

State power on the precipice

The State's ethical responsibilities and obligations concerning the use of its powers

Excessive crackdown on farmers staging a street demonstration in Yeouido, Seoul

"My fellow citizens, the National Human Rights Commission (NHRCK) has announced that the death of two people, that is, Jeon Yong-cheol and Hong Deok-pyo, during a street demonstration was due to the excessive use of force by police. The police have accepted the result of the NHRCK's investigation. This is deeply regrettable. I humbly apologize to you and to the bereaved families and would like to express my deepest condolences," said President Roh Moo-hyun on December 27, 2005.

President Rohs remarks came after the NHRCK announced the result of its investigation into the case raised by the Korean Farmers' League (KFL) concerning the police crackdown on farmers' street demonstration in Yeouido, Seoul a month before. The NHRCK's 10-member investigation team carried out a comprehensive investigation, which included checking written statements made by witnesses, examining the on-spot investigation by police, listening to eyewitness accounts, and collecting materials from press coverage, onsite surveys, and verifications. According to the result of the investigation, Jeon was pushed by the police troops carrying shields and fell to the ground. In addition to receiving a head injury, he was beaten by police wielding batons. As for Hong, he tried to run away to avoid the police confrontation, but was beaten by police shields in the face and on the back of the neck. The use of excessive force by police was confirmed by various materials.

First of all, the most serious problem in this case was the police force's violation of the rules of conduct concerning a crackdown on street demonstrations. The rules stipulate that police should use a minimum of force to disperse demonstrators, even if they are engaged in an illegal assembly, and they should not use shields to attack people. Also, according to the regulations, when the police use batons, they are supposed to focus on the lower body. However, the images taken on the day show that police ignored these rules. They used the shields and batons improperly to attack demonstrators. They kicked people who tried to run away from the scene or fell to the ground. Some of police even attacked women and senior citizens who were waiting for first-aid treatment after having been injured. The rules of conduct stipulate that police should ask leaders of the assembly at least three times to call an end to the demonstration and give an order to demonstrators to disperse before using any force or making any arrests. This rule was not observed at all. In the process of arresting demonstrators, police used force indiscriminately and potentially caused a high number of injuries. The detrimental outcome for police that day was that 218 troops were injured (33 of them seriously) and police buses were burned (estimated to be worth 95 million won). The outcome for demonstrators was that anywhere from 113, according to the police, to 600, according to the demonstrators were injured and two farmers lost their lives.

The NHRCK judged that the deaths of the two farmers were caused by the excessive use of police force during the crackdown and asked prosecutors to investigate the specific riot police squad involved. It also asked the National Police Commissioner to take punitive measures against the police officers and police officials responsible for the death of the demonstrators, as follows: warning against the Commissioner, the Deputy Commissioner, and the Chief of the Public Security Department of the Seoul Metropolitan Police Agency; reprimand against the Chief of the Mobile Regiment of the agency; and various punishments against the commanders and troops who used excessive force against demonstrators.

The National Police Commissioner resigned and President Roh Moo-hyun officially apologized to the public. In his apology, President Roh said, "Such an unfortunate incident would not have happened if the demonstrators themselves had not used violence, including wielding steel pipes," but he also made it clear that state powers should operate with a strong sense of what their ethical responsibilities and obligations are.

He said, "State power is a special power. The use of state power must be strictly controlled so that it is always exercised with care and restraint, otherwise its abuse can have serious repercussions for the public. Responsibilities related to state power should be carried out very carefully, much more carefully than responsibilities related to ordinary people."

Thus, the President stressed that state power should be exercised impartially and fairly according to the needs of a just society.

Excessive use of police power causes many problems

Recommendations concerning candle-lit demonstrations

Candle-lit protest assemblies in the past were mostly held at night. People held such assemblies under the guise of a cultural celebration to avoid being arrested under The Assembly and Demonstration Act. Protests were held peacefully as "cultural festivities." However, on September 24, 2009, the Constitutional Court decided that such assemblies held at night were unconstitutional.

Between May and July of 2008, candle-lit assemblies were held in major cities nationwide, including in Seoul, to protest the Government's decision to fully allow the importation of American beef. After these events, more than 100 complaints about police infringement of human rights were submitted to the NHRCK. On July 11, 2008, the NHRCK decided to launch an investigation. The decision was based on the judgment that it was necessary to look into matters other than the complaints, including the fact that a large number of people had been injured during a police crackdown. The NHRCK's investigation, however, did not cover every issue concerning the candle-lit assemblies and did not look into all of the listed human rights infringements.

Candle-lit assemblies generally take three different forms: first, those carried out peacefully and without confrontation; second, those in which police are injured and police equipment is damaged by demonstrators; and third, those in which many people are injured by the use of excessive police force after provocation or else the use of excessive force without provocation. For its investigation, the NHRCK focused on the third type of protest under The National Human Rights Commission Act. Injuries and equipment damage incurred by the police during the second form of demonstration stated above are dealt with according to criminal act procedures or through a lawsuit under the Civil Act. Cases of human rights infringements among civilians or injury to civilians themselves during candle-lit assemblies were not the subject of investigation by the NHRCK.

According to the NHRCK's investigation, there were three types of human rights infringements by police; namely, the excessive force used against demonstrators and the blocking of pedestrian freedoms; the forcing of arrested demonstrators to write letters of apology; and the failure to attach identification badges. Excessive use of force can be divided into different kinds of attacks; excessive use of equipment; uncontrolled throwing of objects and severe acts of violence. Leading cases of excessive attacks included violence against retreating demonstrators, onlookers, those photographing the action, those trying to caution against the police's use of violence, and those who fell down on the ground. Attacks were sometimes against women, children, and medical volunteers, etc. The police used their shields, clubs, water spray guns, and fire extinguishers in violation of regulations. As for "forcing arrested demonstrators to write letters of apology," it appears that the police did not "force" them but rather told young demonstrators under arrest that they had better write a letter of apology. This is a possible infringement of freedom of conscience by imposing a psychological burden on those arrested. Some police troops purposely covered their name tags with black adhesive tape, so that they could not be identified while using excessive force.

Accordingly, the NHRCK recommended that the Minister of Public Administration and Security issue a warning against the National Police Commissioner concerning the injuries demonstrators received because of excessive police force. The NHRCK also recommended to the National Police Commissioner that before anything else police officers should observe the "principle of defense in keeping public order," so that a repetition of human rights infringements can be avoided. The NHRCK recommended that the chiefs of the relevant departments of the Seoul Metropolitan Police Agency be punished over the problems caused by the crackdown operation. Other recommendations made by the NHRCK to the National Police Commissioner included not placing restrictions on pedestrian traffic not associated with demonstrations; setting up legal regulations for the use of water spray guns against demonstrators; and prohibiting the use of fire extinguishers against demonstrators. The NHRCK also recommended putting an end to the practice of making those arrested under The Assembly and Demonstration Act write a letter of self-statement (also called a letter of apology) and making it a requirement that riot police show clear identification badges on their uniforms at all times.

Some people criticized the NHRCK's recommendations, saying that they were biased. However, it should be pointed out that the NHRCK's recommendations were all made according to the principles of legitimate procedure, the principle of no excessiveness and the principle of police-related proportion. These principles are stated in the country's Constitution and were used to determine whether the police had exercised their state power in a lawful manner or had gone beyond the guidelines stipulated by The National Human Rights Commission Act.

Principles of legitimate procedure: no excessive force and police-related proportion

The three said principles used for judging human rights infringements by police against protesters at candle-lit assemblies are standard principles applied to assessing the legitimacy and propriety of the use of police powers. The principle of legitimate procedure, which is applied to all acts of State, stipulates that the exercising of state power, including toward a criminal suspect, should not violate the principle of proportion or infringe on basic personal freedoms, even when it is carried out under the law. This is a view established by the country's Constitution scholars and Constitutional Court.

The principles of "no excessive force" and "the police-related proportion" stipulate that a balanced relationship should exist between the private good and the public good in the course of police actions. They also stipulate that the exercising of the police power and the measures taken to enforce the law should be the minimum necessary for accomplishing that purpose. This is plainly stated in The Act on the Performance of Duties by Police, Article 1, Paragraph 2: "The authority of a police officer prescribed by this Act shall be limited to a minimum degree necessary for the officer to perform his duties and shall not be abused." Thus, if riot police cause injuries to demonstrators with the use of force in a situation not regarded as legitimate self-defense, they are in violation of this principle. Also, the abuse of state powers is prohibited by domestic laws that embody the principle of the police-related proportion and by regulations concerning the policing of assemblies and the use of police equipment (i.e. the relevant Presidential Decree on the Criteria of the Use of Police Equipment and the National Police Agency's Police Equipment Management Rules). The relevant directives and guidelines internally set by the police have no legal binding force, but can serve as reference points for judging the required minimum for the exercising of state power.

International standards can also serve as a reference for judging the required minimum for the application of state power, as they take the form of agreements made by multiple countries, although they too have no legal binding force. The relevant international norms include The Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly on December 17, 1979, and The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders on September 7, 1990. Clauses of The International Covenant on Civil and Political Rights (ICCPR), which is an international agreement on the best methods in law enactment and execution, also serve as important points of reference. In general, core human rights principles concerning the use of force are proportionality, legitimacy, responsibility, and inevitability (Human Rights & Law Enforcement: A Manual on Human Rights Training for the Police published by the Office of UN High Commissioner on Human Rights, 1997, pp.84-86).

Despite the existence of such criteria and principles, state power still commits abuses of power, as revealed by the violent events at candle-lit assemblies. The police are often compelled to use force to maintain public peace and order. But how they exercise that force has an enormous impact on the quality of life of not only individuals, but society as a whole, too. It is for this reason that police must exercise state power very discreetly and diligently according to legitimate procedures, within their proper scope and with full respect to citizen's rights. The investigation of the improper uses of force at candle-lit assemblies should serve as reminder for us to rigorously adhere to these principles and criteria at all times.

Rights of minorities are a cornerstone of democracy

Opinions expressed concerning amendment to The Assembly and Demonstration Act

Freedom of assembly is everyone's basic right, as stated in Article 21 of the country's Constitution. The term "assembly" includes demonstrations and protest marches. Assemblies held indoors/outdoors, at night/during the day, or in a closed/open-door session all should be protected under the freedom of assembly. The freedom of assembly is also guaranteed by international human rights standards, such as the Universal Declaration of Human Rights, Article 29; the International Covenant on Civil and Political Rights, Article 21; the European Convention on Human Rights (ECHR), Article 11, and so on.

Despite this country's Constitution and international standards guaranteeing a freedom of assembly, this country has laws that limit such freedoms, such as The Assembly and Demonstration Act, The Criminal Act, and The National Security Act. Experts have criticized The Assembly and Demonstration Act, in particular, for having an excessive number of clauses that limit freedom of assembly, thus infringing on people's basic rights. A similar thing can be said of the amendment to The Assembly and Demonstration Act, which was passed by the Public Administration and Security Committee of the National Assembly on November 19, 2003. Ten days later when the amendment bill was about to be submitted to the Judiciary Committee of the National Assembly, the NHRCK expressed its opposition to some of the clauses in the amendment regarding principles of definiteness; no excessive force; the theory of balancing interests; the interpretation of the clear and present danger stated in the country's Constitution; and international covenants.

The opinions expressed by the NHRCK at that time were the following: □ opposition to the new requirement for the submission of a report on a planned assembly within a period between 360 hours (or 15 days) and 48 hours in advance, which is allegedly to prevent long-lasting assemblies; □ opposition to the newly inserted clause that stipulates withdrawal of the approval of an assembly when the leaders of the assembly use violence, and the banning of their holding any other assemblies of a similar nature; □ clarification of amendment concerning places where assemblies are not allowed, and □ setting the criteria for noise levels (e.g. from megaphones) not allowed in public places by law, in the event of that such a stipulation will be inserted into the amendment.

The NHRCK has continued to make efforts to expand freedoms of assembly and demonstration. Leading examples include these: Recommendation of a more discreet execution of state powers, after thorough investigations confirmed the excessive use of force by police at an assembly held in Buan-gun, Jeollabuk-do in February 2005 to oppose the installation of a nuclear waste disposal site; an assembly held in Yeouido, Seoul, in December to oppose the importing of foreign rice in 2005; and an assembly held by POSCO's labor union in November 2006. In January 2008, the NHRCK also made a recommendation on an improvement to the law concerning prohibited assemblies and measures taken prior to the interception of assemblies. The NHRCK made a recommendation to the National Assembly Speaker to abolish a clause in the law concerning the prohibition of assemblies on the grounds of competition for places, as this was abused as a means of blocking assemblies by authorities. The NHRCK made a recommendation to the National Police Commissioner that the police should refrain from certain practices, such as controlling the flow of people in large areas for fear of their participation in protests, taking people to the police station in an effort to reduce the number of people taking part in a protest, or blocking people's access to legally held assemblies by setting up fences.

On June 9, 2009, the NHRCK expressed its opinion on amendment bill for six existing laws submitted to the National Assembly. The NHRCK expressed its opposition to the ban on the wearing of masks by demonstrators [The Constitutional Court (2000 Heon-ba-67, 83 Byeonghap) decided that the freedom of assembly includes the freedom to wear whatever you want.] and it opposed the regulation that allowed the police to take pictures of demonstrators only with a notice (against the requirement for a warrant for such an act under the Constitution).

Freedom of assembly serves as the cornerstone of a society that supports democracy by protecting the rights of all individuals in expressing their political opinions. The Constitutional Court has made it clear that "freedom of assembly and demonstration has Constitutional significance, as it supplements the parliamentary system and puts democracy and people's sovereign rights into practice (2000 Heon-ba 67, 83 Byeonghap). Thus, freedom of assembly and demonstration should be guaranteed as much as possible. It should not be forgotten that any attempt to ban actions related to the freedom of assembly and permit them only in exceptional cases goes against the Constitution and international human rights covenants.

Prosecutors sued

A case of a suspect losing his life at the Seoul District Prosecutor's Office

On October 26, 2002, a suspect named Jo, who was interrogated at the Seoul District Prosecutor's Office as a suspect in a murder case, died under suspicious circumstances and questions were raised about harsh treatment towards him and other co-suspects. A few days later, the NHRCK decided to look into the case. The nature of the alleged victims' complaints drove the investigation forward.

As a result of the investigation, the NHRCK found that a team of nine people, including a prosecutor named Hong, at the Prosecutor's Office had violated the required procedure by not advising the suspects of their Miranda rights (stating the reason for arrest and the arrested person's right to seek the aid of a lawyer) at the time of arrest without a warrant. The requirements for arrest without a warrant, such as probability, need, and urgency, had not been met. The NHRCK also found that they had used violence to coerce the suspects into confession in a special interrogation room. It appears that the suspects had no choice but to make false confessions due to torture in the process of which Jo lost his life.

The nine perpetrators, including Prosecutor Hong, were indicted on charges of using violence, under the Additional Punishment Law on Specific Crimes. Thus, the NHRCK accused them of illegal arrest, imprisonment, and the abuse of authority.

The NHRCK found that a key factor behind the use of violence against suspects was the accepted practice of arresting suspects without a warrant. This practice was in direct violation of the rights of all suspects, including the right to an explanation of the charges made against them. Thus, the NHRCK recommended to the Justice Minister that measures be taken to ensure that no arrest can be made without a warrant, to put an end to the abuse of power, and to improve the current system by implementing procedures for the issuance of an ex-post facto warrant. The NHRCK also asked the Korean Bar Association for legal aid so that the suspects could receive proper compensation for what they had suffered.

On June 23, the same year, the Seoul District Prosecutor's Office informed the NHRCK that the additional charges that the NHRCK asked for could not be applied to the perpetrators, as the suspect who died in the course of interrogation was subjected to arrest without a warrant and the perpetrators had already been indicted on a charge of the use of violence against suspects. On October 10, the same year, the higher prosecutor's office rejected the NHRCK's appeal. And the NHRCK took the case to the Supreme Prosecutor's Office.

The problem stemmed from the difference in the way the parties looked at the key points of the case. The NHRCK paid attention to the fact that the fundamental cause of the use of torturous practices was the ability to arrest without a warrant, which the law enforcement institutions had continued to use, and ignoring the required procedure without heeding suspects' rights. The NHRCK's requests for the indictment of the perpetrators made to the three different levels of legal prosecution displayed its resolute commitment to stop the police ignoring the principle of no arrest without a warrant.

These efforts by the NHRCK were based on the idea that if the principle of "no arrest without a warrant" was properly adhered to then law enforcement officials would be obliged to conduct scientific criminal investigations that rely on collecting hard evidence to obtain arrest warrants. When a suspect is arrested after a thorough investigation, law enforcement officials would not then have to use torture as a means of extracting a confession. The NHRCK's first-ever case against the police and the subsequent investigation appears to have changed the prevailing attitudes at the time; now, more officers are of the view that the arrest and investigation of suspects can only be justified when proper procedure has been followed.

Bitter memory of the torture of suspects in the 21st century

Tortures perpetrated by the police

Acts of torture were perpetrated in a police station in 2009 and 2010. At first, many people could not believe it in this day and age. The notion of "torture" meant the kind of brutal acts carried out in dark, damp basements during the dictatorships of the 1970s and 1980s. So people wondered whether accusations of torture were exaggerated and thought it was perhaps no more than a bit of harsh treatment. However, it was a torture in every way.

Article 1 of The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which this country joined in January 1995, states as follows: "…torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

In May 2010, Mr. Lee (45) submitted a complaint to the NHRCK, saying that "In March 2010, the police put a gag over my mouth, put duct tape over my face, and beat me, forcing me to confess 'my' crime at the police station." The NHRCK received three similar complaints and decided to look into it further. It found that there was a blind zone not covered by the surveillance camera in the room pointed out by the complainants, and so there was a high possibility that what the complainants said was true, especially as their statements coincided with each other with regard to the room where they said they were tortured, the perpetrators involved, and the patterns of torture used. Thus, the NHRCK and decided to carry out a full investigation.

The NHRCK met 32 people who were transferred to the prison after interrogations by the police between August 2009 and March 2010. Twenty two of them said that the police had tortured them and forced them to confess their crime during their interrogations. They said the methods of torture used included severe beating, treading on the head with toilet paper or a towel shoved into the mouth while on the floor, or twisting arms handcuffed behind the back. The NHRCK obtained circumstantial evidence associated with acts of torture, such as the records concerning the status of suspects' physical condition at the time of being jailed, the daily journal kept by correctional officers, and the records concerning the supply of medications. The police officers involved all flatly denied torturing the suspects.

However, the NHRCK judged that it was highly probable the police did torture the complainants, as their statements concerning the torture coincided with each other on specific points. As mentioned, they were tortured in similar ways and in the same area (i.e. within the blind zone not covered by the surveillance camera and in vehicles used to move them to other places), and there were similar materials associated with their tortures. These correlations emerged even though the complainants were put into different cells, were interrogated separately, or did not know each other..

The NHRCK sued the 5 police officers found to have committed the torture and asked prosecutors to investigate and charge them with the use of violence under The Criminal Act, Article 125. The NHRCK also recommended to the National Police Commissioner that an inspection be carried out at the police station in question and measures be taken to prevent a repetition of such abuse. The police officers were arrested and indicted under the Additional Punishment Law on Specific Crimes.

There was much condemnation and shame that such human rights violations could occur in an industrialized country like South Korea in the 21st century. Some people pointed out that it was a result of the reckless results-based achievement culture inside the police force. Regardless of the cause, it was the country and its people that suffered most as the case did irrevocable damage to the image of the country, which had been steadily improving since the launch of the NHRCK. However, the country joining OPCAT (the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment), which the government has been putting off, should help allay the concerns felt by ordinary Koreans and the international community over the country's human rights record, if not put them to rest.

The police inflicting additional pain on victims

Human rights violations in the process of investigating a case of sexual assault against middle school girls

If the police turn a blind eye to the pain of victims, who do they exist for? The police squad that investigated a case of sexual assault against middle school girls in Miryang inflicted additional pain on the victims because of their improper conduct. They committed serious human rights infringements in the course of their investigations, such as disclosing the victims' identities and causing them to feel insulted, anxious, and ashamed.

In December 2004, the NHRCK initiated an ex officio investigation of human rights infringements that occurred during this police investigation into sexual assaults against middle school girls. In total, the NHRCK had received 29 complaints concerning the police's improper investigations. On several occasions before this, the NHRCK had recommended to police that their investigation of sexual assaults should be improved, and thus the police set up the relevant guidelines. However, when the NHRCK checked the standard of compliance with its recommendations, it found no improvement whatsoever had been made among working-level police officers.

In the Miryang case, the NHRCK discovered that police had disclosed the victims' personal information, along with details of the incident, to mass media. Police in charge of the case had also taken the victims to an interrogation room where they were made to stand face to face with their attackers, although there were four other places within the police buildings where the victims could have been taken out of view of their attackers. In the interrogation room, the victims were asked to point out who had attacked them. This resulted in the assailants threatening the victims' families. Police officers ignored the victims' request that female officers handle the case and went so far as to say, "You girls defiled the entire city."

Toward the end of that year, the NHRCK asked prosecutors to investigate the two police officers who disclosed the victims' personal information and details of the incident to the media. This was on the charge of violating the obligation not to disclose personal information of sexual assault victims and to protect privacy, as stated in Article 21 of The Act on the Punishment of Sexual Crimes and Protection of Victims, and of violating the obligation not to publish facts of a suspected crime, as stated in Article 126 of The Criminal Act. The NHRCK also recommended to the National Police Commissioner that the Ulsan Police Metropolitan Agency Commissioner and the Chief of the Ulsan Nambu Police Station be made to take managerial responsibility over such issues and that measures be put in place to prevent such incidents occurring again.

The Miryang police investigation is a representative case in which young victims of sexual assault were not protected by state power and their human rights were infringed upon by police investigators. Ultimately, the reprehensible behavior of the police officers was condemned in court. On March 18, 2007, the Seoul Appellate Court ordered the state to compensate the victims for the harm done to them, saying, "The police officers violated the Police Code of Conduct, which stipulates that police officers should do their best to protect human rights of assault victims, and the way the police officers insulted these victims of sexual assault should be viewed as illegal execution of their official duties." On June 16, 2008, the Supreme Court upheld the lower court's decision.

At the time of this case, there were many regulations to cover the protection of victims of sexual assault, such as The Special Act on Sexual Violence, The Rules for Human Rights Protection-Based Police Investigations, and The Crime Victim Protection Rules. The National Police Agency had also distributed a 130-page manual containing these regulations. However, it turned out that the police officers in question were not familiar with these regulations. The same thing could be said of most members of the police in charge of investigating sexual assaults. This was even after the Ulsan Metropolitan Police Agency had provided education materials for its officers and sent official letters for that purpose to police stations under its control.

But the police officers failed to observe such regulations. They may defend themselves, saying that they were burdened with a large number of cases waiting to be solved. Is such an excuse acceptable? For whom do the police exist? Solving cases is a fundamental duty of the police, but a priority should be placed on the protection of people, particularly on the rights of victims.

Police investigations and court procedures should be improved

Need for improving the protection of the rights of young sexual assault victims and the relevant policy

In August 2004, the NHRCK recommended to the Minister of Justice, the Ministry of Public Administration & Home Affairs, and the Ministry of Gender Equality that young victims of sexual assault should be protected from suffering additional harm in the course of a police investigation and the court proceedings (due to participating officers' lack of expertise within the legal system, including deficiencies in the laws). Such a recommendation was necessary because many medical doctors refused to treat sexual assault victims due to the associated obligation to appear in a police station or court (police and courtroom confidentiality was non-existent). Following the investigation of the Miryang case, the NHRCK asked the National Police Agency to investigate the two police officers in question and recommended that a relevant law and system be implemented to prevent victims from suffering additionally in the course of police investigations.

Despite the NHRCK's recommendation, there were continued incidents of young sexual assault victims suffering further in the course of police investigations, including both the "Jeong Seong-hyeon case" and the "Jo Du-sun case" in 2008. In the "Jo Du-sun case," the court sentenced the attacker to 12 years in prison, with the excuse that he had been "under the influence of alcohol." This led to an outcry against the court for issuing a "light" sentence in relation to such an abominable crime. Also, people were shocked to learn that the young sexual assault victim had suffered an additional ordeal during the police investigation. At that time, she was in a very poor physical condition as a result of the assault. She had to change diapers every hour. But the police made her sit on a steel chair for hours and go through the videotaped statement session several times.

So, the public strongly criticized the level of punishment for this sexual assault and the lack of consideration for the young victim during the police investigation. The way the NHRCK saw the case was not much different from the opinions expressed by the general public. On August 3, 2010, the NHRCK recommended to the Ministry of Gender Equality, the Ministry of Justice, the Ministry of Education, the Supreme Court, and the National Police Agency that young sexual assault victims must be protected from further distress during police investigations.

First of all, it is important to add protections for young sexual assault victims under the Criminal Act procedure. Then, the following steps should be taken: Participation of experts and the prosecutor's office at the first statement made by the victim; the process of hearing the victim's statement should be shorter; greater expertise should be applied to the police investigation report; the characteristics of young victims' statement in the educational session should be assessed by judges specializing in the field. What is also required is the following: Videotaping a victim's statement and the suspect's interrogation; protective measures for the witnesses appearing in court; victims' personal information must be protected; and the rights to privacy and access to information should be guaranteed.

The NHRCK also recommended the following: Increasing the number of facilities for the treatment and protection of young victims of sexual assault; establishing a system for providing information on criminals released from prison; protecting crime reporters; ensuring no disadvantages are imposed on victims or teachers who report a case of sexual assault; implementing more useful preventive education; introducing programs designed to stop criminals repeating crimes; and oversight and assessment of the efficiency of these policies.

Effective March 2012, young victims of sexual assault can now have access to lawyers in the course of police investigations and court proceedings, under an amendment to the Act on the Protection of Children and Juveniles from Sexual Abuse, with the "selection of attorney for young victims" clause inserted and enacted on September 15, 2011. It is expected that, with this amendment in place, young victims of sexual assault are less likely to have their rights infringed upon through repeated interrogations and will be better protected from aggressive questions from attorneys representing suspects in court.

Need to abolish police serving as part of military service

Brutal acts perpetrated within police units

The formation of Combat Police (CP) units occurred in September 1976 because of a need to carry out anti-espionage operations. Auxiliary Police (AP) units were formed in December 1982 to meet other requirements, such as cracking down on street demonstrations, making the rounds for crime prevention, and traffic control, i.e. to alleviate the workload for regular police. The CP are still provided by the Defense Minister in response to the National Police Commissioner's request made early every year. They are selected at random among those who finished the course at military boot camp. The AP consists of individuals who volunteer to serve in the police force instead of doing compulsory military service.

In October 25, 2011, following an investigation, the NHRCK recommended that the CP and AP forces be abolished to the National Police Commissioner, the Minister of Defense, the Minister of Public Administration & Security, and the Minister of Strategy & Finance, with a view to putting an end to the brutal acts committed within these police units.

In January 2011, the NHRCK conducted a basic investigation after receiving a complaint about the death of a recruit of an AP unit as a result of brutal treatment by his superiors (he was diagnosed with blood cancer). AP servicemen said to NHRCK investigators that there were many cases of violence and brutality habitually committed in AP and CP units, and their commanders actually connived or encouraged such acts due to a need for unit cohesion or the maintenance of discipline. The NHRCK subsequently commenced a full investigation of AP and CP units.

Earlier in 2007 and 2008, the NHRCK recommended comprehensive improvements of human rights for CP and AP servicemen. The NHRCK's recommendation made to the National Police Commissioner, the Minister of Strategy & Finance, and the Minister of Defense included these points: adoption of the 5-day work week, closure of stockades, adoption of measures to prevent beatings, improvement of facilities and everyday living conditions, etc. The NHRCK saw that its earlier recommendations had not been fully implemented despite efforts by the National Police Agency and that it was still necessary to improve conditions in the AP and CP services. Thus, the NHRCK recommended setting up measures to prevent brutal acts, including beatings; to overhaul the training system; and to protect victims who had received brutal treatment. It also asserted that it was desirable to have all AP/CP servicemen replaced by career police officers. By that time, punitive measures had already been taken against those responsible for brutal acts.

The NHRCK's recommendation for abolishing the current AP/CP service structures was made because CP troops have been used by the police as an auxiliary force for tasks such as confronting street demonstrators, even though their main purpose is supposed to be for counterespionage operations. CP servicemen suffer a disadvantage, as their status is switched from Army to CP without any choice on their part. Also, many AP troops have been assigned duties, such as confronting street demonstrators, rather than the usual police business of targeting traffic violators. Many of them found themselves unable to mentally adapt to such out-of-the-ordinary service requirements.

Following the report on violent behavior among CP servicemen in January 2011, the National Police Agency announced that it would "abolish the AP/CP systems some time after 2012 and replace them with services filled with career police officers, in consultation with the relevant institutions," and the Ministry of Defense consented to this plan. The NHRCK's position was that the current systems should be abolished because it was ridiculous for a modern society to ask the troops to put up with poor working environments, where their rights were regularly infringed upon, just because they are doing compulsory service and have no choice of opting out. The Government should prepare a more up-to-date alternative. The NHRCK's recommendation was also based on the judgment that career police officers, who are supposed to have a higher expertise and sense of responsibility, would better serve citizens and society in general with better quality service in keeping social order. In conclusion, the AP/CP systems have outlived their usefulness. In any case, they started going awry the moment military personnel were used for purposes other than what they were meant for. The sooner changes are put in practice, the better.

Marine Corps' bad behavior as standard military practice

A case of marines killed in a shooting incident

At 11:45 a.m. on July 4, 2011, a Marine corporal opened fire on 5 fellow servicemen, killing four and injuring two, including himself, after stealing a K-2 rifle and hand grenades at a coastal guard post of the 2nd Division, ROKMC. It was the worst incident in the history of ROKMC since the 1980s. The NHRCK decided to carry out a formal investigation of the case after finishing a basic investigation that included a visit to the site at 3:00 p.m. on the day of the incident.

After a two-month investigation, the NHRCK saw that the malicious and brutal human rights violations in the Marine Corps were a major contributor to the incident. In the Marine Corps, superiors treat their troops so harshly that it is hard to imagine by ordinary people, such as forcing them eat an excessive amounts of cookies or bread rapidly; treading on their chests and beating them; putting pressure on their thighs with the elbow; removing their leg hairs with duct tape; putting out burning cigarettes on their palms; and slapping them on the face.

One harsh method of punishment unique to the Marine Corps, as revealed through the investigation, was designed to inflict a sense of shame on anyone made an outcast. Superiors would have inferiors address an outcast, ranked higher than themselves, with impolite language or even beat him without repercussion. The NHRCK investigators discovered that the marine who had opened fire was one of these outcasts, as revealed in memos he wrote and other statements he made. Before this incident in March 2011, and following an investigation into another case involving brutal treatment, including beatings, the NHRCK had recommended to the Chief of Naval Operations that measures be taken to stop such practices and that strict guidelines be set up to punish such behavior. Apparently, not enough had been done.

The poor management of military units, including the incompetence of officers and men being allowed to drink alcohol within camps, was disclosed. Officers, including the company commander, carried out interviews with the suspect and discussions about him on a total of 31 occasions, but it was not until December 2010 that they started paying attention to him as a serious problem. However, they left no particular records. Investigations revealed that the officer in charge of the guard post where the incident occurred used to hold small parties for his men, and this happened on a few occasions between January and May of the same year and on the day of the shooting. The assailant had gotten drunk at one of these small parties and it was after that he started shooting.

Following the investigation, the NHRCK adjudged that it was necessary to make fundamental changes to the Marine Corps' long-held customs. It was found that the old-timers at the guard post in question had brainwashed their inferiors, saying that it was "our world" and that everyone should live by their internal rules. Inferiors thus found it difficult to complain to officers about their rights being violated. Marines were made to think that they had to accept a strict hierarchical order and the old-timers' rules and even their intervention in personal matters. Most of the marines regarded violent acts, including beatings by superiors, as a rite of passage or a practical joke pulled by "friendly" superiors. The NHRCK recommended to the Minister of Defense and the Minister of Strategy & Finance that comprehensive measures be put in place to protect the rights of servicemen, improve barracks culture, and that a budget should be drawn up to finance the placement of experts capable of fostering a new barracks culture and comprehensively managing the new system.

There is a motto adopted by marines, "Once a marine, always a marine." "Ghost-catching marines" is understood to be an expression of their sense of pride. However, the series of incidents that have occurred make people skeptical. Now, they ask, "Are they buddy-catching marines?" It is time that the Marine Corps take a reality check and find solutions with the help of outside experts, as recommended by the NHRCK. Only then, will they be strong enough to catch ghosts.

Judges speaking harsh language

Infringement of human rights through verbal abuse

> # Scene 1: A civil court on April 23, 2009. The 40-something judge scolded a 69-year old senior citizen, saying, "Where did you learn to behave like this?" in response to the latter's attempt to make a remark without the judge's permission during a court proceeding.
> # Scene 2: A Civil Act coordination proceeding at the court on January 29, 2010. "You, Shin xx (70) (the complainant's mother), so, your daughter is very sick, eh? You would like to see your daughter die in jail? There are so many of them dying in the jail. When are you going to learn, after your daughter drops dead? Now, you are telling me to exchange your daughter's life with money?" Are you deaf?"

Concerning # Scene 1, the "ill-bred" senior citizen felt insulted and submitted a complaint to the NHRCK. The plaintiff's former attorney testified at the NHRCK, saying, "What the complainant said was true." He added that the complainant felt shocked to hear an expression that could not have been made even to one's junior. He said he had resigned as the citizen's attorney the following day, feeling responsible for his failure to respond properly to such a remark made by the judge.

The judge in question explained that he "simply exercised the right to command a court, giving a caution to observe court etiquette." However, the NHRCK noted that in Korea the expression "an ill-bred one" is normally used to a young person who does not show respect to senior citizens. The NHRCK judged that the 40-something judge chose the wrong expression to use in talking to the 69-year old, even though the senior citizen had committed an act that broke court order and the judge had the right to command his court.

The NHRCK also concluded that the judge infringed the senior citizen's moral right, as the judge's right to command court should not infringe upon people's basic rights, including dignity and value as humans as stipulated in the Constitution, Article 10. After all, judges are public officials and as such should serve the public as respectful public servants.

With regard to #Scene 2, the NHRCK concluded that the judge infringed the complainant's moral right guaranteed in the Constitution, Article 10. What he said must have made the 70-year old senior citizen feel ashamed and insulted from a perspective of the social order generally accepted in Korea. And the question put to the person, "Are you deaf?" was an improper remark to have been made. After these two cases, the NHRCK recommended to the Court Administration Office that a warning be given to the judges in question and measures be taken to prevent such incidents occurring again. These cases of judges making high-handed and insulting remarks to people in court served as an opportunity to think of the way that public officials treat ordinary people. They reminded everyone that public officials have the obligation to be respectful to the public and serve people faithfully as public servants.

The relevant courts have accommodated the NHRCK's recommendations. The Seoul District Court launched the Court Behavior Research Committee and set up guidelines so that those trying to express opinions are not discouraged and that the language used in courts will always be respectful. The Seoul Family Court formed a task force, carried out questionnaire-based surveys, and held a special lecture session on how to converse with the public. Some chiefs of courts went so far as to attend and assess court proceedings carried out by judges of their courts. The Supreme Court distributed a film about judges setting a good example with proper behavior. We expect that such efforts will help judges consider ordinary people's rights in court, rather than behaving like dictators.

3

The way police officers treat people

Are uniforms enough as police officers' IDs?

Asking for IDs on the street

"A police officer, by using reasonable judgment based on perceived suspicious activities or circumstances, may stop and question a person when there is reason to suspect that the person has committed or is about to commit a crime, or when the person is believed to have knowledge of a crime already committed or to be committed" (The Act on the Performance of Duties by Police Officers, Article 3, Paragraph 1). This means that a police officer may stop anyone on the street to check his/her identification purely based on that police officer's judgment. Do we have to comply with such an act without raising any objections? No, we do not.

At around 9:00 p.m. on September 14, 2006, a Mr. Kim was spending his leisure time on a park bench. A police officer came up to him, while making the rounds in the neighborhood, and after identifying himself asked Mr. Kim to show his ID. This occurred during a time in which the police force was conducting a special campaign to round up suspects nationwide. So the officer, in seeing that Mr. Kim wore shabby-looking clothes and looked pale, looked upon him as suspect.

Kim complied with the request, but felt offended at being suspected of any wrongdoing, as anyone would have been. He asked to see the officer's ID and the officer replied, "My uniform is my ID," and declined to show his ID. Mr. Kim later questioned the NHRCK about the incident. The correct procedure is as follows: "When a police officer stops a person on the street and asks questions … he shall present to the person credentials indicating his identity, disclose the agency to which he belongs and his name, and explain the purpose and the reason thereof" (The aforesaid law, Article 3, Paragraph 4). Such a procedure is designed to inform the person being questioned that it concerns a police action and to let that person know who may be charged in case the action is illegal. Police officers must explain the purpose and the reason for their questioning someone on the street, so that the person being questioned may understand the situation and prepare to defend themselves. They are also required to present their IDs first before asking questions.

The issue in Mr. Kim's case is whether or not a uniform can serve as a police officer's ID. The NHRCK's position is that it cannot. The aforesaid law stipulates that a police officer shall present credentials indicating his identity, disclose the agency to which he belongs, and give his name. Article 5 of the Enforcement Ordinance of the said law stipulates that "ID cards that establish police officers' identity shall be in the form of ID cards of national police officers." In answering Mr. Kim's question, the NHRCK judged that it was a human rights infringement and the officer violated the aforesaid law, that is, he violated legal procedure when exercising state power as stipulated in the country's Constitution, Article 12. The NHRCK recommended to the police that the police officer undergo relevant educational training to prevent such an incident happening again.

So, what can we do if a police officer does not follow the legal procedure when stopping us for questioning in the street? We may refuse to comply with the officer's requests. The aforesaid law stipulates that "a person shall not have his body bound without recourse to the laws governing criminal procedure or be compelled to answer any question against his will." A precedent has been set in a court concerning this. A judge found a person, who had been charged for interfering with official police duties, not guilty for refusing to comply with a police officer's command to stop and show his ID on the street.

A police officer's request that a person accompany him to the police station must be willingly accepted

Forcing people to accompany police officers to the police station

A person may be taken to the police station against his will either after the presentation of a warrant, after being caught in an act of crime or after being arrested without a warrant. Otherwise a person may be taken to the police station after voluntarily agreeing to go there in the company of a police officer.

In September 2006, a Mr. Lee took a taxi in which he began smoking. The taxi driver complained and asked him stop. This led to an argument and Mr. Lee assaulted the driver. The driver gestured for help from the public. A person driving a car right behind the taxi saw the incident and reported it to the police. Soon after, the police arrived at the scene. In this situation, can the police take Mr. Lee to the police station right away?

This might be considered as either a case of being caught in the act or being arrested without a warrant. However, "a person caught in an act" refers to "a person who is in the act of committing a crime or has just committed a crime" (The Criminal Procedure Act, Article 211). Thus, Mr. Lee did not meet this requirement. The same law, Article 200-3, Paragraph 1 stipulates that at least one of the following must apply as a requirement for an emergency arrest: there should be good reason to suspect a crime punishable with imprisonment for 3 years or more; the suspect is likely to destroy evidence; the suspect tried to escape or is likely to escape; the police are unable to obtain a warrant in time because of the urgency of the situation. In Mr. Lee's case, none of these requirements was met, either. Thus, although he was a suspect in a violent attack, the only way the police could take Lee to the police station was by getting him to agree to accompany them voluntarily.

The NHRCK discovered that Lee refused to sign the consent form presented at the scene concerning the police officers' taking him to a police station, but he verbally agreed to do so. He told the NHRCK that "I was unwilling to comply with the police officer's request but was almost forced into it, as I feared that they might use violence." At the police station, Lee insisted that "I am not in a good state to undergo any questioning." Thereupon, the police checked his ID and released him, asking him to return when he is requested.

Since this case did not involve a warrant, being caught in the act, and was not an emergency arrest, the issue is whether the police properly obtained Lee's consent to accompanying them to the police station. Moreover, Article 51 of The Rules on the Performance of Duties by Police Officers (which are directives of the National Police Agency) stipulates that officers shall inform a suspect that he/she has the right to refuse to accompany them or can leave the scene freely. A precedent set by the Supreme Court (sentencing on July 6, 2006 / 2005-Do-6810) says that the legitimacy (or voluntariness) of accompaniment can be recognized only when voluntariness is clearly evident, based on objective circumstances, and the suspect has been informed of his right to refuse or else to leave the scene at any time.

The reason for such a strict interpretation of the rules and the application of voluntary accompaniment is simple. While there are diverse systems designed to protect people arrested or detained by the police, those people who voluntarily accompany the police are not eligible for such protective measures under the Constitution or The Criminal Procedure Act, unlike those who are formally arrested or detained.

In light of the intention of such regulations and precedents set by the courts, it seems clear that Mr. Lee did not voluntarily consent to accompanying the police. Accordingly, the NHRCK judged that the police officers infringed upon the suspect's personal freedom in violation of the legal procedure stipulated in the Constitution, Article 12. The NHRCK recommended to the police that the officers be made to undergo an internal educational program on citizen's rights.

Police interrogations after midnight

Midnight investigations

Suppose you, a suspect, are made to sit at a worn-out table in a dimly-lit police interrogation room surrounded by dark colored walls. Needless to say, you would be scared, even more so if it occurs in the middle of the night. According to testimonies, those undergoing late-night police interrogations are likely to suffer greater mental and physical anguish and find it difficult to think properly. The mental stress is said to be indescribable, when interrogators take turns questioning a suspect without allowing him or her to sleep.

At around 3:00 p.m. on June 7, 2006, a Mr. Jeong voluntarily accompanied police to their station on a charge of damaging his neighbor's apartment floor and kicking his neighbor. The police interrogated him from 5:00 p.m. that day until 6:30 the following morning, without allowing him any rest. The police did not obtain the suspect's consent to undergo this late night interrogation. The police officer said, "The suspect displayed a very offensive attitude and we could not get him to sign the letter of consent."

The issue in this case is whether the all-night interrogation of Mr. Jeong was a human rights infringement. Article 40 of The Human Rights-based Investigation Rules (which are directives of the Ministry of Justice) stipulates that prosecutors shall stop interrogating suspects or other related people before midnight, that is, unless they (or their defense counsel) consent to an interrogation after midnight or there is a valid reason—such as a need for prompt investigation due to an impending statute of limitation, or a judgment on the detention of the suspect within the arraignment period—and permission has been given by a human rights officer.

Article 64 of The Rules on the Human Rights-based Performance of Duties by Police Officers (which are directives of the National Police Agency Directive) contains a similar provision. It stipulates that necessary consent and permission must be obtained before a late-night interrogation, that officers other than interrogators must be present, and that those being interrogated must be given adequate time for rest.

In Mr. Jeong's case, it is doubtful that there was any urgency to justify a late-night interrogation, since the suspect had been taken to the police station at 3:00 p.m. Also, the officers did not obtain the suspect's consent to the late-night interrogation under the aforesaid internal rules. The NHRCK judged that the officers infringed upon the suspect's right to sleep, which is a basic human right (for pursuit of happiness stipulated in the Constitution, Article 10), and they neglected to follow legal procedure. Thus, the NHRCK recommended to the police that a caution be issued to the police officers involved.

Under authoritarian governments in the past, prosecutors and police officers who interrogated suspects late at night were regarded as hardworking officials and the citizen's rights violations were viewed as trivial. However, following the launch of the Participatory Government (i.e. the Roh Moo-hyun Administration), late-night interrogations were regarded as outdated practices with no place in an era of democratization. New internal regulations stipulated that interrogations should be stopped before midnight, unless a suspect gives consent or the expiration of the statute of limitations is imminent or it is necessary to carry out urgent questioning.

Overall, thanks to the country's democratization, the way law enforcement officers and prosecutors view suspects of crimes has improved and they do take human rights into account. Does this mean that law enforcement has been made more difficult? The answer is "No." People interrogated by the police or prosecutors are not state slaves without freedom or rights. They are citizens of the country whose personal freedom is temporarily restricted for the purpose of an investigation. It is important that suspects be allowed to express their views and prove any innocence on an equal footing with interrogators.

Requirement that information about a detainee be given to family or counsel in writing

Failure to give notice about someone being detained

Suppose a member of your family is summoned by police for interrogation. You would feel terrible. What if he/she is detained by the police but your family is not informed about it? Under normal circumstances you should not have to worry about such a thing happening, as police are required to notify families about the detention of family members, but sometimes families are not notified.

The country's Constitution, Article 12, Paragraph 5 stipulates that "The family of a person arrested or detained and others as designated by statute shall be notified without delay of the reason for and the time and place of the arrest or detention." In connection with this, The Criminal Procedure Act, Article 87 (Notice of Detention) stipulates that "when the defendant is detained, his defense counsel shall be informed of the gist of the facts concerning the offense, the time and place of detention, the basics of the charge and the cause for detention. If the defendant does not have a defense counsel, the persons designated by the defendant from among the persons mentioned in Article 30 (2) [hereof] shall be informed of the facts of the case and he may select a defense counsel." The same law, Article 209 stipulates that the same shall apply mutatis mutandis to detention of a suspect. Article 51 of The Regulation on Criminal Procedure, Article 23-2 of the Rules on Judicial Police Officers Management and the Performance of Duties (which are an ordinance of the Ministry of Justice), and Article 97 of The Criminal Investigation Rules (which are a directive of the National Police Agency Directive) all stipulate that written notice on arrest or detention must be made within 24 hours, or a written record concerning the fact must be filed if such a written notice cannot be made, and when the said information must be given via phone due to urgency, written notice shall be provided thereafter.

A complaint was submitted to the NHRCK regarding the following case. A Mr. Mun was detained by the prosecution on a warrant concerning a charge of false accusation on January 29, 2005. The prosecutor gave him his cell phone, telling him to let his family know about his detention. Mr. Mun used the cell phone to ask his workplace boss to find a defense attorney for him. Mr. Mun also called other individuals a couple of times. The prosecutor thought calls had been made to Mr. Mun's family and so did not send a written notice to his family. A few days later, Mr. Mun's family paid a visit to the police to report that Mr. Mun was missing only to learn that he was under detention at the same station.

The issue in this case is whether the fact that the prosecutor gave the detainee an opportunity to call his family can replace the requirement of serving a written notice. The answer is that it cannot. The prosecutor was supposed to call the suspect's family in person to inform them of the detention and then he was required to send a written notice of detention. The NHRCK judged that the prosecutor did not fulfill the requirement for serving a written notice of detention under the Constitution and The Criminal Procedure Act by simply providing the suspect with a cell phone to call his family.

The NHRCK also recommended that a caution be issued to the prosecutor and that investigators in his office be made to undergo an educational session so that similar incidents do not happen again.

The requirement for a notice concerning arrest or detention is important for upholding human rights as it allows the suspect to take appropriate defense measures, prevents greater mental anguish for the suspect and his family, and enables the suspect to seek assistance of a defense counsel. During rule under past authoritarian governments, people were abruptly taken to law enforcement facilities without notice. Often families did not know where their loved ones were taken, for what reason, or whether they were tortured or even still alive. In some cases, suspects' bodies were found later. The requirements for serving notice of arrest and detention were set up to put an end to these kinds of abuses of the past.

Those in detention can communicate with the outside

Detainees' right to have visitors

The moment a person is detained, he is separated from the outside world, but his right to see a defense counsel is guaranteed under the Constitution. Family or acquaintances can visit him, too. However, controversy exists about the extent to which such a right is guaranteed.

On April 30, 2004, a Mr. Koh was "urgently" arrested on a charge of violating The Act on the Control of Narcotics, Etc. He was quickly imprisoned after the issuance of a detention warrant. The prosecutor decided not to allow him visitors. Because of this, Koh submitted a complaint to the NHRCK. The prosecution explained that its decision not to allow Koh visitors while an investigation was being carried out was due to a fear of losing evidence—people who supplied narcotics to him might get away, he might be influenced to reverse what he had said earlier, and others close to him, including his family, might be influenced to manipulate or hide evidence.

First, let's look at the basis for guaranteeing the right of detainees to have visitors, including defense counsels. Being allowed to have visitors is a basic right in the Constitution, designed to prevent a detainee's psychological distress due to social exclusion and to guarantee the right to defense under the Criminal Procedure Act. In particular, detainees who have yet to be convicted have the right to visitors in accord with the Constitutional Court's recognition of the freedom of action as a basic right and the right to pursue happiness as stipulated in the Constitution, Article 10. The basis for these freedoms are the terms stated in the Constitution, Article 27, Paragraph 4 ("The accused shall be presumed innocent until a judgment of guilt has been pronounced") and the current standards of international human rights, such as Principles for Protection of Detainees and Minimum Rules for the Treatment of Prisoners. Sometimes it is necessary to put restrictions on these rights, for example, when it is feared that a detainee's visitors might destroy evidence for him or disrupt practices of the detention facility. So then, what about Mr. Koh's case?

In his case, the prosecution had already secured enough evidence to indict him, including the detection of a large amount of Dextromethorphan hydrochloride in his urine. That meant that he was definitely involved in narcotics dealing and there was no possibility of manipulating or destroying evidence with the help of outsiders. Even so, Koh was denied the right to have visitors, including his family, even after completion of the preliminary investigation. The NHRCK judged that the prosecutor's decision was excessive and infringed upon the detainee's rights as stipulated in the Constitution.

This brings up the issue of how long the restriction on a detainee's right to have visitors can stay in place and according to what justification. On the matter of non-convicted detainees' being guaranteed the right to have visitors, as a basic right stated in the Constitution, there has been insufficient discussion on the relevant requirements and period. Article 91 of The Criminal Procedure Act, for example, only stipulates the requirements for restricting visitors without stating how long such a restriction should be. Thus, the NHRCK recommended to the Prosecutor General that the scope and period of a restriction on a detainee's right to visitors need to be addressed and fixed.

A prosecutor's decision not to allow a detainee to have visitors leads to a conflict between a need to gather evidence under the criminal judicial system and a need to guarantee basic citizen's rights. The period of visitor restrictions placed on a detainee should be fixed with regard to their specific crime, the urgency of the investigation, the detainee's desperate need to have visitors, and the progress of the investigation, but it should be done in a way that does not go against the Constitution or international human rights standards.

The police and a search of naked cleaning maids

In connection with a motel guest losing her jewelry

A motel guest reported that she lost her diamond ring and mother-of-pearl necklace in a motel late at night. The solution of the police was to have the guest search cleaning maids while they were naked. Was it a justifiable act?

On February 18, 2006, a woman reported that she had lost a diamond ring and a mother-of-pearl necklace worth 5.4 million won in total at midnight during a one-hour stay in a motel. Police officers arrived at the motel at 3:30 a.m. and searched the cleaning maids' room and their belongings. The police even had the motel guest search the bodies of the three cleaning maids (two of them being Korean-Chinese) twice after having them take off their clothes. They could not find the lost items in the search. The police then took the maids to the police station and had them write letters of explanation.

According to article 216.2.2 of the Criminal Procedure Act, a public prosecutor or a judicial police officer can seize, search and inspect a suspect without a warrant in the case of an emergency arrest, or to arrest and detain a flagrant offender. A public prosecutor or a judicial police officer is not allowed to use such means as seizure, search, or inspection without the consent of a suspect or relevant person in a non-compulsory investigation. Even in the case of a criminal investigation where the participants are voluntary, the extent of the infringement of a suspect's or relevant person's rights shall be kept to a minimum (the principle of minimal police involvement).

In criminal investigations like the one in question, it is always a controversial point whether the police have obtained the total consent of a suspect or relevant person. So in a situation where the police had a motel guest search cleaning maids twice while they were naked and in the early hours, it is difficult to confirm that the police obtained the maids' consent or took an effort to minimize human rights infringement.

If absolutely necessary, the police should have provided experienced female officers to carry out the body search after asking for the maids' understanding and consent. It is clear that the maids felt insulted and humiliated in being body searched by a motel guest. The police officers also violated the regulations in Article 64 (No Late-Night Investigation), Paragraph 3 ["Even a late-night (i.e. midnight through 6:00 p.m. the following morning) investigations carried out exceptionally shall obtain consent and a letter of permission."] of The Human Rights-based Investigation Rules (which are a directive of the National Police Agency.)

The NHRCK judged that the police officers infringed the maids' personal rights to human dignity and worth, as stipulated in the Constitution, Article 10, and the right to personal freedom, as stipulated in the Constitution, Article 12. Thus, the NHRCK recommended to the National Police Agency that a warning be issued against the offending police officers.

Lines that should not be crossed in police investigations

Use of unjustifiable methods of investigation

There are TV dramas and movies about police officers engaging in a stakeout or tailing people to catch criminals. It happens in the real world too but there are lines that should not be crossed by the police in their line of work.

Arrest warrants were issued against nine labor union leaders, including Mr. Min, under the charge of violating The Election Act. At each provincial police department, a squad to arrest the union leaders was assembled, with a total of 138 police officers involved. The police made a request for approval to gather facts via telecommunications under The Protection of Communications Secrets Act so as to obtain the union leaders' locations and arrest them. They also had a seizure/search warrant issued from the court and started an investigation to trace the union leaders.

One of the police officers sent emails a couple of times to over 10 addresses used by the labor union leaders, pretending that the emails were sent by a colleague of Min. He also posted letters to Mr. Min, pretending they were from boss, asking Mr. Min to promptly return to work.

In addition to sending mail under a fake name, the police tried to locate the labor union leaders by visiting Min's house, monitoring phone conversations made by his family, or calling Min's relatives and acquaintances. They set up a stakeout close to the house of Min's daughter and asked neighbors about Min's whereabouts. They followed his daughter when she went out and until she returned home, sometimes even to the entrance to her house. They also monitored the phone calls she made and received, and they checked up on her friends, professors at her university, and the men she met.

As for emails the police sent under a fake name to those in hiding, in an effort to discover their locations, the police explained that it was a commonly used method for locating and arresting criminal suspects. However, even if police had a warrant allowing them to trace internet protocol (IP) addresses, this does not give them the right to send emails under a third party's name without obtaining his consent. Sending an email under the name of a third party violates not only the personal rights of the third party, along with his or her privacy and freedom, but also violates the integrity of law enforcement institutions. Even in the case of implementing a legitimate warrant, it does not mean that all acts to fulfill the warrant are allowed. Legitimate procedures for implementing the warrant should still be observed.

In this case, the police's surveillance of people close to Mr. Min went beyond the scope of the usual activities to catch a suspect. They monitored phone calls received or made by the suspect's daughter to her home or on her cell phone and by third parties not directly related to their suspect. Watching a suspect's family or monitoring phones should be carried out to the minimum required to satisfy a public purpose. Thus, the NHRCK recommended to the police that appropriate guidelines be set for investigation techniques and police officers undertake relevant education sessions.

When someone accused of being a criminal is found not guilty…

Disclosure of charges made against a suspect

In this country, law enforcement agencies are in principle not allowed to disclose charges made against a suspect prior to a trial, under the Constitution, Article 27, Paragraph 4 (“The accused shall be presumed innocent until a judgment of guilt has been pronounced.”) and The Criminal Act, Article 126, which states that the punishment for publicizing the facts of a suspected crime should be imprisonment for not more than 3 years, or the suspension of qualifications for not more than 5 years. However, this clause has been ignored for many years. Law enforcement agencies have often openly released charges made against suspects to the media. The media and the general public have defended this practice, saying that it is their right to know.

In November 2004, the NHRCK carried out an investigation of controversial cases involving human rights infringements through the disclosure of information about charges made against suspects. One was the case of “Incheon Mayor Ahn Sang-soo and the dried croaker boxes” and the other concerned the case of “unhygienically made mandu.” During the investigation, the NHRCK held public hearings with experts and meetings in which those representing the prosecution, the police, and the media took part, and it collected diverse opinions of scholars and examined similar cases in other countries. The NHRCK found that the disclosure of evidence and charges made against suspects was only inevitable in a limited number of cases.

First, the disclosure of charges made against suspects should be confined to matters that justify special attention, matters that pose a risk to people’s lives and safety, and matters that have already become the focus of attention through the media. Even if it is necessary or serves the public good to disclose charges made against suspects, certain restrictions should be observed with regard to the purpose, method, and balance of legal benefits, according to the principle that one is considered innocent until proven guilty and according to the “anti-excessiveness” principle. When it is necessary to disclose charges made against suspects, it should be done by a responsible officer in line with their institution’s internal procedure. The disclosure should be phrased so that it is not possible to identify the suspect, it is minimal and to the extent required for the purpose of the disclosure, it contains no details of evidence that might affect court proceedings, it has no content associated with the case, such as details on the suspect’s personality or private life, and it should not contain expressions or conjectures that might influence the public to think that the suspect is guilty.

Based on these restrictions, the NHRCK judged that the two cases above involved human rights infringements when charges against the suspects were disclosed. In the case of “Incheon Mayor Ahn Sang-soo and the dried croaker boxes,” police informally told the media what they found in the course of their investigation, even though they had not proven anything as fact. Details provided by the police were disadvantageous to the suspect and had nothing to do with the charges, nor were they based on objective and sufficient evidence. The NHRCK judged that the police disclosure violated the “anti-excessiveness” principle in terms of the procedure, the methods, and the content of the disclosure.

In the case of the “unhygienically made mandu,” the press release by the police used exaggerated expressions such as “leftovers of Chinese-made pickled radish thrown away as trash,” which caused unnecessary misunderstandings and conjectures. Their use of the term “immoral businesses” influenced opinions about the suspects and their activities. The NHRCK also judged that the release of a film about the pickled radish factory by the police was disadvantageous to the suspects and therefore violated what was acceptable in terms of the scope and method of disclosure. Thus, the NHRCK recommended to the National Police Agency that a warning be issued to the officers involved and measures be taken to prevent such incidents happening again.

The unauthorized disclosure of information relating to charges made against suspects is a criminal act. When disclosure is inevitable, authorities should be clear on what can be and what should not be disclosed. It is unreasonable for a suspect to be regarded as a criminal prior to a court’s final decision due to the disclosure of charges made against him or her. This impinges on personal rights, privacy, and the right to a fair trial. As luck would have it, suspects in both cases mentioned above were found “not guilty” by the Supreme Court.

Property-related fines should be better managed before giving freedom-depriving penalties

NHRCK's investigation into the implementation of fines

> "On July 28, 2004, I was at the police station to have my driver's license reissued, but the police detained me, saying that I had defaulted in the payment of a fine. I did not even know a notice of fine had been issued to me."
> "On March 22, 2005, I was detained at a prison work camp due to a default in paying a fine. It is not reasonable that I should be classed as a criminal after the prosecution sent a notice for the payment of a fine just once."
> "It is a case of human rights infringement for police to put up a letter of warning on the entrance to the house or workplace of a person who has failed to pay a fine."

In April 2006, complaints were submitted one after another to the NHRCK concerning human rights infringements in cases where a fine had been imposed. Fine collection is usually carried out in accordance with the Prosecution's Fine Collection Rules and upon the court's decision: ① Fixing the fine amount → ② Order of payment → ③ Reminder of payment → ④ Forced implementation → ⑤ Putting the defaulter into a prison work camp. Complaints submitted to the NHRCK chiefly concerned three types of human rights infringement as follows.

First, there exists a problem in the delivery of the notices. Upon investigation, it was found that the percentage of court orders that were delivered properly stood at only 37%. However, this is usually not taken into consideration, and so a percentage of people who do not receive a court order end up being subjected to detainment. This infringes upon their right to human dignity and worth and the right to pursue happiness as stipulated in the Constitution, Article 10, and upon their personal freedom, as stipulated in the Constitution, Article 12. Also, if personal information is divulged in the process of fine delivery, it is an infringement of the right to privacy and personal freedom.

Second, human rights infringements occur in the process of forced implementation. Forced implementation takes place if a fine has not been paid within 30 days of the date set for payment. An order of collection is imposed, after the issuance of a notice and reminder, if a person still does not pay the fine and they are in possession of property. Or, an application is made to the court for a forced auction of the person's real-estate. It was a violation of the legal procedure stipulated in the Constitution, Article 12, to issue an order for implementation that includes a prison sentence and classes a person as a criminal prior to their receiving a reminder.

Third, it is improper to put a person in prison work camp after only one notice. Having a person who defaults in paying a fine go through several procedures prior to a forced implementation helps reduce expenses associated with forced implementation and gives that person an opportunity to pay their fine voluntarily. Putting a person in a prison work camp should be done according to the principle of supplementation (meaning that punishment should be a last resort after all other procedures have failed). Also, imposing forced labor on a person who defaulted in a payment without careful consideration of his or her ability to cope with such labor can damage their health and is thus an infringement of the right for life and health.

On the basis of survey results, the NHRCK recommended to the Justice Minister, the Director of the Court Administration Office, the Prosecutor General, and the National Police Commissioner that measures be taken to prevent human rights infringements in the process of obtaining fines. A fine, which takes the form of the deprivation of property, is a lighter sanction than a punishment that deprives a person of his or her freedom. If legal procedures are not followed or state power is excessively applied to punishments without due process in obtaining a fine payment, it is a serious case of human rights infringement.

4

They are not different from us

Should prison inmates be prevented from reading certain newspaper articles?

An inmates right to know

The greatest hardship for prison inmates is being confined, and since they already suffer from being deprived of their freedom, it is unreasonable to inflict additional pain, even trivial pain, on them. The International Covenant on Civil and Political Rights stipulates that the human dignity, even for prison inmates, should be respected and protected.

Separated from the outside world, prison inmates want to keep up with current events. So they should be allowed to subscribe to newspapers at their own expense.

Between January and April of 2003, five inmates in two different prisons submitted complaints to the NHRCK concerning prison authorities who censored the newspapers they were reading. One of the prisons had articles cut out of newspapers before delivering them to the inmates. The other prison allowed only one kind of newspaper per inmate (or two for those in a solitary cell). The NHRCK concluded that these constituted infringements on the right to know.

The NHRCK discovered that the articles that were censored included a story written by a prisoner on a hunger strike, an ex-prison warden sentenced on a charge of receiving bribes, and the case of a suicide committed in a prison. The prison authorities explained that the censoring was out of the fear that the articles might upset security and order within the prison. They referred to the Guidelines for Inmates Taking in Newspapers, Article 9, Paragraph 2, which stipulates that the prison authorities may block inmates from reading articles or ads that may either have a bad effect on security and order within the prison or adversely affect an inmate's mental stability.

The NHRCK considered the expressions in the guidelines, such as "may have a bad effect" or "may adversely affect mental stability," to be vague and open to arbitrary interpretation. It checked the number of cases in which newspaper articles were censored in the period the complaints were received. The number ranged from 0 to 16. This indicated that newspaper articles were censored according to the authorities' arbitrary judgments. The prison had even censored articles about an inmate who had given his kidney to a son suffering from cardiac problems and about the 10th anniversary of the Sarangbang Group for Human Rights.

The NHRCK judged that the guidelines concerning restriction of newspapers for inmates were vague and indefinite, left room for prison officers' arbitrary judgments, and violated the right to know as stipulated in the Constitution, Article 21 concerning freedom of speech and of the press. The NHRCK also concluded that limiting the number of newspapers an inmate can have was in violation of the anti-excessiveness principle. Thus, the NHRCK recommended to the Justice Minister that the relevant guidelines be amended for more detailed and clear stipulations concerning the newspaper articles that can be censored (such as those about a prison escape or a group hunger strike that might compromise security and order) and that inmates should be allowed to subscribe to newspapers and magazines as freely as possible.

The Guidelines for Inmates Taking in Newspapers, Article 9, has been amended. Under the amended guidelines, censoring shall be confined to articles or ads that might disrupt order within the prison concerning prison escape, prison suicide, disorderly conduct, or an inmate's refusal to eat or work. The limitation of the number of newspapers an inmate can have has been lifted. Inmates may now read as many domestically published newspapers as they wish.

A country where even prison inmates' human rights are respected

Prison cell environment

A prison cell is a place in which inmates live most of the time, their everyday lives under strict control and surveillance. These poor living conditions are often deemed acceptable, as it is thought they are part of the punishment for crimes committed. How well should prison inmates be treated? Is it all right to let them live as they do—living in a cramped cell, using a low-walled toilet open to others, eating next to the toilet, not being able to wash trays sufficiently?

In October 2008, the NHRCK conducted a survey of cells in 14 correction facilities nationwide in connection with the launch of the Dignity and Justice for Detainees Week by the Office of the High Commissioner for Human Rights (OHCHR) on the occasion of the 60th anniversary of the Universal Declaration of Human Rights. The OHCHR urged human rights organizations around the world to launch activities to enhance the rights of prisoners.

The NHRCK's survey was focused on poor living conditions in prison cells. In 11 of the 14 prisons surveyed, the toilets inside the cells had walls 75~90 cm high and 80 cm wide, that is, only large enough to cover the lower part of the body. They had no doors. A toilet should be a private space. Unprotected privacy results in inconvenience for both users and those in the vicinity. Inmates said that they felt humiliated, upset, and annoyed whenever they or others had to use such a toilet.

The prison authorities said that doors were not installed on toilets due to the fear of something happening out of sight, such as a suicide. However, the NHRCK has found that the existence of toilet doors had no impact on the frequency of inmate suicides. The NHRCK's judged that the absence of toilet doors was a violation of human dignity and the right to pursue happiness as guaranteed in the Constitution, Article 10.

Four out of the 14 prisons were accommodating 2~3 inmates in a space of 2.48~3.22 square meters, which is too small even for a one-person cell with a proper mattress. A prison was accommodating 4 persons in a space only providing 5.32 square meters or 1.33 square meters per person. The NHRCK recommended to the Justice Minister that doors be installed on all toilets in cells accommodating 2 or more inmates and that a solution be found for cramped cells.

It may not be advisable to allow prison inmates to live in as enticing an environment as everyone else. But it is necessary that their basic human needs are met under every circumstance. This is a barometer for the level of human rights in a truly democratic country, and the level of human rights indicates the level of a society's maturity. One way to improve the level of the human rights awareness in our society is to ensure that all rights are protected, even in prisons.

The personal dignity and honor of criminals

Binding and handcuffing inmates when they are transferred

Prison inmates are bound with rope and handcuffed when moving from one place to another for fear of their escape. They are also made to wear prisoner uniforms when being transferred. Is their personal dignity being respected?

On a day in October 2006, a Mr. Choe was moved from prison to court for trial and had to endure many people seeing him handcuffed and in a prison uniform. He submitted a complaint to the NHRCK, saying that he was extremely humiliated for the 5 minute period.

The question in this case was whether the correction officials were obligated to take special measures to protect the dignity of an inmate handcuffed and bound with rope in public. A key point is that inmates waiting for a trial have a different status to those who have been convicted.

The Constitution-guaranteed principle that one is considered innocent until proven guilty applies to inmates waiting for a trial. It is generally accepted that their rights should not be restricted beyond measures taken to prevent their escape or any attempt to destroy evidence. That is, their basic human rights should be protected just as the rights of ordinary people are, except for a need to detain them and restrict personal freedom. Their basic human rights include a right to expressing their personality and a right to dignity.

How such detainees should be treated during transfers is stipulated in Article 45 of the UN Standard Minimum Rules for the Treatment of Prisoners (adopted on August 30, 1955, by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders and on July 31, 1957 by UNESCO). This is recognized as an important legal basis in international human rights law, although it is not an international treaty): “When prisoners are being removed from or taken to an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.”

Similarly, Article 4 of The Penal Execution and Correctional Treatment Act states that prison inmates’ human rights must be respected as much as possible. The Regulations on Safe Custody Duty also stipulate that caution must be taken not to impair inmates’ sense of dignity during their transfer between prison cells, to a courtroom, or to the prosecution’s interrogation room.

Thus, the NHRCK recommended to the Justice Minister that improvements be made in the transfer of bound and handcuffed inmates, such as protecting their rights with the use of headgear or facial masks, and that the relevant officials undergo educational sessions related to such improvements.

Someone may say that we are making a fuss about the rights of criminals. People especially have a dim view about providing benefits, such as covering faces or using a cloth to hide handcuffed hands, for criminals accused of violent crimes. The NHRCK is far from defending such criminals. We also believe that criminals should be punished properly. However, we are focused on human rights. We remind people and the relevant state institutions that any necessary restrictions of criminals’ basic rights should be made to the minimum extent required for maintaining the public good, as stipulated in the Constitution and as befits a truly democratic country.

Suppose you are forced into hospitalization

Putting someone into a mental facility against his or her will

In this country, anyone can be put into a mental facility against his/her will, with the consent of a guardian (two guardians, if that is the case, under the rule change made on March 22, 2009) and the diagnosis of a psychiatrist. According to statistics, 86% of people in domestic mental health facilities were involuntarily hospitalized, so there are endless human rights controversies surrounding the issue. The question is whether these people are put into such facilities under a legitimate procedure.

In April 2006, a Mr. Pak was committed to a mental hospital with his mother's consent after being diagnosed with schizophrenia. He asked to be discharged from the hospital from the beginning, but his request was rejected. Six months later, his mother was hospitalized because of Alzheimer's disease. Mr. Pak's stay in the hospital was then extended with his elder sister's consent. The hospital continued to refuse his request for a discharge. In 2007, he was finally discharged after a year and submitted a complaint to the NHRCK, saying that his human rights had been infringed upon through forced hospitalization.

The kinds of guardians, whose written consent is required (along with a doctor's diagnosis) for committing a person to a mental hospital against his/her will under The Mental Health Act, are as follows: A guardian stipulated under The Civil Act; the mayor or the county magistrate or the district office head (when the patient has no guardian or the guardian is not able to perform his/her purported function, or in the case of emergency hospitalization by the police). The guardian stipulated in the Civil Act refers to kin, such as a spouse or a relative living with the person. In the case of Mr. Pak's hospitalization, the consent of his mother was legitimate, but the extension of his stay in the hospital six months later with the consent of his sister, who was not living with the patient, was illegitimate and in violation of The Mental Health Act.

The Mental Health Act stipulates "not longer than six months" as the period of hospitalization in a mental health facility for a patient who is there against his or her will. When the patient needs to stay longer, the hospital should ask the mayor, the county magistrate or the district office head to review the need for continued hospitalization, following the same procedure as in the initial hospitalization. Also, a patient hospitalized against his/her will or his/her guardian may ask the mayor, the county magistrate or the district office head for their consent to be discharged. In this case, the relevant hospital should help the patient with such a procedure. But in Mr. Pak's case, the hospital wrongfully asked for the consent of his sister, who was not a lawful guardian, during its review of his continued hospitalization and the local government office gave its consent without questioning the procedure. Moreover, the hospital failed to provide Mr. Pak with relevant help concerning his right to ask for a review about his discharge.

The NHRCK recommended to the director of the hospital that the hospital should observe the relevant regulations concerning hospitalization, take measures to help hospitalized patients exercise their rights, as stipulated in The Mental Health Act, and carry out job-related education for his hospital's employees. As for the relevant local government office, the NHRCK recommended to its head that the government office should observe the relevant regulations under The Mental Health Act, issue a necessary caution to the head of the hospital, and carry out proper supervision concerning the hospital.

When a person suffers from a mental disease and he/she needs treatment, the need for hospitalization must be confirmed and if so the legitimate procedure must be followed. A well-known hospital in Gwangju makes it a practice, when there is an application to hospitalize a patient in a mental ward, to ask for the submittal of a diagnosis issued by third-party hospital, or the patient's past medical record in relation to the disease, in addition to the consent of a guardian.

Procedures like this by reputable facilities can prevent procedural errors or arbitrary judgments that lead to forced hospitalization. If a person is hospitalized in a mental facility against his/her will and the correct procedure is not followed, it constitutes unlawful confinement.

Quality of life for patients under round-the-clock surveillance?

Surveillance cameras in a mental hospital

A concern with hospitalization in mental facilities is not just whether patients are hospitalized through the correct procedures, but also whether they are taken care of properly from a human rights standpoint. What is the use of medical treatment if the patient does not have any rights?

One mental hospital put its patients under round-the-clock surveillance with cameras installed in sick rooms and even in toilets "to prevent accidents that may happen to patients." Is such a system of surveillance justified?"

The NHRCK recognized a need to install surveillance cameras as part of an effort to protect patients in a mental ward, but there were problems at the hospital in question. The cameras filmed patients sitting on the toilet and taking a shower, so privacy infringement was an issue. Patients that were conscious of the existence of surveillance cameras inevitably felt their freedom restricted.

What is filmed by a surveillance camera can be replayed and copied, which means it can possibly be leaked to an unauthorized person. Images can be taken and enlarged or manipulated. So this involves the infringement of a patients' right to control their personal information. The relevant laws, including The Mental Health Act, do not have clauses concerning the control of such surveillance devices installed in hospitals despite the potential for problems.

The NHRCK judged that the installation of such surveillance cameras in the mental hospital infringed upon hospitalized patients' rights to privacy and freedom. The NHRCK recommended to the hospital that it destroy all surveillance camera recordings and set up a procedure for the future use of cameras, defining who is directly responsible for operating a system to prevent unauthorized use of recorded materials. The NHRCK asked the local government office, which was responsible for supervising the hospital, to issue a warning to the hospital. The NHRCK recommended to the Minister of Welfare that a clause concerning the installation and operation of a surveillance camera system be inserted into the relevant law.

A surveillance camera has both positive (e.g. crime prevention) and negative sides (e.g. privacy infringement). But it is important that basic rights be respected, even when dealing with patients suffering from mental diseases and needing to be watched.

Experts say that mental diseases can be treated with efforts made by patients, their families, and doctors. The methods of treatment are important. As Professor Lee Yeong-mun, a psychiatrist at Ajou University, School of Medicine puts it (the November/December issue of Human Rights Magazine), "Freedom decides the quality of the treatment of mental patients."

Human rights-friendly mental treatment and patients' return to normal life

A national report on mental patients

No one is immune to a mental disorder. According to WHO statistics, 20~25% of people the world over suffer from a mental disorder during their life. However, the mentally disordered suffer deep-rooted prejudice and discrimination in this country, including difficulties in getting a job or subscribing to insurance. There are many cases of human rights violations against them, such as forced hospitalization in a mental facility, including a longer stay than necessary because of an inability to express their opinions (or the refusal to recognize their competence). Measures taken to help those suffering from a mental disorder usually focus on placing them in a facility rather than rehabilitating them for normal life.

Seeing a need for a fundamental shift in policy, the NHRCK submitted the National Report on a Need for Protection and Promotion of Human Rights of the Mentally Handicapped in 2009, recommending to the Prime Minister and the Minister of Welfare that relevant policy changes for the mentally disordered should be carried out. With this report, South Korea became the third country in the world, after the United States and Australia, to issue a national report on the protection of the mentally disordered. The NHRCK recommended that the overall status of the mentally disordered be systematically monitored on a national level and proposed some human rights-friendly alternatives to present systems.

First, it is necessary to set a proper procedure for their hospitalization and discharge. In South Korea, the percentage of those committed to a mental health facility against their will accounts for 86% of the total number of those hospitalized for mental problems, compared to 3~30% in more advanced countries. The percentage of those staying in a mental hospital for more than 6 months stands at 53%. In many cases, those discharged are re-hospitalized immediately against their will. In the process, their basic human rights, including their personal freedom, privacy or self-decision, are infringed. Thus, the NHRCK recommended to the relevant authorities that the following measures should be taken: as stipulated in The Mental Health Act, confirming a patient's desire for hospitalization; strengthening the conditions required for hospitalization; reducing the frequency of review for continued hospitalization from the present 6 months; and improving the present review criteria.

It is necessary to protect the rights of patients in a mental facility and improve the conditions of their treatment. Many of the mentally disordered are not given a chance to hear sufficient explanations about their hospitalization/discharge or treatment. They are hospitalized without knowing their status or what the doctors will do for them. The NHRCK recommended the following for mentally ill patients: inserting a clause in The Mental Health Act concerning the provision of information to patients; strengthening the criteria for the protection of personal information; revising the regulations that put restrictions on a patient's right to communicate with the outside world, including having visitors; introducing more conservative criteria by which to separate one patient from the others, or to impose other limitations, with a view to minimizing the restrictions placed on a patient's freedom; upgrading the criteria concerning the relevant facilities and their staff; readjusting the medical fees to more realistic levels; and including factors such as facility criteria, links to the local society and the evaluation of medical fees with respect to developing a proper local environment for their treatment.

We should pay attention to the needs of patients following their discharge from mental facilities. The United States, for example, runs a variety of programs designed to help the mentally disordered live together outside of health facilities. In Italy, an epoch-making step was taken in which all mental hospitals were replaced by local mental health centers providing rehabilitation and treatment services. South Korea needs to take a similar step through the supplementation of facilities that can help the mentally disordered return to normal life, through increases in relevant funding, and through the provision of support for the families and self-help organizations. The focus should be on developing mental health-related services in local communities.

Finally, we should make efforts to put an end to prejudices and discriminations against the mentally disordered. In the course of its investigations, the NHRCK found that many businesses refused to recruit those with a history of mental illness and there are many clauses in laws that cause them disadvantages, such as describing them as "mental patients" or "mentally abnormal." The NHRCK recommended an overhaul of laws containing discriminatory clauses towards the mentally disordered and an increase in public awareness and education through the media.

The general public reacted positively to the NHRCK's national report and the issue of the human rights of the mentally disordered received widespread media coverage. It was a good start, but we have a long way to go.

"Apologies for discrimination, prejudice and indifference"

NHRCK recommends policies for improving the human rights of Hansen's disease sufferers

On June 29, 2005, NHRCK Chairman Jo Yeong-hwang said the following to Hansen's disease (leprosy) patients on his visit to Sorokdo National Hospital in Sorokdo Island, "We have treated Hansen's disease patients with discrimination and prejudice and the Government has been indifferent to matters concerning them. Let me apologize as the head of a government institution for having neglected to do what we should do." The media covered his speech, introducing it as the first of its kind made by the head of a government institution to people suffering from Hansen's disease.

In 2005, the NHRIC included the improvement of the rights of Hansen's disease patients in a major project that involved listening to what the less privileged had to say and solving their human rights problems. The NHRCK held consultation sessions in areas where groups of Hansen's disease patients lived, experts' meetings, a discussion session with Korean and Japanese participants along with a survey of them, and an investigation concerning over 160 complaints received.

During the 1910s, Japanese colonists forced Hansen's disease sufferers to move to Sorokdo Island. The policy in the colonial period was focused on separating them from society and preventing them from having children. Those relocated in Sorokdo Island were made to engage in forced labor and to remain in their designated areas. All expectant mothers there were forced to have abortions. After death, the body's of people with Hansen's disease were used for dissections or preserved for research.

The inhumane treatment of Hansen's disease sufferers remained the same even after the country's liberation in 1945. Between 1945 and 1957, sufferers were afflicted with more than ten men-made disasters, such as when 84 of them were massacred by employees of the institution in charge of taking care of them amid a quarrel over the right to operate the institution, and many were massacred in the same area over the reclamation of Bitoriseom Island, close to Sorokdo, right after the Korean War.

Inhumane treatment of Hansen's disease patients continued. During these days, half of about 16,000 patients nationwide were confined to their homes, while others were made to live and work on 89 farms exclusively provided for them, or they had to stay in special facilities, including the hospital on Sorokdo Island. They could not receive education/medical service/welfare benefits because of social prejudice. Those in the Sorokdo hospital had to report to the hospital director whenever they wanted to go out.

It was therefore necessary to improve the system of central registration for Hansen's disease patients and change The Act on Welfare of Persons with Disabilities to include Hansen's disease patients, who might look normal but have finger disabilities like the handicapped.

Many people have a misconception that Hansen's disease is infectious or passed on to offspring. More than 95% of people are naturally immune to Hansen's disease. Once sufferers have the drug named Rifampicin (also known as rifaldazine), it removes 99.99% of any possibility of them spreading their disease. The disease is perfectly curable, too. Then, what is the point of confining Hansen's disease sufferers to concentration camp-like facilities?

In May 2006, the NHRCK made the following recommendations about necessary policy changes concerning Hansen's disease suffers to the Welfare Minister, the Truth and Reconciliation Commission, and local governments with jurisdiction over farms where sufferers work: Disclosure of facts about the infringement of human rights of Hansen's disease sufferers; proper compensation and restoration of their dignity; and the enactment of a special law with relevant stipulations.

In 2007, the National Assembly enacted The Special Act on Disclosure of Facts Concerning the Maltreatment of Hansen's Disease Patients and Compensation for Victims in response to the NHRCK's recommendation. However, the law was criticized for lack of specifics on the government's obligations to pay compensation and for not stating realistic methods of compensation. Thus, Hansen's disease patients still have not received proper compensation and continue to live in poverty.

It is regrettable that so many Hansen's disease patients are still victims of social prejudice. A 70-something senior citizen said that he was forcibly taken to Sorokdo when young and has been forced to stay on the island throughout his life. When will our society accept such a person as one of its members without prejudice?

The incumbent government's responsibility for the criminal actions of authoritarian predecessors

NHRCK's recommendation for compensating victims of "Samcheong Gyoyukdae"

Years ago, there was a domestic TV drama entitled Morae Sigye (Hourglass). Set in 1980s Korea, the drama was extremely popular. On the days the drama aired, people hurried to be home before it started at 8:00 p.m. In the drama, the hero was forcefully taken to one of the Samcheong Gyoyukdae (a government "reeducation" camp) and suffered inhumane treatment there.

In August 1980, the Special Committee for National Security Measures (a euphemistic name for supra-constitutional body run by a military dictatorship) announced its plan to get rid of "social evils" by establishing correctional camps at 25 military facilities. Subsequently, more than 60,000 people were arrested nationwide without a warrant. Some 3,000 people were referred to a military tribunal while over 40,000 were taken to the Samcheong Gyoyukdae for reeducation. The fact that they were forcibly interned in camps was itself a human rights violation. Many people died: 54 died from violent treatment whilst in confinement that resulted in a ruptured colon, concussion or suffocation; a further 397 died due to the after-effects of their treatment; and 4 were reported missing. Later, 2,768 people complained about various disorders, including mental disorders they had developed due to the brutality they experienced. The people taken to the re-education camps compulsorily amounted to approximately 20,000. Of these, 15,000 were under 18 and 7,578 were placed under watch without appearing before a tribunal following their so-called reeducation.

Details concerning these illegal and anti-constitutional acts were disclosed to the public during the Roh Tae-woo Administration. The new administration promised that it would restore the honor of the victims and make up for their losses. However, no substantial action was taken as promised during that administration or the two administrations that followed. In 1999, President Kim Dae-jung gave instructions to enact a comprehensive law for compensation to people who have been victims of a government's illegal acts, but no substantial action was taken. Relevant bills initiated by members of the National Assembly between the end of the 1980s and the 1990s were all killed with the completion of their terms. The Supreme Court ruled that the statute of limitations on rights claims had run out but said that the government should make up for the broken promises over compensation. For its part, the Constitutional Court ruled that it could not accept a constitutional petition to redress the lack of legislation for compensation, as there already existed systems for the compensation of rights infringements caused by illegal government actions, such as The State Compensation Act and the relevant clauses in The Civil Act.

However, in 2003, the NHRCK recommended to the Defense Minister and the National Assembly Speaker that a special law be enacted to ensure the disclosure of all facts concerning Samcheong Gyoyukdae, the restoration of honor for the victims, and compensation for the victims with respect to the following: the president's promise for compensation; a court ruling for governmental payouts of consolation money to the victims; the confirmed restoration of the honor of those people who took part in the democratization movement as well as those identified by the Presidential Truth Commission on Suspicious Deaths; and the enactment of a law to ensure compensation for dismissed government officials and people who took part in the democratization efforts in the 1980s. In January 2004, the National Assembly enacted The Act on the Honor Restoration of and Compensation to Victims Involved in the Samchong Training Camp Incident. The law took effect on July 30, 2004.

The NHRCK's recommendation was based on the principle that the government should be responsible for serious past infringements of human rights, for whatever reason, perpetrated by a state power. Articles 2 and 10 of the Constitution stipulate, respectively, that "The State shall protect its citizens abroad as provided by Act" and "It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals." That means that the incumbent government is obliged to take responsibility for misdeeds perpetrated by previous regimes.

The fact that we are humans does not change even under threat from an enemy.

Harsh acts perpetrated at an Army Training Center

On the evening of January 9, 2005, a company commander at the Army Training Center gathered the trainees under his control and told them to keep toilets clean. On the following morning, he gave a similar instruction. At around 10:00 a.m. the same morning, he checked the cleanliness of the toilets and told them, "I will have you eat excrement if the toilet is found to not be clean." At 3:40 p.m. in the afternoon, the company commander checked the toilets again and found that they had not been kept clean. He told another officer in charge of trainee education that he would hold a special educational session for his men. An hour later, he ordered his men together and asked the one who had failed to keep the toilets clean to step forward. No one responded at which the officer had all 192 trainees put a piece of excrement from the toilet floor in their mouths. News of this bizarre punishment spread to other officers, but no one reported it to the higher authorities. The fact was not known outside of the center until 10 days later, when one of the trainees wrote about it in a letter to his friend.

The ridiculous event was reported on TV news. The NHRCK immediately launched an investigation under The National Human Rights Commission Act, Article 30, Paragraph 3. Other similar cases of human rights infringement perpetrated in the military were included in the NHRCK's investigation. Another company commander in the Army Training Center was found to have taken a similar step over the issue of keeping a toilet clean. In this case, the NHRCK discovered, a trainee who spat on the toilet floor was told to wipe some spit onto his finger and put his finger into his mouth. The NHRCK found that trainees were often subjected to harsh treatment and abusive language.

The military is an organization run in preparation for carrying out war. By its very nature it upholds strict discipline and regards the following of orders as more important than anything else. Sometimes, harsh disciplinary punishment imposed on inferiors is considered normal. In such an environment, the human rights of servicemen are not a high priority and this leads to the kinds of abuses where a superior is able to force trainees to put feces-covered fingers in their mouths.

The NHRCK judged that such a human rights infringement was caused by a rigid barracks culture, the common perception that there is little room for human rights in military camps, and a lack of apparatus for controlling malpractices perpetrated within camps due to the need for military security. The NHRCK recommended to the Defense Minister that measures be taken as follows to avoid similar incidents occurring.

First, it is necessary to bolster human rights education within the military. The military needs to include human rights subjects in training courses for officers and NCOs and include them as criteria in the selection process for promotion. Recruit training centers and other units should conduct human rights education sessions. In addition, human rights protection should be included as a core factor in the evaluation of high-ranking officers with an aim of fostering a barracks culture conducive to respecting human rights.

Second, measures should be taken to prevent cases of human rights infringement in the military. Internal control systems need to be implemented and run accordingly. It is necessary to allow men to make complaints without their identities being revealed.

Third, inferiors should be allowed to point out wrongs evident in their superiors' orders. It should be made obligatory to report wrongful actions to commanders. Harsh disciplinary punishment should be prohibited and violators should be punished

The NHRCK's recommendations were based on the idea that even soldiers should have their basic rights protected under the Constitution. No exceptions should be allowed concerning human rights, not even for unique organizations like the military. The fact that we are all humans remains unaltered even in the middle of a war.

A right to health

NHRCK's opinion on having medication available to AIDS patients

A young man was infected with AIDS and after being diagnosed he was segregated from society. It appeared that his only hope of having a normal life was through being treated with the drug called Fuzeon. Fuzeon is for AIDS patients who developed resistance to antiretroviral drugs. However, it was not available in Korea due to the failure of price negotiations between the Ministry of Health and the global pharmaceutical company that holds the patent right for the drug. The stalemate lasted for more than four years until the permit for domestic sales was given in May 2004. The man could buy the drug from overseas, but its cost (1.8 million won a month) was too burdensome since he could not get a job to pay for it because he had AIDS.

The young man asked the authorities to abolish the patent right holder's monopoly so that he could buy the drug at an affordable price. Subparagraph 3, Paragraph 1, of The Patent Act stipulates that "A person who intends use a patented invention may request the Korea Intellectual Property Office (KIPO) to adjudicate for grant of a non-exclusive license thereon, where the working of the patented invention is specially necessary for public interests." Upon the granting of a non-exclusive license, the patent right may be used by non-patent holders for a limited period of time, which means that Fuzeon generics could be produced within Korea. In December 2008, an AIDS organization asked the KIPO to adjudicate on a license.

A year later, the NHRCK upheld the AIDS organization's request, saying that it was desirable to license Fuzeon to protect the health rights of patients as stipulated in the country's Constitution and the International Covenant on Economic, Social and Cultural Rights.

But the government has delayed making a decision for years, pointing to the possibility of an international trade dispute with the pharmaceutical company and subsequent economic losses. The NHRCK holds a different opinion. Article 31 (Other Use Without Authorization of the Right Holder) of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) stipulates that individual countries may waive patent rights if needed for public non-commercial use and to make medicines available. Many countries have exercised this option to waive patent rights and it has not always led to international trade disputes. This is demonstrated in the following examples: an anthrax treatment drug in the United States and Canada; an AIDS treatment drug in Brazil and Thailand; and a breast cancer treatment drug in Thailand. In these cases, governments exercised (or considered exercising) the waiver of patent rights so as to lower the price of medicines within their countries. Fear of financial losses in conflict with a pharmaceutical company is hardly a valid explanation for the government's delay. Besides, pharmaceutical companies often back down and agree to supply the drugs at lower prices when governments threaten patent waivers.

The NHRCK's assessment was that the government is obliged to respect, protect, and realize its citizen's right to life and health, even if there is a possible clash between the need to protect intellectual property rights and the need to protect a right to life and health.

The NHRCK helped to expand the view that the right to health is a human right and as such must necessarily be protected by the government. The protection of the right to health in Korea will remain a pressing issue with the government's signing of multilateral FTAs.

The supply of water and power is essential for life

NHRCK's recommendation on cutting of water/ power to those unable to pay bills

More than 100,000 households do not receive water or power in Korea, as they cannot afford to pay for the costs. Every year, we read reports of people who lose their lives because they cannot afford utilities, such as a couple with disabilities and a young student who died due to fire while sleeping with candles burning because their power had been cut off.

Stoppage of water or power to poor households is an outcome of the callousness of capitalism and is a serious infringement of people's human rights.

Power and water are essential for life in this day and age and cutting them off can threaten one's existence. But the utility needs of households living at subsistence level without the government's financial support are ignored. Their water and power supplies might be cut off without consideration for their hardships and this infringes upon their right to a decent life and their basic rights as stipulated in the Constitution.

In more advanced countries like France, the U.K, the U.S., and Australia, the government is required to supply minimum power and water to people, regardless of their circumstances, under law. The stoppage of power and water does not occur in these countries except as a last resort. They have systems in place so that social welfare administrations can ensure an uninterrupted supply of power and water to the less privileged.

While each country has its own welfare standards, Korea should never stop the supply of minimum water and power necessary for human existence and should follow the example set by countries with more advanced welfare systems.

After complaints about human rights infringements caused by the stoppage of power and water supplies, the NHRCK carried out a survey and consulted with the ministries concerned over ways to improve the situation in 2006. In the following year, the NHRCK recommended to the Minister of Welfare, the Minister of Commerce and Industry, the Minister of Environment, the Minister of Construction and Transportation, and the heads of local government offices that an amendment be made to the relevant laws and policies in order to protect the rights of the less privileged households.

The NHRCK's recommendation included protection of underprivileged households from a social security perspective; the government's payment of utility charges on behalf of select poor households; the stoppage of power and water supplies as a last resort only (and only for those maliciously defaulting in the payment of utility charges).

The NHRCK's recommendation served as a reminder of the government's obligation to protect people's rights as stipulated in the Constitution, Article 34, Paragraph 1 (right to life worthy of a human being) and Paragraphs 2 through 6 (protection of people from material poverty). Ensuring the continued supply of water and power for all citizens at a national level is a human rights issue and should be pursued according to the Constitution and international norms.

Actress Kim Yeo-jin took to the streets to advocate for the rights of street cleaners

NHRCK recommends improvement in their human rights

In early 2011, actress Kim Yeo-jin started speaking out on a series of social issues. At first, she posted a message on Twitter about the unreasonable way cleaners at a university were treated. She provided support to workers engaging in street demonstrations by supplying them with food. Then, in conjunction with others, she placed an ad expressing her support for cleaners. What prompted her actions?

In 2007, the NHRCK conducted a survey on the reality of cleaners in the workplace from a human rights perspective. The country saw a rapid increase in the number of casual workers from the latter half of the 1990s onwards because of labor market changes brought about by the IMF economic crisis. Conditions became worse and worse for casual workers, including cleaners.

In its survey, the NHRCK found that most cleaners were often women, those with only a middle school diploma, and elderly people, i.e. the less privileged groups in society. Their biggest problem for them was low wages. In 75.6% of situations, cleaners were working under a package-wage system, which offered lower wages than the government-set minimum level. Nearly half, 49.7% of them consisted of the heads of households who had to support an average of 3.3 dependents, while 60.8% said that they had difficulties in making ends meet.

The low bid price-based system, which was adopted by public institutions, was to blame for the low wage level of cleaners. The State Contract Act stipulates that the successful bidder's ability to carry out a contract has to be reviewed carefully in contracts signed with the government. However, in the course of such reviews, those unqualified under The Minimum Wage Act or The Labor Standards Act were often not screened out.

Employment instability was also a serious concern. The outsourcing system for hiring cleaners consists of a service business that acts as mediator between employers and workers. In such a system, the employers have the advantage of getting cheap workers and can avoid responsibilities as an employer. The employer's termination of a service contract with a mediating service means the easy dismissal of workers without any obligation or legal ramifications.

Another problem prevalent in the past was the inhumane treatment of cleaners. In many cases, they were exposed to sexual harassment, abusive languages, violence, disdain, and sometimes taking a rest was only a dream.

To the NHRCK it was clear that the poor working conditions suffered by cleaners constituted a human rights infringement, and in 2007, it recommended to the Minister of Labor, the Minister of Government Administration, and the Ministry of Finance and Economy that improved monitoring of the treatment of cleaners should be enforced; that a law be enacted for their protection; that an amendment be made to The State Contact Act; and that an amendment be made to the service contractual conditions involving the government.

Follow-up measures concerning these recommendations are still under way. There have been some improvements, but working conditions of cleaners still leave much to be desired. In early 2011, cleaners gathered to raise their voices in protest and ask for the protection of their basic human rights. They expressed bitterness about low wages, employment instability, and the lack of "space in a workplace where they could eat a bowl of warm rice." They said they were not even allowed to eat in staff cafeterias and had to have lunch in a deserted stairway or basement storage area or even in a toilet. Can we claim that we live in a mature and civilized society if we allow such things to happen? Please check on the status of cleaners in your workplace.

5

Children, are you happy?

Prohibiting the corporal punishment of children

NHRCK's opinion on the amendment to The Enforcement Decree of The Elementary and Secondary Education Act

In September 2002, the NHRCK expressed its opposition to corporal punishment in schools, after reviewing the School Life Regulations announced by The Ministry of Education in June of the same year. The NHRCK recommended that amendments be made to the relevant clauses in The Elementary and Secondary Education Act and its Enforcement Decree, which serve as the basis for corporal punishment in schools.

In its recommendation, the NHRCK states that corporal punishment is an act of infringing on students' freedom, that the guidance of students should be conducted with a respect for their human dignity, and that education authorities should find another method of disciplining instead of corporal punishment. The NHRCK added that most students said that they felt anxiety, depression, and hatred because of corporal punishment, although some said there was a need for corporal punishment as a means of discipline. Like the NHRCK, the UN Committee on the Rights of the Child has stressed a need for dialogue and collaboration rather than punitive measures.

The Elementary and Secondary Education Act, Article 18, Paragraph 1, stipulates that "The head of a school may, if deemed necessary for education, discipline or otherwise guide students as determined by acts and subordinate statutes or school regulations." And Paragraph 7, Article 31, of The Enforcement Decree of the Act stipulates that "… it shall be conducted by methods such as discipline and admonition which do not inflict physical pain on a student's body…except on unavoidable occasions." With regard to these clauses, controversy has arisen over whether corporal punishment, which is violence toward children, can be justified as being educational. The clauses have also been criticized because they suggest that corporal punishment is an acceptable option. However, it has been pointed out that this decree, which allows for the infliction of physical pain on students, if unavoidable, is in violation of The Elementary and Secondary Education Act, since it contains no clause stating that the head of a school can use methods that inflict physical pain on students.

Under these circumstances, in March 2011, the Ministry of Education pushed ahead with an amendment to Paragraph 7 (now Paragraph 8), Article 31, of The Enforcement Decree such that it stated "… pursuant to school regulations," which leaves room for indirect corporal punishment. In response, the NHRCK stated that it should be amended to "…shall be conducted by methods such as discipline and admonition which do not inflict physical pain on a student's body," thus leaving out the possibility for even indirect corporal punishment. For the NHRCK, the corporal punishment issue is not just about methods used to inflict physical pain, but about whether teachers should be allowed to force students to do what they want by using violence. Some people objected to the NHRCK's views, citing that teachers also have rights and that there is the need for a realistic disciplinary method for students. The NHRCK, however, remains steadfast in its opposition of all corporal punishment.

"Children are not completely protected yet concerning personal and physical dignity, which is readily taken for granted for adults. The need for prohibition of corporal punishment under the law is not to indict parents, but to change the view that children may be beaten," said Peter Newell, Global Initiative to End All Corporal Punishment of Children, at the workshop in 2009 hosted by the NHRCK on the occasion of the 20th anniversary of the Convention on the Rights of the Child (CRC).

Inherent human rights should not be undermined

NHRCK recommends text books in line with human rights criteria

School textbooks can enlighten students' human rights consciousness. The effect of textbooks is so great that if they had information on the importance of human rights, separate human rights education would not be needed. But if textbooks contain anti-human rights sentiments, they can be a bad influence. For this reason, the NHRCK studied the contents of school textbooks and asked that revisions be applied to them where necessary.

In November 2002, the NHRCK recommended to the Ministry of Education that 13 items in textbooks published under the 7th Amendment of the National Curriculum be revised, as they might have a negative impact on students' human rights consciousness. The items had content associated with putting national interest or social order before human rights, justifying infringements against the right to life and freedom, justifying the infringement of students' moral rights, and perpetuating prejudices and discrimination against person with disabilities, women, other races, and certain occupations. The Ministry of Education accepted NHRCK's recommendations and said that it would take measures to ensure that textbooks were in accord with the recommendation from the first semester of 2003.

Details of the NHRCK's recommendation were as follows:

A. A chapter entitled "Let's observe laws – Socrates who observed laws" in an ethics textbook for 6th graders

The chapter introduced a statement by the Greek philosopher Socrates, "The laws are a promise made by the state. Thus, I must observe them even if it costs my life." This relates to a famous saying attributed to the philosopher, Dura lex, sed lex, or "The law may be harsh, but that is the law," though it is unlikely Socrates ever made this statement. The NHRCK pointed out that Socrates' ancient philosophy of law advocates anti-human rights notions and does not fit with modern views based on basic rights in a free democracy.

B. A sociology textbook for 6th graders about freedom of expression

This textbook said that individuals may express their opinions and views verbally or in writing as long as they do no harm to national security or social order. The NHRCK pointed out that the text put national purpose before human rights and this is contrary to Article 10 of the Constitution, which provides for human dignity and the right to pursue happiness.

C. Discrimination against other races, the handicapped, women, and so on:

- A high school fine arts textbook states that "The logo of Seoul uses the human skin color for the sun for symbolic expression." But the idea of "human skin color" here perpetuates prejudices and promotes racial discrimination.

- A sociology textbook for high school freshmen states that "The handicapped shall not be put at a disadvantage if they have ability equal to normal people." The expression "normal people" implies that the handicapped are abnormal people.

- A home economics textbook for middle school sophomores states that "Work hours include the hours housewives engage in housework." This can be interpreted as meaning that housework is a role only for women; also, a sociology textbook for high school freshmen states that "Men getting married to gajeongbu will lead to a decrease in GDP." The term gajeongbu is a derogative one, meaning "housemaid," and the text was accompanied by an illustration of a male employer paying money to a female housemaid who is mopping the floor

The NHRCK continues to check newly published textbooks and make recommendations on revisions to material that does not correspond to human rights values or that might be interpreted as discriminatory. In June 2009, the NHRCK invited textbook writers and publishers to an informal meeting to ask them to produce textbooks keeping human rights in mind. The NHRCK will continue with its efforts against discrimination in school textbooks.

Hairstyle is a way of expressing personality

NHRCK's recommendations on relaxing restrictions on students' hairstyles

A high school senior had his head shaven like that of a Buddhist monk as an expression of his determination to apply himself to his studies. As it turned out, he could not concentrate on his study due to the new hairstyle. Hairstyle is very important to young people and they do not like teachers interfering with their hairstyle choices.

In March 2005, the NHRCK received three complaints about the school authorities' restrictions on students' hairstyles. Teachers had cut the hair of students at two high schools after the students had gone against the school's hairstyle regulations and at a middle school a girl was not allowed to tie her hair back.

The NHRCK started looking into these complaints and reviewed the relevant policies with a view to improving the current system to protect students' human rights related to their hairstyles.

At that time, students at most middle and high schools followed regulations concerning hairstyle, which differed from school to school. According to the Ministry of Education, 92.6% of the 2,761 middle schools and 91.1% of the 1,924 high schools imposed restrictions on their students' hairstyle. Teachers had cut students' hair when regulations were disobeyed at 32 middle schools and 44 high schools. Students surveyed at the two high schools associated with the complaints (24 students out of the 65 in one school and 42 out of the 63 in the other) said that their hair had been cut by teachers or that they saw their classmates' hair cut by teachers more than once.

Under the basic rights provided for by the Constitution, people should be allowed to choose their own hairstyles as part of their right to express their personalities.

Article 16 of the CRC provides for the right not to have one's private life interfered with arbitrarily or illegally. Thus, it is an infringement of human rights for teachers to cut students' hair against their wishes. It constitutes a moral infringement as well, if it makes the student feel humiliated.

It is fair that schools can put some restrictions on the freedom of their students concerning their hair, according to what is necessary to protect their students' futures and help them achieve the school's educational goals. However, the details of such restrictions, including their enforcement, should be reasonable and take into account a student's right to make their own decisions. It is important to remember that such restrictions are intended to protect young people and help them develop healthy personalities, and not to exercise absolute control over them, so the restrictions should not violate the "proportionality principle."

Accordingly, the NHRCK recommended to the headmasters of the relevant schools that measures be taken to avoid such incidents from occurring and that their school regulations be revised to accommodate students' rights as much as possible. The NHRCK also made recommendations on the following to the Minister of Education and superintendents of education nationwide: minimum possible restrictions on students' hairstyles in all schools based on the fact a hairstyle is a student's basic right; steps toward including human rights infringements in the revision of school regulations; and measures to stop teachers' from cutting students' hair against their will.

Personal diaries should be strictly protected

Teachers' opinions left on elementary students' diaries

In Korea, it is customary for elementary school homeroom teachers to have pupils keep diaries so that teachers can check to see if the students have been paying attention in class. Children feel stressed of an evening when they have little to write about. Some lazy children write a month's worth of diary entries in one day at the end of their vacation. In these instances, they need to borrow a diary from one of their diligent friends so they can state how the weather was each day. In March 2005, the NHRCK expressed an opinion contrary to the long-held practice of teachers checking students' diaries and thus ignited controversy.

It began in July 2004, when the NHRCK was contacted by an elementary school in Seoul for its opinion on whether the practice of having pupils keep diaries, and presenting awards to exemplary diary-keeping pupils, was a possible human rights infringement.

Having children keep a diary has its merits, such as forming a habit of reflecting on how they spend a day and enhancing their writing or record keeping abilities. However, the NHRCK judged that it can possibly infringe on children's privacy and freedom of conscience. The NHRCK's judgment was based on fears that children's private activities and desires might be interfered with, since they know their private details will be disclosed to others; teachers could be negatively involved in the formation of children's personalities, as children might modify behavior because they know their dairies will be checked by a teacher; and children might learn to never disclose their true or candid thoughts.

The NHRCK also had the view that when children are forced to keep a diary they might regard it as simply a part of their schoolwork, rather than a true private record of their daily activities, so this defeats the intended purpose of keeping a diary. And the claim that diary keeping enhances children's handwriting and composition skills is not especially significant because those skills can be obtained through other means.

Thus, the NHRCK concluded that the practice of keeping student diaries and having them checked by homeroom teachers was not a proper method for educating children because it placed restrictions on children's rights to privacy and freedom of conscience.

The NHRCK recommended that the Education Ministry improve the practice in a way that respects children's human rights. The Education Ministry accepted the NHRCK's recommendation and said that it would supervise schools to stop the practice of homeroom teachers checking children's diaries and presenting awards to exemplary diary keepers, but it would continue to allow children to keep diaries because of its educational effects.

The media, teachers, and parents responded to the NHRCK's recommendations in a variety of ways, and the whole process served as an occasion to raise awareness and build a new consciousness toward children's human rights. As stipulated in international standards on human rights, and in the CRC and the country's Constitution, children should be educated and protected properly, with schools doing all they can to respect children's rights and human dignity.

We should protect the human rights of all children

NHRCK's recommendations to guarantee the right of migrant workers' children to a basic education

Who should take care of migrant workers' children and their education? Article 2 of the CRC, ratified by South Korea in November 1991, stipulates as follows: "1. State parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. State parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."

Article 28 of the CRC stipulates that "States Parties shall recognize the right of a child to education, and with a view to achieving this right progressively and on the basis of equal opportunity." Thus, a variety of steps must be undertaken. In 2003, the UN Committee on the Rights of a Child recommended to the Korean Government that it should "guarantee the right to education to all non-Korean children within the country equal to what is provided to Korean children." As a signatory to the CRC, the South Korean Government has the responsibility of carrying out the convention faithfully and respecting the recommendations made by the committee, including the right of migrant workers' children to an education.

However, migrant workers' children in this country have not been receiving a proper formal education. As of August 2008, the number of migrant workers' children stood at 69,987, of which 8,259 were unregistered, and it appears that the percentage of those attending schools is very low. In February 2008, the Government amended Paragraph 1, Article 19, of The Enforcement Decree of The Elementary and Secondary Education Act to make it possible for the admission of the unregistered school-age children of migrant workers into elementary school, provided they submit verification of their residence. In January 2010, the NHRCK recommended to the Minister of Education that the amendment should be extended to also include middle school age children as the Basic Education standard stipulates that compulsory education should include three years of middle school. In response, the Ministry of Education opened a way for the unregistered children of migrant workers to attend middle school by issuing a pre-notice about the amendment to the law in August 2010.

In February 2011, the NHRCK came up with comprehensive measures for guaranteeing a right to an education for migrant workers' children and submitted them to the Ministers of Education and Justice. The measures included the following: bolstering the system for provision of a systematic education on the Korean language and information on school life in the mother tongue of the relevant child; preventing discrimination and human rights infringements against migrant workers' children and strongly supporting the victims of discrimination; suspending orders made to illegal migrant workers to leave the country until their children have finished the current school year or semester; and setting up a legal clause to allow for the suspension or exemption of the obligation of government officials in charge of protecting rights of migrant workers to report illegal migrant workers who have children attending school.

According to the NHRCK's 2010 survey of the status of the right to education enjoyed by migrant workers' children, 61.4% of them found it difficult to attend school due to poor Korean language proficiency, while 15.2% of them said that their admission was rejected by authorities; 60% of them said that they had to drop out of school due to difficulties associated with language, racism, socializing, expense, or worries about their illegal status.

Four months later, the Ministries of Education and Justice said that it would accommodate the NHRCK's recommendations proactively. Thus, a way was opened for unregistered migrant workers' children to attend elementary and secondary schools in this country. The NHRCK is happy with what has been done to help all children enjoy the right to learn in preparation for their futures. It is hoped that this kind of thinking will spread throughout society

"My name is important."

Attaching nametags to school uniforms

Kim Chun-su's poem Flower starts with the line "He was merely a gesture until I addressed him by his name." People say that it is a poem about an individual who wishes to be addressed and named by someone, but not just anyone, it must be by someone who is more meaningful to that individual.

A name carries identity and is precious personal information. Article 17 of the Constitution provides for people's right to privacy and freedom, that is, the right to have a private life, the right not to be interfered with concerning free thinking and the development of a private life, and the right for the control of information about themselves. It means that people have the right to decide for themselves how and when their name should be known to other people and how it should be used.

In May 2009, a Ms. Yang (age 50) submitted a complaint to the NHRCK, saying, "A middle school in Daegu forces students to have nametags permanently fixed to their uniforms. This discloses the students' names to anyone. It should be stopped."

The school involved explained to NHRCK investigators that fixing permanent nametags to the chest area of school uniforms was so that student uniforms could not be easily stolen and so students would be encouraged to behave well. However, the Ministry of Education and the local office of education opposed the practice, saying that fixed nametags on uniforms might expose students to criminals and criminal conduct.

The NHRCK judged that a name was personal information that should be protected and fell under the right to self-determination concerning personal information. The NHRCK pointed out that the use of fixed nametags put excessive restrictions on students' privacy and freedom through the disclosure of their names outside of school grounds and that there was a danger of students being exposed to people with evil intentions. In addition, the NHRCK saw that it constituted an infringement of moral rights provided for in Article 10 of the Constitution and privacy and freedom provided for in the Article 17 of the Constitution. Thus, the NHRCK recommended to the headmaster of the school in question, all superintendents of education, and the Minister of Education that the nametag practice be changed and that school regulations be revised.

With regard to the use of nametags within school, the NHRCK judged that it was reasonable to have them for purposes such as student guidance.

The NHRCK's recommendation was controversial. The majority of students welcomed it, while adults expressed concern about bad behavior by students outside of school. However, the use of permanently fixed nametags should be viewed first from a perspective of protecting students' basic rights as guaranteed by the Constitution. In response to the NHRCK's recommendation, the offices of education in Seoul and Gangwon-do instructed schools under their control to revise their internal regulations so as not to infringe on students' human rights with fixed nametags. Although all schools have not yet followed the NHRCK's recommendations, the case created a lot of publicity and influenced many to look at the subject of students' human rights more seriously.

"Don't take teachers from us."

Freedom of expression of students opposed to national scholastic achievement tests

Nationwide scholastics achievement tests are aimed at providing statistics that will help improve curricula and teaching methods, establish better educational policies, and develop better student evaluation methods. From 1998 to 2007, the tests were carried out in the form of a sample test given to 1~3% of the entire student population nationwide. In 2008 the method used before 1998 was re-adopted, and the test was given to all students nationwide at different levels. Previously it was taken by 6th graders, middle school seniors, and high school freshmen, but in 2008 it was taken by 6th graders, middle school seniors, and high school sophomores.

The resumption of the nationwide test in 2008 ignited controversy. Five school teachers in Seoul, who had opposed the test, were dismissed by the Seoul Metropolitan Office of Education. Day after day, newspapers carried articles about the struggle between dismissed teachers, who continued to appear at schools in protest, and school headmasters. Meanwhile, the NHRCK received complaints about human rights infringements from students who were opposed to the nationwide test.

Complaints were received after some pupils had expressed their support for the five dismissed teachers and staged a demonstration in front of the school before class. Their complaint was that their freedom of expression/assembly and the right for learning were infringed upon when teachers interfered with their protest. Some teachers at the elementary school in question took away the protest signs (which read "Don't take teachers from us!") from the pupils without their consent. The NHRCK judged that "the right for learning" was not a matter within its jurisdiction, under the National Human Rights Commission Act, and that the other matters raised could not be viewed as cases of human rights infringement.

With regard to taking away the pupils' protest signs, however, the NHRCK recommended to the headmaster of the school that instructions should be conveyed to the teachers who took away the signs to avoid such a thing happening again. The Constitution and the CRC provide for children's right to express their views freely, if it is within their right, concerning all matters that have an impact on them. This means that students are guaranteed the freedom for assembly and demonstration except in cases where national security or public safety/order are hindered. Students have a special social status and they are guaranteed a freedom of assembly or demonstration over issues that impact on them.

The NHRCK judged that taking away the student's protest signs without their consent was an infringement of their freedom of expression, as provided for in Article 21 of the Constitution, since the students' were conducting a peaceful demonstration before class hours, without infringing on others or damaging school facilities. The school headmaster accepted the NHRCK's recommendation and instructed 61 educational personnel, in June 2010, on matters pertaining to the freedom of expression, constitutional rights, and children's human rights.

Aside from the controversy over the nationwide scholastics achievement test, this case was significant because it highlighted elementary school pupils' freedom of expression.

Are only students human?

Discrimination against teenagers not attending schools

In this country, people are likely to look down on teenagers out on the streets during school hours who do not seem to be students. They tend to think these young people are perhaps social dropouts.

Some teenagers do not attend schools due to their parents' economic situation or because they are in alternative educational programs. Nonetheless, many teenagers not in school are discriminated against. For example, discounts on public transportation fares or cinema admission prices do not apply to them.

In May 2003, teenager Pak Ho-eon (16) submitted a complaint to the NHRCK. Although he attended a school in Daejeon, he submitted a complaint on behalf of his non-student friends who were discriminated against.

The NHRCK found that the 10~50% discount on public transportation/facility fares or fees for young people was provided only to students. Those not given such discount due to their status as non-students were estimated to be about 3 million (500,000 of those aged 9~18 and 2.5 million aged 19~24).

The NHRCK judged that such a practice was unjustified discrimination under Article 11 (all people being equal under the law) of the Constitution and the Charter of the Youth, which stipulates that no young people shall be discriminated against due to where they come from, their gender, religion, academic background or age. The NHRCK recommended to the Minster of Culture that measures be taken to improve the relevant laws, systems, policies and practices in connection with assistance for young non-students, whose numbers were increasing amid an economic downturn.

In response to the NHRCK's recommendation, the Ministry of Culture and other relevant institutions started preparing new policies. It was decided that IDs should be issued to non-student youngsters. For those holding the IDs, local government offices provided discounted public transportation fares and public-facility admission fees. At first, few youngsters applied for issuance of youngster IDs because holders of such IDs were regarded as problematic youngsters. To avoid this issue, the Ministry of Culture started issuing youth IDs to all teenagers—students and non-students.

The case publicized the need to give consideration to non-student teenagers.

Male students first

Serial numbers given to elementary students

In Korea, gender discrimination is a deep-rooted social custom. Under the influence of Confucian culture, the male-first view is prevalent everywhere in our society, including at elementary schools.

In July 2005, a Mrs. Jo, the mother of an elementary student in Daejeon, submitted a complaint to the NHRCK, saying that the practice of placing male pupils first when designating serial numbers in each class is gender discrimination.

The NHRCK found that the elementary school had indeed adopted such a practice. Also, within the same gender, serial numbers were given according to dates of birth (older ones first).

The NHRCK judged that the practice might influence young students to develop a "males first" mentality and that it could also lead girls to think that they were second-class citizens. On the other hand, it was an administrative convenience to group students according to gender. But because of the undesirable result from gender-based discrimination, the NHRCK judged that it was more important not to discriminate than to have administrative convenience. Thus, the NHRCK recommended to the headmaster of the school that the practice should be changed.

The school accepted the NHRCK's recommendation, in consultation with parents, and said that it would designate pupil's serial numbers according to alphabetical order or dates of birth, starting the following school year. Many other schools have since followed the NHRCK's recommendation.

But many gender discrimination problems still exist in schools, such as designating serial numbers and classroom seating according to height, or increasing the number of toilets for girl students compared to those available for boy students.

People have also pointed out school textbooks containing gender discrimination. In 2011, the NHRCK checked and found that improvements had been made to many textbooks that might contain gender discrimination and therefore influence the thinking of young students, but there were still stereotypes found in textbooks such as associating women with housework or shopping and men with business outside of the house or in public, or placing more emphasis on famous men than on famous women in quotes, photographs and illustrations.

Young children absorb knowledge like a sponge. School authorities should remember this and take steps to prevent students being influenced by gender-related prejudices.

Part-timers' human rights

NHRCK's recommendation to improve laws and policies concerning young part-timers

There has been an increase in the number of young people engaging in part-time jobs, but their rights are not as well respected as those of regular workers.

According to a survey of the economically active population conducted by Statistics Korea in August 2009, the number of income-earning teenagers among those aged 15~19 (3.3 million) stood at 213,000 or 6.5%. It turned out that 123,000 or 63.7% of them were paid lower salaries than the statutory minimum wage (4,000 won per hour in 2009) and one out of five of them worked more than 48 hours a week.

A majority of 62.3% of them said that they had to work to pay their tuition and meet living expenses. The fact that so many youngsters are engaged in work like this is an indicator that the number of poor households is increasing. The survey also showed that less than 10% of teenage part-timers were receiving the benefits of insurance (such as employment insurance or health insurance), retirement allowance, overtime pay, or paid holidays. That is, they existed in a blind zone not protected by law.

In March 2010, the NHRCK recommended to the Ministry of Labor and the Ministry of Education that the relevant laws and policies needed to be improved to protect the human rights of young part-timers suffering under extremely poor working conditions. Under The Labor Standard Act, Article 69, those under 18 shall not be made to work more than 7 hours a day or 40 hours a week (under a six-day work week system), but the law has no stipulation on work hours for a less than five-day work week. This was not in line with the amendment to The Labor Standard Act that reduced adults' statutory work hours from 44 hours to 40 hours a week based on a five-day work week. So the law was in violation of the clause concerning the special protection of teenagers in the Constitution, Article 35, Paragraph 5. The Labor Standard Act therefore had to be amended to reduce the statutory work hours for teenagers to 35 hours a week and a maximum overtime of 5 hours a week. It was also necessary to apply The Labor Standard Act more extensively to workplaces with less than five employees, the majority of which were teenagers. In 2008, the NHRCK made recommendations along these lines to the then Labor Minister.

The Ministry of Labor also needs to enhance the efficacy of the enforcement of laws. It should provide administrative supervision to protect teenagers who are placed in a legal blind zone. This should be made possible through amendment to the Employment Supervising Officers Regulations so that supervision can be carried out without giving a notice to suspect workplaces. The Ministry should also carry out education on labor laws for employers hiring teenagers and take other measures to protect teenagers from unscrupulous employers, including education on sexual harassment.

The NHRCK's recommendations to the Minister of Education included the addition of labor-related human rights education as part of the curriculum for middle and high schools. The curriculum would adequately educate teenagers about the labor market so they can avoid unfair treatment at workplaces because of a lack of knowledge about their rights as part-time workers. Teenagers' experiences of part-time jobs remain long in their memories as their first experiences in earning an income. For this reason, labor-related education and the protection of their rights as employees are very important to future social harmony and attitudes in the workplace.

6

Cry for freedom

Popularization of the concept of "information-related human rights"

NHRCK's recommendation on NEIS

All new concepts are unfamiliar and difficult to accept at first. It usually takes time for people to get used to them, but that can happen quicker if the new concept is introduced with a big event or is surrounded by controversy. An example is the concept of the "information-related human right." In 2003, the controversy over the National Education Information System (NEIS) promoted by the Ministry of Education drew the public's attention to so-called information-related human rights. The ministry wanted to establish the NEIS in an effort to collect information on students and the attempt met stiff resistance from civil groups. In the process, the NHRCK voiced its opinion.

In the past, the information on students and their parents needed for student guidance was collected and managed through each school's integrated client-server information system under the control of school headmasters. With the adoption of the NEIS, the ministry intended to centralize and manage such information with an integrated system using a high-speed communications network and run by 16 offices of education nationwide. The adoption of the NEIS was to be part of the effort to digitize all administrative work in line with the idea of an e-Government. But controversy erupted over possible human rights infringements, such as the disclosure of personal information and the violation of the right to privacy.

Thus, the NHRCK recommended to the Minister of Education that the following measures be taken in the operation of the NEIS: Exclusion of matters concerning academic affairs, including school admission and health details of students, from among the 27 areas covered by the NEIS; exclusion of records concerning faculty members' personnel affairs left in "the separate index," through the revision of The Public Education Employees' Personnel Records and Relevant Administrative Work Handling Rules; and reinforcement of the security system concerning the client server method currently used for the integrated information system at schools.

A central issue in the NEIS controversy was whether the need for a more efficient operation of administrative system has priority over people's basic rights [namely the right to pursue happiness (Article 10 of the Constitutions); the right to privacy and freedom (Article 17); the right to receive education (Article 31); the right not to have freedoms and rights neglected] and whether supplementary measures were taken against loss or theft of the relevant certifications. In response to the NHRCK's recommendation, the Ministry of Education said that it would exclude the three areas pointed out by the NHRCK (i.e. academic affairs, health and admission information) from the NEIS.

The NHRCK also pointed out problems concerning errors and system integrity associated with the NEIS. In July 2011, the Chungnam-Daejeon Office of Education reported that a total of 4,314 errors occurred in 88 schools under its control in relation to the NEIS program and students' academic records. This shows how accurately the NHRCK predicted potential problems with the NEIS in its recommendation.

The NEIS controversy brought attention to the importance of information-related human rights. Technological development is made so fast that laws and systems can hardly keep pace. So, it is important to put fundamental controls in place and gain a social consensus concerning the protection of information-related human rights.

How many surveillance cameras should be allowed?

NHRCK's views on amendments to The Act on the Protection of Personal Information Maintained by Public Institutions

Parking your car in the basement of a building late at night, you may think that you are protected by surveillance cameras installed there. But has it ever occurred to you that you are the one under surveillance?

Surveillance cameras are installed by public institutions for such purposes as crime prevention and cracking down on traffic violations, but the practice is often on shaky legal grounds as it is associated with the violation of privacy and human rights infringement. The number of camera installations has increased because of the usefulness of surveillance. No one denies that cameras are useful in such areas as crime investigations; searching for missing people; identifying more efficient placements of police officers on streets; recording scenes of violence; helping to provide first-aid to the injured; and assisting to control traffic. Surveillance cameras can be used to obtain an image of a suspected criminal and see who he or she is with and what they were doing. They are also used to record individuals' activities that fall under the category of privacy. Thus, they may give rise to problems concerning the right to personal images, information-related self-decision or privacy, and the freedom of the people being photographed.

In April 2004, the NHRCK recommended to the National Assembly Speaker and the Minister of Government Administration/Home Affairs that laws be enacted concerning the installation and operation of unmanned surveillance cameras for such purposes as crime prevention, with the aim of protecting people's basic rights provided for in the Constitution.

In the ensuing period, a bill concerning surveillance cameras was submitted to the National Assembly. In May 2007, a bill for amendment to The Act on the Protection of Personal Information Maintained by Public Institutions (over making it obligatory to gather people's opinions before installing a surveillance camera) passed the plenary session of the National Assembly. The NHRCK also recommended to the Minister of Labor the enactment of a special law and amendment to the Labor Standards Act to protect workers' rights when surveillance cameras are used in workplaces. This led to the enactment of The Personal Information Protection Act in March 2011.

The NHRCK's recommendation made in 2004 was significant as the first statement made by a government institution on the need to address human rights issues in the use of surveillance cameras. It resulted in enactment of relevant laws.

Many people express their skepticism about the "clear" crime prevention purposes of surveillance cameras, pointing to their use by criminals and their installation in areas where privacy is expected. The number of complaints submitted to the NHRCK concerning surveillance cameras increased four-fold from 2005 to 2010, up from 80 to 326. So, we need to take steps to prevent the misuse of surveillance cameras and use them wisely with the aid of social consensus.

Review of broadcast content in the information era

NHRCK's recommendation on improving the information/communication inspection system

Recently, the Korea Communications Standards Commission (KCSC) disclosed a controversial plan to inspect social network services and mobile applications to screen out illegal or harmful information. Those opposed to such a plan say that the KCSC is trying to control social networks and Internet broadcast providers. We are living in an era in which the development in information/communication technology enables people to enjoy a level of communication unlike anything in the past. So, how should this new freedom of expression be handled?

In October 2010, the NHRCK recommended to the KCSC Chairman that its current regulations be revised so that the authority for information/communications inspections and actions can be transferred from the KCSC to an autonomous body in the private sector.

Under the current Government-controlled communication review system, the KCSC examines requests from a public institution or an individual to censor content on the Internet and decides whether the requests are valid. If so, it asks the owner of the content (a business) to comply and take down the content. The content provider has to follow the KCSC's decision in most cases, as the KCSC has the authority to issue an administrative order, the violation of which is punishable under The Criminal Act.

However, the KCSC does not give a pre-notice to the party that puts the content online or allows the party an opportunity to express its opinion. KCSC's request for the removal of content is a de facto administrative order. Thus, its failure to give a pre-notice or provide a pre-hearing is a violation of legitimate procedure and leaves room for the infringement of the freedom of expression.

The currently unclear regulations on the scope and criteria of the KCSC's powers are of concern because they allow the KCSC's arbitrary intervention in the broadcasting of content. Under its regulations, the KCSC may review "information/materials intended for, instigating, or helping a crime, or when information/materials are liable to cause social confusion."

Allowing an administrative (not a "judiciary") institution, whose independence is not guaranteed, to judge acts of expression carried out on the Internet, either in advance or afterwards, is highly likely to compromise the freedom of expression. For this reason, major countries, such as the United States, the United Kingdom, and Japan, have self-regulated civil institutions in charge of assessing broadcast content. In Germany, monitoring is carried out by a self-regulated civic institution under the management and supervision of a public institution.

The NHRCK's recommendation was intended to prevent Internet monitoring that could infringe upon the freedom of expression by transferring the authority to regulate broadcast content to an autonomous civic institution, comprising service providers, businesses handling Internet content, and other civic organizations, but with the KCSC in a managerial and supervisory role.

South Korea is reported to be a country with one of the world's highest Internet penetration rates. It is part of South Koreans' everyday lives. However, the system adopted by the country for reviewing Internet content appears to be backward. Communication is a core factor of democracy and the country's democracy grows stronger through Internet communications. It is folly to stand in the way of progress with archaic methods for monitoring online content.

No restrictions on the freedom of expression

NHRCK's opinion on The Framework on Telecommunications Act, Article 47, Paragraph 1

> Q: "There are people spreading false information or using insulting remarks on the Internet, thus tarnishing the reputation of others, which sometimes drives them to commit suicide. Shouldn't those people be punished?"
> A: "Yes they should. Such an act is punishable under The Criminal Act."
> Q: "Then, what about the spreading of vague information that is not so serious or not at a specific target? Should that be punishable under The Criminal Act?"

The prosecution's answer to the last question spreading rumors was punishable under The Framework on Telecommunications Act, Article 47, Paragraph 1. In what came to be known as the "Minerva case," the prosecution arrested a person, who had spread false information on the Internet, under that Act ("A person who has publicly made a false communication over the telecommunications facilities and equipment for the purpose of harming the public interest shall be punished by imprisonment for not more than five years…..").

The Act was enacted in December 1961, but the clause in question has been left unenforced for more than 40 years. It became the focus of attention when it was applied to protesters who had attended candle-lit demonstrations in 2008. It was used in court to pass sentences in a total of eight cases between September 2008 and April 2009. Thus, as people pointed out, the Government used the regulation to suppress the freedom of expression. A request was submitted to the Constitutional Court, asking for a review of the unconstitutionality of the clause.

In this case, the NHRCK expressed its opinion to the court which was handling the Minerva case and to the Constitutional Court that in the making of judgments the Act should not be used to infringe on the freedom of expression.

First, the telecommunications clause stipulates that an act of spreading false information for the purpose of harming the public interest shall be punished regardless of whether it has inflicted loss/damage to a specific person. As a penal clause concerning an act of expression, it should have a high level of clarity. However, it contains vague expressions, such as "for the purpose of harming the public interest" and "a false communication." It lacks the minimum required clarity for a penal clause that puts restrictions on the freedom of expression. The NHRCK's judgment was that the "protection of comprehensive public interest" and the "promotion of truth" were not justifiable purposes for placing restrictions on basic rights as provided for by the Constitution. In addition, it is not reasonable to ban all instances of the spreading of false information through the threat of criminal punishment, given that it is possible to deal with false information through refutation.

It should also be pointed out that the said clause is applicable to a wide range of expressions due to its lack of clarity, which makes it difficult for people to see whether their acts of expression are punishable or not. If it is used for criminal punishment of acts of expression it could result in a widespread suppression of the freedom of expression. This was feared following the arrest in the Minerva case.

In December 2010, after the NHRCK's submittal of its opinion, the Constitutional Court ruled that the clause in question was unconstitutional, based on logic similar to the logic behind the NHRCK's recommendation. The Central Seoul District Court found the defendant in the Minerva case to be not guilty.

So, how much freedom of expression should be guaranteed on the Internet? The criteria will vary from country to country and from era to era. Nonetheless, freedom of expression is the basis of democracy and human rights. In 1992, when the Supreme Court of Canada ruled that it was unconstitutional for a country to have a clause against free expression, it was referring to a clause similar to the one in The Framework on Telecommunications Act, and it concluded that "No free democratic country has such a regulation."

Do those in the Defense Ministry live in the past?

NHRCK's opinion on unconstitutionality of The Military Personnel Management Act, Article 47-2

Historically, many forbidden books had contents that confronted authority and social hypocrisies. A Roman emperor put Homer's Iliad and Odyssey on a list of forbidden books, saying that they contained ideas against the emperor system. The Grapes of Wrath and Dr. Zhivago were also blacklisted at the time of their publication for political reasons. Rulers throughout history have blacklisted books on the grounds that they endanger national security or go against established social customs. Such a practice exists even in democratic Korea in the 21st Century.

In July 2008, the Ministry of Defense blacklisted 23 books, saying that they promoted the enemy or anti-government, anti-U.S., or anti-capitalist concepts. The ministry banned the books within military facilities for fear that they might do harm to the morale of servicemen. It also dismissed two legal officers who filed a lawsuit against the "unconstitutionality" of Military Service Rules in blacklisting books within the military. When news of this became public, people criticized the Ministry of Defense, saying that its blacklisting of books was outdated thinking. A TV news anchor said, "The watches at the Ministry of Defense seem to be stuck in the past."

With response to the Ministry of Defense's actions, the NHRCK submitted a letter of opinion to the Constitutional Court, saying that the action taken by the Ministry of Defense in blacklisting books infringed upon the freedom of conscience and information collection and violated the spirit of the Constitution.

The NHRCK's view was based on the idea that reading a book is a basic right to be enjoyed by all humans with reason and conscience, and a basic right like that should be given priority over considerations concerning the mental state of military servicemen. The NHRCK also judged that it is ludicrous to blacklist books when they have nothing to do with duties assigned to servicemen or with military security.

It was unfathomable that the ministry included bestsellers, popular liberal arts books, books written by world-famous scholars, and ordinary literary works among books blacklisted for containing pro-North Korea ideologies. The 23 blacklisted books included those praised by experts and the media and used at colleges, such as Bad Samaritans (written by Professor Jang Ha-jun of Cambridge University in the United Kingdom), Year 501: The Conquest Continues (by Noam Chomsky), and A Spoon on the Earth (by Hyeon Gi-yeong).

Ironically, many of these books became bestsellers after being blacklisted by the Ministry of Defense, which demonstrates what happens when you make a book forbidden—everyone wants to read it. This is one reason why forbidden books rarely disappear and many become classics.

The Ministry of Defense accommodated the NHRCK's opinion. It said that it would redefine the criteria for blacklisting books as referring to the books not suitable for maintaining the morale of servicemen. Even now, the controversy over books blacklisted by the Ministry of Defense continues. Did the watches at the ministry really stop in the past?

No restrictions on basic rights beyond the law

Practice of putting a fingerprint on a record book when receiving a certified seal certificate

In August 2007, Mr. Kim Bong-je (41) went to a local city council office in Seoul to get a certified seal certificate for his boss, issued on his behalf. The official there asked him to put his fingerprint on the record book as a receipt for the certificate. Is this a valid procedure? The record book contained fingerprints of others like Mr. Kim who had visited there. (Human Rights, March-April, 2009)

In March 2008, Mrs. Kim Yeong-hee went to a local city council office in Suncheon to get a certified seal certificate for her husband, issued on his behalf. The official there made photocopies of her and husband's resident registration card and asked her to put her fingerprint in the record book as a receipt for the certificate. She thought it was going too far to ask her to put her fingerprint on the record book even after her identification had been checked.

The local city council employees had these people put their fingerprints on record books under The Certification of Seal Imprint Act, Its Enforcement Decree, Article 13, Paragraph 4 ("In the case of an agent, the Government office shall issue a seal impression certificate after having a designated agent put his/her fingerprint on the record book."). The Ministry of Public Administration and Security (MOPAS) explained that the practice was adopted to prevent problems associated with issuing certificates to third parties and to protect people's rights and property. However, the NHRCK judged that it was a clear case of human rights infringement to ask for fingerprints based on the enforcement decree, when its parent law has no such clause.

Fingerprint-related rights are basic rights, coming under the right for self-decision on personal information, and should be protected. Thus, the NHRCK judged that requiring individuals to leave their fingerprints was an act of restricting basic rights and infringing the right to privacy and freedom provided for in the Constitution, Article 17.

You cannot put restrictions on people's basic rights without a relevant stipulation in law. Nowhere in The Certification of Seal Imprint Act is there a clause that allows a government office to require people to leave their fingerprints for the issuing of a certified-seal certificate. Using the Enforcement Decree as the basis for such a practice goes against the Constitution. The practice adopted by MOPAS is simply for administrative convenience. Thus, the NHRCK recommended that a legal basis be established for occasions when an agent is required to put his/her fingerprint on a record book for the issuance of a certified-seal certificate.

Putting a fingerprint on the record book itself may be a simple thing to do. However, there is a danger that the fingerprint may be used for a criminal purpose. Efforts to protect one's bio-information are as important as efforts to protect oneself.

Students' activities restrained by outdated regulations

School rules prohibiting college students' political activities

In her autobiography entitled Living History, U.S. Secretary of State Hillary Clinton said that political activities at Wellesley College were a pleasure to her and they served as the basis for her democratic thinking. Like Mrs. Clinton in the U.S., college students in many countries engage in political activities freely. So, what about students in Korea?

In this country, many universities put restrictions, some backed punitive measures, on students engaging in political activities such as carrying out activities for specific political parties or holding political meetings on campus. In fact, college students' political activities are restrained by outdated school regulations. In May 2005, the Democratic Labor Party (DLP) submitted a complaint to the NHRCK concerning a total of 69 local universities that put restrictions on students' political activities, including the requirement of having to obtain permission for campus assemblies.

The problem raised by the DLP concerned 20 national or municipal universities and 48 private universities, which "prohibit students from engaging in activities that run counter to basic functions of school and educational purposes," and 16 private universities that ban students' political activities both on and off campus. Fifteen private universities have regulations backed by harsh punishment, including expulsion from school, to stop students engaging in political activities.

The universities and the Ministry of Education told NHRCK investigators that such regulations were a matter of self-regulation and were necessary to foster an atmosphere of scholarship. However, the NHRCK did not agree that "self-regulation" justified school authorities banning activities related to specific political or religious beliefs, and self-regulation had nothing to do with the students. The NHRCK judged that there was no valid evidence to suggest that political activities affected the quality of a scholastic environment. It also judged that it was not right to ban students from engaging in political activities, when most of them have the right to vote and are therefore as much involved in politics as adults.

Accordingly, the NHRCK recommended to universities that they take steps to alter their regulations on banning of students from political activities so as not to restrict students' basic rights, including freedom of thought, conscience, and assembly/association, provided for by the Constitution and the International Covenant on Civil and Political Rights (ICCPR).

Despite the NHRCK's recommendation, however, many people in our society think that letting college students engage in political activities can lead to the spread of dangerous ideologies. They need to view students' political activities as an expression of their right as democratic citizens to question and debate social issues. It would be less beneficial if students were indifferent to politics because then nothing would change, and most people today would agree that change in politics and politicians is definitely needed for the better. The ideals of democracy found in textbooks should also be found in practice, so it is the right and obligation of students to engage in political debate.

Public squares are directly linked to democracy and communication

Not granting the right to use Seoul Public square

Public squares are spaces where people can gather together to freely express their opinions as provided for by the Constitution. Located in the heart of Seoul, Seoul Square has long been a place for gatherings and democratic discussions. During the March 1919 Independence Movement, people gathered at the square and shouted "Long live Korea!" During the June 1987 democracy movement, 1.4 million people gathered at the square and shouted, "Down with the dictatorship!" During the 2002 World Cup, the square was known throughout the world as a place where Koreans were united as one and cheered for their national team. Public squares are certainly where Koreans like to express their emotions.

But in 2005, Seoul Square became a center of controversy when the Seoul Metropolitan Government enacted the Ordinance on the Use and Management of Seoul Square and confined its use to recreational and cultural activities. The ordinance required that no events be held there without the permission of the Seoul Mayor. The reason given by the City of Seoul for this restriction was that Seoul Square was losing its inherent role and significance. Amid the controversy, a complaint was submitted to the NHRCK on the new restrictions.

In April 2005, the City of Seoul rejected a plan to use Seoul Square for a commemorative event hosted by a committee of civic organizations. It said that the event's purpose did not fit the new ordinance's requirements ("a cultural activity that is universal and popular"). The committee subsequently complained to the NHRCK, saying that "It is clear discrimination to reject the use of the place for an assembly planned by the liberal camp, while giving permits to assemblies held by the conservative camp, such as those for opposing the relocation of the Administrative Capital or a farewell event for troops leaving for their mission in a foreign country."

The NHRCK looked into the case and judged that the City of Seoul interpreted the new ordinance arbitrarily in refusing to the committee the use of Seoul Square. It was a matter of consistency and equality, as the City of Seoul had already given permits to other commemorative events of a similar nature.

Aside from discussing the nature of the planned event, that is, whether it was a cultural activity or an assembly, the NHRCK focused on the fact that Seoul Square was supposed to be a place where the freedom of assembly/demonstration was guaranteed. The City of Seoul's new ordinance should have been drawn up in accordance with the Constitution and The Assembly and Demonstration Act, but some of its clauses left room for arbitrary decisions. Because it allowed the City of Seoul to refuse to give permission even to legitimate assemblies, the ordinance could be said to be unconstitutional or illegal. Using the new ordinance to create a permit system that prioritized the use of Seoul Square, when no clause in the Demonstration Act covered such prioritization, appeared to be an attempt to restrict people's basic rights without any basis in law.

The NHRCK recommended that the City of Seoul take measures to prevent such incidents from happening again, so that people's basic rights are not infringed upon arbitrarily. The NHRCK also recommended that the City of Seoul set out detailed guidelines so that the new ordinance would no longer clash with the freedom of assembly.

Any attempt to block access to a public square, which is a space for communications among people, can be viewed as anti-democratic. Public squares serve their intended purpose when they are used by people to freely express their opinions. Public squares should belong to the people.

The highest barrier in the world?

Banning bereaved families of victims of suspicious deaths during military/police service from access to the National Assembly

In 2009, bereaved families of victims of suspicious deaths during military/police service were not allowed to enter the National Assembly (NA) building. They protested, saying, “Why not? Isn’t this a place open to all Koreans?” What they heard in answer was that they had been blacklisted.

In December 2009, the five individuals who were blacklisted, including Mrs. Yun (75), submitted a complaint to the NHRCK, saying that it was a human rights infringement not to allow them to enter the National Assembly without explanation, clear procedure, or stated period for which they are denied entry.

The background to the incident began in 2008. In the process of asking for an extension of the Presidential Truth Commission on Suspicious Deaths associated with military service, 19 people including the bereaved families, clashed with NA member Shin Ji-ho. They were subsequently blacklisted in November 2008 by the NA Secretariat at Mr. Shin’s request. At that time, they were protesting that their loved ones could not be buried in the National Cemetery, while the bill for amendment to The Act on the Establishment and Management of National Cemeteries was pending at the NA.

The National Assembly Building Management Regulations, Article 3 stipulates that “The National Assembly Speaker may take measures, such as denying access to the building if required for its management and protection.” This meant that it was impossible for the protesters to enter the NA building unless they were taken off the blacklist. The NA Secretariat explained, “The NA building is an important government facility, where assemblies and demonstrations are prohibited, but acts of disturbing the order within the building occur frequently. Thus, it is inevitable to carry out special management of violators to help NA members carry out their activities and maintain order within the building.”

The explanation by the NA Secretariat is correct. Even so, at least the criteria, procedure and the period of controlled entry should be clearly stipulated in the law and practiced under a legitimate procedure. Without any clear stipulations, there is a high possibility that the denial of entry and the blacklisting of people will be conducted arbitrarily.

The NHRCK pointed out that to control people entering the NA building based on arbitrary decisions rather than on law was a case of human rights infringement. It recommended to the NA Secretary General that the NA building management regulations be amended to make it a requirement to provide criteria for why people are not being allowed entry and give details on the period for which their entry is denied.

In June 2010, the NA Secretariat informed the NHRCK that it lifted the ban imposed on the group of protesters and it would amend the relevant regulations in compliance with the NHRCK’s recommendation.

Full-body scan of air passengers?

NHRCK's recommendation against installation of full-body scanners at airports

Can full-body scanners at airports screen out all terrorists? In January 2010, the Ministry of Land, Transport and Maritime Affairs (MLTM) announced a plan to install full-body scanners for detecting liquid explosives at major international airports within the country. MLTM said that such equipment would be able to detect explosives and other items that existing detectors could not detect. The problem is that full-body scanners allow security personnel to view private areas of passengers' bodies. Full-body scanners can expose objects attached to human skin, including piercings in private parts of the body, catheters, and women's breasts and male genitals. Thus, the plan for scanners created a controversy over the infringement of people's right to privacy. Terror prevention is necessary, but are full-body scanners the only means? The NHRCK judged that they were not.

Is the full-body scan of air passengers really effective? This country has hosted large events—such as the 1988 Seoul Olympics, the 2002 World Cup, and the 2005 Busan APEC Summit—successfully without using full-body scanners. Nonetheless, MLTM says that it is necessary to start using them to detect explosives and other items that existing detectors cannot detect. Yet according to a test carried out by a foreign expert, even full-body scanners cannot detect an object hidden in certain private parts of the body.

In the United Kingdom, the police issued a warning against an airport worker after he took a photo of a female colleague as she went through a full-body scanner. A similar incident can occur wherever a full-body scan is required.

Experts point out the possibility of harm to the body when exposed to strong electromagnetic or X-ray radiation from body scanners. They also point out that there is always the possibility of discrimination in the process of selecting those that should be made to go through scanners. The air safety and security equipment operation standards stipulate that the equipment is used against "those feared to do harm to safety" and "those whom state institutions either in or out of the country have pointed out." This means that factors such as arbitrary judgment of security personnel or the fact of boarding an airplane in a specified country may result in someone being made to go through a scanner. The use of scanners may especially cause concern from those of certain nationalities or with religious beliefs. Thus, the use of scanners is likely to violate the anti-excessive principle and infringe on basic human rights, while the public good accomplished by using such equipment is limited.

The MLTM's plan for adopting full-body scanners goes against the principle whereby restrictions on people's basic rights should only occur if stipulated by the law. Therefore, in June 2010, the NHRCK recommended that the MLTM give up its plan.

Two months later, however, the MLTM informed the NHRCK that it would not follow its recommendation and instead installed 3 full-body scanning units at Incheon International Airport and a unit each at Gimpo, Gimhae, and Jeju International Airports. This was backward step for human rights. Major developed countries, including the United States and the United Kingdom, which considered using such equipment before Korea did, have given up their plans in consideration of protests related to human rights infringement. The NHRCK expects that MLTM will make a similar wise judgment before it is too late.

7

At the threshold of a multicultural society

The term “human flesh color” is no longer used

Crayon companies’ choice of a wrong term

In this country, the term “human flesh color” was used to refer to the color similar to that of “our” skin. But that practice was changed with the NHRCK’s recommendation and its accommodation by the Korea Agency for Technology and Standards (KATS) and relevant businesses.

On November 26, 2001, one day after the launch of the NHRCK, a group of people (comprising 4 foreigners, including Mr. Coffiedickson from Ghana and Rev. Kim Hae-seong, the representative of the Seongnam Migrant Workers’ Home) submitted a complaint to the NHRCK about the practice by KATS and domestic crayon companies of using the term “human flesh color” to describe a color.

The NHRCK found that the term “human flesh color” was first used in 1967 by KATS, which was in charge of matters concerning the Korean Industrial Standards under The Industrial Standards Act. Domestic crayon companies followed suit and started using the phrase.

In July 2002, the NHRCK recommended to KATS that changes be made on the following grounds: the term “human flesh color” was racially discriminating as it referred to only a specific race’s color as being human and so was in violation of the right for equality provided for in the Constitution, Article 11; the term was outdated and unacceptable in an era of globalization; and the term did not fit in with the purpose of The Industrial Standards Act (“enhancement of the country’s industrial competitiveness and contribution to the development of the national economy through enactment and distribution of rational industrial standards”).

Four months later, in response to the NHRCK’s recommendation, KATS replaced the term “human flesh color” with yeonjuhwang (light orange color) in uses related to Korean Industrial Standards. But the case did not end there. In August 2004, a group of six children (including Minha and Minyeong, who were young daughters of the previously mentioned Rev. Kim Hae-seong) submitted another complaint to the NHRCK. They said that yeonjuhwang was a term difficult to understand for children and it should be replaced by “apricot color” or “peach color.”

Eventually, KATS accepted the children’s proposal and replaced the term with “apricot color” in May 2005. In 2009, a group of 5 high school students, including Minha (then a high school senior), submitted a complaint to the NHRCK about the continued use of the term “human flesh color” in news reports or product ads of three broadcast stations, nine newspapers, an Internet site, two underclothes businesses, and three discount store chains. All of the businesses concerned promised that they would take steps immediately to fix the problem.

Nowadays, the term “human flesh color” is no longer used in Korean society. Has it also disappeared completely from our consciousness? The whole episode involving the use of the term “human flesh color” made us stop and think about diversity and the difference between people in a multicultural society. The term’s disappearance is a sign of our advancement and maturity as a society.

Need to respect the human rights of migrant workers

NHRCK's views on government steps to improve the system for employing migrant workers

Migrant workers first appeared in this country as industrial trainees. The system to cater for them was formed in November 1993 under the guise of technological collaboration with the Third World, but in reality it was just a convenient means of securing low-wage migrant workers for small and medium-sized enterprises (SMEs). Industrial trainees were not guaranteed the three basic labor rights as they were not officially regarded as workers. While many of them gave up their status as industrial trainees to become unregistered foreigners, they still suffered low wages, wage payment delinquencies, and various human rights infringements.

In July 2002, the Government announced ways to improve the employment of migrant workers, including the following: Improvement of the industrial trainee system; employing migrants in agriculture and dairy farming; and allowing ethnic Koreans to work at restaurants and cleaning service businesses. The Government also said that it would strengthen its policing of illegal aliens in the country.

In August of the same year, the NHRCK expressed its opinion on the Government's announcement, based on surveys and policy reviews of the human rights situation of migrant workers, which it had been carrying out since its launch. The NHRCK recommended the gradual abolition of the industrial trainee system and the adoption of a migrant work-permit system (along with the guarantee of the three basic labor rights and social security). Seeing that the Government did not comply with its recommendation, the NHRCK repeated it in February 2003 to the Prime Minister, with the added recommendation that only a government institution should handle the import of migrant workers into the country. The NHRCK also recommended to the National Assembly Speaker that the relevant law be amended.

The NHRCK had repeated its recommendation because it saw the seriousness of the migrant workers' human-rights plight through surveys done and complaints received. Migrant workers suffered an array of human rights infringements and discriminations together with other problems such as excessive charges to come into the country, long work hours, low wages, poor working conditions, and chronic wage payment delinquencies.

In August 2003, The Act on the Employment, etc of Foreign Workers, which included the adoption of an employment permit system (EPS), was enacted. Under the EPS, which was implemented in August 2004, domestic businesses that had difficulty securing Korean workers could hire migrant workers after obtaining the permit from the Ministry of Labor. In May 2007 and January 2008, the NHRCK made recommendations on improving the EPS, as it still had a number of shortfalls.

The EPS was implemented in 2004, though it co-existed with the industrial trainee system until 2006, and was not fully implemented until May 2007. In May 2007, the NHRCK recommended to the Prime Minister that the Human Resources Development Service Korea be made to serve as the only service for handling EPS-related matters. This was in response to the Government's plan to select other institutions as agencies for EPS-related matters despite irregularities associated with them in importing migrant workers into the country.

In January 2008, the NHRCK also recommended that improvements be made to the rules for when migrant workers change workplaces, including the relaxing of limitations and periods for making such a change. At that time, migrant workers were allowed to change workplaces only three times, and they had to leave the country if they failed to comply with this condition. So many found themselves stuck in bad conditions with employers who treated them harshly, infringed upon their human rights, and discriminated against them.

More problems have been found in the EPS. The most serious problem concerns unregistered migrant workers who violate the EPS. The country started using migrant workers to meet its business needs, so it should reciprocate the benefit it has received and show consideration for migrant workers by focusing on their human rights. They are humans like the rest of us.

We should help refugees

NHRCK's recommendation on the country's policy for refugees' human rights

The UN set June 20 as World Refugee Day to encourage people to pay attention to the suffering of those who had to leave their home countries to avoid war, terrorism, persecution or dire poverty and find a new life elsewhere.

South Korea joined the Convention Relating to the Status of Refugees and adopted the relevant protocol in 1992. It inserted a refugee-related clause in The Immigration Control Act and its Enforcement Decree in connection with a need to accommodate refugees in 1993. But this country has been criticized for its rather stingy attitude toward refugees, when it should be setting an example and showing generosity toward people in such dire need. The South Korean government has granted asylum to only 250 out of a total of 3,301 refugees who submitted applications between 1994 and the first half of 2011, including the first asylum granted to an Ethiopian in 2001. The percentage of Korea's refugee acceptance stands at less than 10% compared to 30~40% in major countries. According to a survey conducted by the UNHCR in 2009, South Korea was at the bottom of the list of 34 OECD member countries in terms of the percentage of refugees that had joined its population, and it was ranked 32nd with regard to the total number of refugees it has accommodated.

Economic difficulties experienced by refugees in this country have been serious. They are not allowed to get a job during the first year of their refugee application. Those involved in administrative proceedings at an appellate court following the rejection of their application are also not allowed to get a job. A survey of refugees and refugee applicants conducted by the Ministry of Justice in 2010 shows that 59.6% of the respondents often skipped meals due to economic difficulties.

In 2006, the NHRCK made recommendations to the Minister of Justice, the Minister of Health and Welfare, and the Minister of Foreign Affairs for improvements to the country's refugee-related policy. At the top of the list of recommendations was the inclusion of a clause banning the forced return of refugees to their home countries. This was in keeping with international norms for the protection of refugees and was also in consideration of the fact that refugees would face a miserable fate if returned home. Of course, exceptions would be possible through judgment by the Minister of Justice, in limited cases, such as when the court has convicted a refugee for criminal offences. Another recommendation was to provide a temporary status to refugee applicants who needed protection under the non-refoulement principle, on humanitarian grounds, or who were highly likely to be given asylum so that they could get a job sooner.

The NHRCK also recommended improvements in the procedure for granting refugee status and in the way refugee applicants are treated by way of increasing the number of personnel to handle them and by providing them with legal assistance. The NHRCK also saw a need to strengthen education for refugees, so as to help applicants and those granted asylum gain language proficiency and job skills. In addition, the NHRCK urged the protection of the children of refugees through the provision of social security benefits.

The NHRCK's recommendation on enacting a law that would serve as the basis for recognizing the status as refugees, and ensuring that they are treated like the rest of us, was based on the views of scholars and human rights activists who advocated the need for a separate law instead of The Immigration Control Act and who recognized the need to approach the issue of refugees' human rights under the Constitution and according to international standards for human rights.

An enactment of a separate law concerning refugee issues would help the country better protect them from a human rights perspective, rather than from state-centered perspective as occurs now under The Immigration Control Act. In 2009, a bill for The Act on the Status and Treatment of Refugees was submitted to the National Assembly by a group of NA members, headed by Mr. Hwang Woo-yeo, but it has yet to be passed. The NHRCK issued a commentary welcoming the bill and asking for the NA's prompt handling of it. The commentary still applies to this day.

A bitter scene that occurred on the very day the Seoul Guideline was adopted for coexistence with migrants

Excessive crackdown on illegal migrant workers

The Government's crackdowns on unregistered migrant workers should be carried out according to legitimate procedures and with attention to protecting human rights.

In November 2008, over one hundred officials from the Immigration Office carried out a large-scale raid on a furniture complex in Maseok and arrested more than 100 unregistered migrant workers. In the process, the immigration officials illegitimately broke down the entrance to the migrants' sleeping quarters and people were seriously injured when trying to escape. A complaint was submitted to the NHRCK about the excessive force used in the raid.

In light of this, the Ministry of Justice said, "The crackdown in Maseok was a step inevitably taken to maintain law and order and the officials did not infringe on the migrant workers' human rights in the crackdown." However, the NHRCK found that this did not match the facts uncovered through its own investigation.

Any Immigration Office crackdown on unregistered foreigners should be carried out in accordance with The Immigration Control Act and procedures similar to those police must following when questioning people on the street under The Act on the Performance of Duties by Police Officers. When it is necessary to place a migrant under emergency custody without a warrant, an immigration official should supply a document stating the reason for the custody and the place and period of the custody. The emergency custody system requires law enforcement officials to adhere to procedure strictly because it is a serious restriction of freedom and constitutes force being used by a state institution. Immigration officials are not allowed to use force to break open locked doors of a business premises where foreigners are working or sleeping, although they can visit and investigate such premises and ask for materials in the course of a crackdown.

When the NHRCK investigated the Maseok incident, it discovered that immigration officials had failed to follow the proper procedure: that is it was not "similar to the police's questioning of people on the street under The Act on the Performance of Duties by Police Officers and did not include the procedural requirement of displaying their IDs. They entered workplaces without obtaining the employers' consent. They only explained the purpose of the emergency custody after they had arrested foreigners and put them into vehicles - no notice in advance or during the process of execution was given. What they should have done was explain their actions right before or after the exercise of force. It also turned out that the officials had broken open the locked entrance to the sleeping quarters for females; they did not heed the complaints about the injuries some foreigners had incurred in trying to escape; and they made some female foreigners urinate in the open instead of allowing them the use of a toilet as requested.

The NHRCK judged that the immigration officials' behavior infringed upon the foreigners' freedom (Article 12 of the Constitution), their right to pursue happiness (Article 10 of the Constitution), and their right to privacy (Article 17 of the Constitution) and recommended to the Minister of Justice that measures be taken to put an end to such illegitimate practices. Earlier in 2005, the NHRCK had recommended to the Minister of Justice that The Immigration Control Act be amended to allow for a system of efficient supervision similar to what is specified under The Criminal Act on the restriction of freedoms, including the restriction of freedoms of unregistered migrant workers.

Ironically, November 12, 2008, the day that the Ministry of Justice carried out the Maseok raid, was the very day a human rights conference was held in which the NHRCK adopted the Seoul Guidelines. These guidelines stress a need for the harmonious coexistence with migrant people, and they concern ways to protect and promote human rights of migrants more effectively through collaboration between relevant bodies in their home countries and in the countries in which they have settled. The guidelines were presented in Seoul at a human rights conference on the occasion of the 60th anniversary of the Universal Declaration of Human Rights, whose theme was the promotion and protection of human rights of migrants in Asia. It was attended by human rights experts from the world over. Regrettably, the Maseok raid was a reminder of the stark reality, far from the conference's ideals, of migrants' human rights in this country.

A place for temporary custody is not a jail

NHRCK's recommendation for improving conditions for foreigners in temporary custody at the Immigration Office

In the early hours one day in February 2007, a fire broke out in the foreigners' detention center at the Yeosu Immigration Office, claiming the lives of 11 people and injuring another 17. The fire, which the police attributed to arson by a detainee, caused thick black smoke from the burning urethane floor. The fire alarm did not go off, no sprinkler system was installed, and detainees inside double-locked cells could not escape. Officers wasted time looking for keys, while 11 detainees died from suffocation.

Following the fire at the Yeosu Immigration Office, the NHRCK conducted a six-month investigation into the human rights situation for migrants across the country being held in detention facilities. What it found was that most detention centers were not up to the expected standards. They were not much different from jails, with double walls and sealed windows intended to prevent the escape of detainees.

Detainees were also not allowed to move freely from one place to another within the facilities. Use of medical services, access to exercise space, or a wish to meet a visitor required permission from authorities. They were not even allowed to freely choose a book among those provided. They had to spend most time in their cells watching TV. Many of the facilities had no exercise area for detainees. Where there was an exercise area, detainees were not allowed to use it on a daily basis. Many of the facilities put restrictions on articles taken into the facilities for detainees, such as underclothes, skin lotions or shampoos. Some facilities had two or three surveillance cameras installed to watch every movement of detainees. Sometimes male officers were made to monitor the surveillance cameras installed in female cells due to personnel shortages.

The NHRCK recommended to the Ministry of Justice that fundamental steps must be taken to improve the conditions of "protection" facilities for foreigners. The detention of foreigners was no better than what is common for criminals that are arrested or arraigned, even though the temporary detention of foreigners is supposed to be for administrative purposes and not as a punishment. The NHRCK recommended to the Ministry of Justice that a system be set up for the proper protection of foreigners in temporary detention.

The Immigration Control Act stipulates that the detention of foreigners for "protection" should be confined to those whose violation of the law has not been confirmed, those who may escape during investigation, or those who are awaiting preparations for expulsion from the country.

The NHRCK recommended that the Immigration Office's detention of foreigners for "protection" should be carried out only in limited cases, as it involves comprehensive restrictions on basic rights, including bodily restraint.

The NHRCK's recommendations in this case also included improving the way that foreigner detainees are treated in such facilities under the UN-adopted Standard Minimum Rules for the Treatment of Prisoners.

Facilities for the temporary detention of foreigners are places where they are protected for administrative purposes or until their departure from the country, not places where punitive measures are undertaken. It is therefore a human rights infringement, if such facilities are no better than a jail. It is said that human rights is often a case of what goes around comes around. Citizens of countries who treat migrants like prisoners might one day find themselves in a country where the same thing happens to them.

Freedom for a 3 month-old baby

Children in detention facilities for foreigners

Article 37 of the UN Convention on the Rights of the Child (CRC), which South Korea joined in December 1991, stipulates that children and youths should be protected from torture or other cruel, inhuman or degrading treatment or punishment; that children and youths who are locked up should be able to challenge their imprisonment in court; and that children and youths must only be arrested or imprisoned as a last resort and for the shortest possible time.

In June 2009, a Mongolian (37) submitted a complaint to the NHRCK, saying, “My family and I were detained at facility of an immigration office. Even a 3 month-old baby was not given special consideration. The authorities put all of us in a dirty cell, where there were already many people.”

The immigration office in question explained that The Immigration Control Act does not have a clause for the exceptional treatment of young children and it had no choice but to put the baby in a cell shared by adults. It also said that it gave special consideration to children’s health and emotional stability, allowing the complainant to spend time with his family except during sleeping hours, and allowed all articles needed for the infant’s care in the cell, including a baby carriage, dried milk, diapers, blankets, and items needed for feeding.

Articles 2 and 3 of the CRC stipulate that the Convention shall apply to all young people under 18 years of age no matter what their race, religion, abilities, what they think or say, or what family they come from. It states that all organizations that work with or for young people should work towards what is best for each child or young person.

In light of these international standards, the immigration office in question failed to give proper consideration to the infant, who was in a fragile physical and mental state. The NHRCK judged that the authorities infringed upon the right to human dignity and the right to pursue happiness as provided for by the Constitution, Article 10, and it violated the principle of placing a priority on the best interests of children and the principle of only using detention when absolutely necessary.

The NHRCK recommended to the Minister of Justice that on the occasion of detaining unregistered foreigners accompanied by children, under the Immigration Control Act, a legal clause should be introduced stating that children are only to be detained as a last resort and for a minimum period of time; a departure from the country should be used as much as possible as an alternative to the detention of foreigners; and separate facilities should be set up for protecting members of a family when the detention of children is inevitable.

Following this case, the NHRCK conducted a survey of immigration office detention facilities with a focus on non-adults between 2007 and December 2009. It found that the facilities in Cheongju and Hwaseong kept a total of 48 children without providing a separate area for them. As a signatory to the CRC, Korea should fulfill its obligations and take appropriate steps to remedy this situation.

Foreigners in this country should also be allowed to enjoy basic rights

Discriminations against foreigners in paying fees online

As of the end of 2010, the number of foreigners residing in Korea stood at 1.26 million. That number has continued to increase. We are living in a multicultural era and it is quite natural that basic rights of foreigners residing in Korea should be protected.

On the question of whether foreigners in this country should be allowed to enjoy basic rights provided for by the Constitution, the Constitutional Court said "Yes." In 1993 and 1999, the Constitutional Court ruled, "In principle, basic rights of foreigners in this country, who hold a status similar to that of nationals, shall be recognized. Concerning human dignity and worth and the right to pursue happiness, it shall be thought that these rights apply to foreigners as they do to all humans. After all, the right to equality is a right of all humans. The only areas that can be recognized as an exception to such rights are those concerning the right to political participation or reciprocity." (93-Heonma-120 & 99-Heonma-494)

In April 2009, a Christian missionary from Mongolia subscribed to a phone service. However, the phone service refused to accept his offer to pay his monthly fees through an automatic bank transfer and said that it would only accept credit card-based payments from a foreigner. In his complaint submitted to the NHRCK, the missionary said that the payment restriction was an unreasonable discrimination against a foreigner, especially as he had stayed in Korea for an extended period of time, had a definite place of abode, and had an account with a bank as well as a stable income.

The phone service told NHRCK investigators that its insistence on credit card only payments for foreigners was due to a difficulty in contacting foreign clients on matters of payment delinquency or serving relevant notices. It added that, as of March 2009, the percentage of foreigners defaulting in fee payments stood at 54% compared to only 13% of locals. The NHRCK pointed out that two other phone service providers were accepting automatic banks transfer from foreigners. But the phone service replied that the matter was complicated by factors such as business size and thus comparisons were not applicable.

The NHRCK respects the freedom of choice held by communications services in a capitalist society. However, it also judges that foreigners should be guaranteed their basic rights as provided for by the Constitution and as shown in a ruling made by the Constitutional Court. The NHRCK's view, therefore, was that the phone service should consider that defaulting on payments was unlikely in the case the complainant, who had been in Korea for long time, had a definite place of abode, earned a stable income, and whose sojourn period was not due to expire any time soon. The NHRCK was of the opinion that it was unreasonable to apply a particular method of fee payment to all foreigners without giving consideration to their individual circumstances. The NHRCK recommended to the phone service that it take steps to revise its current payment practices.

Discrimination is often caused by a fixed notion or prejudice. Isn't this an example of such a case?

How we should treat those who chose Korea as second home

Discrimination against migrant women married to Koreans in insurance subscriptions

According to statistics, one in every seven marriages in Korea is an international marriage. And 80% of international marriages in the country involve migrant women. As an increasingly multicultural society, it is important to consider how we should treat migrant women married to Koreans.

A Cambodian woman married a Korean in October 2007. She has lived in Korea for more than three years, has passed the naturalization test, and is waiting for the Korean nationality to be issued for her. In April 2011, her husband (39) contacted an insurance company to subscribe to tooth insurance for his wife. The insurance company did not accept the application because his wife's period of sojourn in Korea had been less than five years. So, her husband submitted a complaint to the NHRCK on the grounds of discrimination.

When the NHRCK contacted the insurance company, it explained that when deciding whether to accept foreigners' insurance subscription applications, it checks their disease-related history over a 5 year period and obtains doctors' diagnoses about their diseases. In other words, it requires diagnoses made in Korea over a 5 year period to assess the health status of foreigners before accepting their insurance applications. The company said it is difficult to assess the health status of foreigners before their arrival in Korea. It added that the same criterion was applied to all foreigners it dealt with and thus it was not discriminating against the Cambodian woman.

The NHRCK realizes that an insurance company is free to select those it will make insurance contracts with based on its own criteria. It has every right as a business in a capitalistic society and under the principle of individuals' autonomy. However, if restrictions are to be put on a migrant woman who is married to a Korean man over her tooth insurance application, there should be a very good reason, such a drastic increase in loss ratio or the jeopardizing of the insurance system. The NHRCK judged that the insurance company's reason for its 5-year restriction, being that it did not know the woman's health status before her arrival in Korea, was an unreasonable one.

First, the NHRCK's position was that the insurance company could have checked her tooth status by asking her to submit material evidence, including a doctor's diagnosis, instead of insisting on a 5 year sojourn. The insurance company did not put similar restrictions on Koreans who returned home after years staying in foreign countries, even though it had no idea of their health history either. The NHRCK also found that two other insurance companies selling tooth insurance, together with most life insurance companies, did not set a minimum period of sojourn in this country. They just made sure that the foreigners subscribing to insurance intended to stay long-term in the country and understood the terms and conditions written in Korean in the subscription documents.

The insurance company in question immediately agreed with the NHRCK's recommendation and took steps to remedy the situation.

Migrant women married to Koreans are those who have expressed a willingness to adopt Korea as their second home. We should do all we can to abolish barriers migrants face while living in this country as a mature multicultural society.

8

Let’s not aggravate their misery

Need to revise job entry requirements for person with disabilities

Discrimination against the visually handicapped in government entry exams

Among cases of discrimination submitted to the NHRCK up to the first half of 2011, those concerning "person with disabilities" (4,120 cases/38.4%) topped the list, followed by those concerning "social status" (1,168 cases/10.9%), "sexual harassment" (972 cases/9.1%), and "age" (824 cases/7.7%).

One complainant, a Mr. Sohn, had sat an exam for becoming a provincial government employee. His goal was to work in an area related to the welfare of the disabled. But he faced great difficulties in the exam because of a hand-tremor associated with hepatic encephalopathy. He had expected to be given a special answer sheet for people with disabilities, but on the day of the exam, no such special answer sheet was provided. For those suffering from a serious hand tremor condition like Mr. Sohn, the act of completing an answer sheet is a great challenge. Mr. Sohn could not write down his answers properly and consequently failed the exam.

Many disabled people like Mr. Sohn have submitted complaints to the NHRCK concerning the discrimination they experienced in sitting exams for government employment. In a complaint submitted to the NHRCK in October 2006, two disabled people said, "We are visually handicapped. In an exam for hiring Seoul City officials, we asked to be provided with Braille-typed exam paper or allowed to have someone who could write down the answers we supplied, but our request was not accepted. They made us take the exam in a poorly-lit room on the 5th floor without giving consideration to the inconveniences we would experience. We were not given an equal opportunity to become government employees."

The inherent meaning of equality is based on the idea of "treating the same as same, and the different as different." That means "treating the same as different or the different as same" is discrimination. In a written exam for hiring public officials, handicapped people cannot write down answers with the same ease as the non-handicapped. An exam for hiring public officials is to ascertain quality and capability, not handwriting ability. So, measures taken to supplement a handicapped person's limited handwriting ability are required to fulfill the principle of equality and "treating the different as different."

It is discrimination against person with disabilities, who need handwriting assistance, to make them take a written exam under the same conditions as the non-handicapped. For this reason, the NHRCK judged that it was the state's obligation to make up for the limited ability of person with disabilities in an exam for hiring public officials, in keeping with the relevant laws in the Constitution, The Act on the Welfare of Persons with Disabilities, and The Employment Promotion and Vocational Rehabilitation of Disabled Persons Act. The state must also recognize that handwriting ability is no longer a critical skill for public officials as most documentation nowadays is processed on computers at government offices.

After the NHCR urged that supplementary measures be taken to prevent the inconveniences experienced by person with disabilities in taking exams, the government began making changes. Steps taken for exams administered by the Central Civil Commission included the following: providing Braille-typed question sheets and voice-based computers for the seriously visually disabled; allowing the use of raised blocks, magnifying readers/glasses. Apparently encouraged by the government's changes, a larger number of handicapped people have been taking exams for the hiring public officials. It is good to see the government at last making provisions to assist the less privileged in exams.

Discrimination-related complaint No. 1, 01-Jinchar-0000001

The first ever complaint submitted to the NHRCK concerned discrimination. On November 25, 2001, a medical professor submitted a complaint on behalf of Mr. Lee, his ex-student, who had been disqualified for selection as head of a local public health center because of his handicap status (class 3). Mr. Lee had served as a doctor at the health center in a small city in Chungbuk Province for 10 years since 1991. In 2001, he was at the top of the list of candidates for the vacant position as head of the health center because he had a medical license.

The Enforcement Decree of The Regional Public Health Act, Article 11, stipulates that anyone hired as the head of a local public health center should ideally have a medical license. Even though Mr. Lee had the credentials for the job, the mayor of the city put off filling the vacant position for three months without explanation. Eventually, he appointed a health official from an upper local body that controlled City Hall, who had no medical license, as the new head of the medical center.

Mr. Lee said that he was discriminated against because he was handicapped and excluded from consideration for the job, even though he was best suited for the position. Then Mr. Lee's ex-professor submitted a complaint to the NHRCK on Mr. Lee's behalf.

NHRCK investigators were told by the city's officials that Mr. Lee was not excluded as a candidate for the position because of his disability. They said he was disqualified for other reasons, and explained that he lacked an ability to properly manage employees, he did not have sufficient administrative experience, and it was thought that an ordinary health official rather than a medical doctor was more appropriate for the position. They also took into account the need for lower-ranking officials with many years of public service (including the one appointed to the said position) to be promoted and transferred to new positions.

The question in this case was whether Mr. Lee was excluded because he was disabled. The NHRCK found that the city's conduct in filling the vacant position for the head of the local public health center was improper. According to Article 8 of The Decree on Provincial Public Official Appointment, the city should have asked the City Personnel Affairs Committee to fill the vacant position immediately based on the fixed criteria for such an appointment. Contrary to this, the city left the position vacant for three months. It was also discovered that the city, in fact, did not check Mr. Lee's qualifications or his ability to carry out the responsibilities of the position, even though it was known he was most qualified as the only person among city officials with a medical license.

The NHRCK also learned that at a session of the city council on September 21, 2001, the mayor said that Mr. Lee was the only one qualified for the position based on the length of service requirement, but he did not appear to be the one who should be responsible for the health and welfare of 150,000 local residents. When questioned on the reason for the delay and for the city's personnel policies, the mayor did not mention anything about Mr. Lee's physical status.

The NHRCK judged that Mr. Lee was excluded and treated unfavorably for no reason other than his physical status, even though he was best suited to the position.

The NHRCK recommended to the municipal authorities that a strict warning be issued against the mayor concerning discrimination and the city's systems and policies should be checked for any other discriminatory issues and ensure they are properly resolved.

Consideration should be given to the hearing-impaired during election campaigns

The need to improve the sign language system in election campaign broadcasts

Voting rights are equally afforded to all people regardless of their gender, academic background or social status. But people with disabilities often experience discrimination in the election process, including in the way election broadcasts are shown. The NHRCK found that during the 17th General Election only 205 out of the 272 candidate debates that were aired provided subtitles or sign language interpreters. The reasons for this were technological problems or insufficient funding. In a complaint submitted to the NHRCK in April 2004, the Representative of the Korea Association of the Deaf said, "We were discriminated against. During the 17th General Election, broadcast stations did not provide subtitles or sign language interpreters for the candidate speech sessions that were aired."

Since election broadcasts are important in helping voters assess the candidates, the NHRCK recommended to the National Assembly Speaker and the Chairman of the National Election Commission that The Act on Public Official Election and Prevention of Election Irregularities should be amended so that it would be obligatory for election broadcasts to provide subtitles or sign language interpreters for the hearing-impaired. The NHRCK's opinion was based on the following:

First, hearing-impaired voters should be have the opportunity like everyone else to understand the contents of election broadcasts, including candidates' speeches and candidate debates, based on the Constitutional right of equality. From this viewpoint, the current clause of the above law making it optional to provide subtitles or sign language interpreters actually infringes on the rights of hearing-impaired voters.

All people, including person with disabilities, have a right to participate in activities in all walks of life, including politics, the economy, and social affairs, as citizens of the country and members of a society. The government has an obligation to improve telecommunication/broadcast facilities so person with disabilities can have access to relevant information without difficulty. The provision of subtitles and sign language interpreters during a National Assembly election is necessary to enable person with disabilities to take part in social affairs.

Following the publication of the NHRCK's views, many complaints were raised about discrimination against person with disabilities during elections. During the May 31 provincial election in 2006, representatives of the hearing-impaired submitted an appeal to the Constitutional Court about the lack of subtitles or sign language interpreters, saying, "The Public Official Election Act, Article 70, Paragraph 6, which makes it optional to provide language interpreters for broadcast concerning candidates' expression of their opinions, is unconstitutional, as it infringes on the right to equality and political participation." But the Constitutional Court upheld the constitutionality of the relevant clause of the law with a majority vote of eight to one, saying, "The intention of the clause not stipulating sign language interpretation of broadcast as an obligation does not have the meaning of denying a need for such broadcast in principle, but considers the impossibility of such broadcast due to problems related to equipment or technological level of broadcast businesses. If such a broadcast is stipulated as an obligation at this stage, it is feared that it will limit the freedom related to candidates' election campaigns and broadcast company's news reporting and program composition."

Thus, the Constitutional Court stood in opposition to the NHRCK, but looking on the bright side, the court did make clear that the intention of the law "does not have the meaning of denying a need for such broadcast in principle." We should look forward to the day when the NHRCK's forward-looking view is fully adopted for the enhancement of human rights.

Business freedom in a risk society?

Discrimination of person with disabilities in insurance subscriptions

"We'll do as we please." Some insurance companies take this kind of attitude in evaluating subscriptions. Yes, they are allowed to make insurance contracts that suit their requirements and pay different amounts of insurance money to different people, provided that there is sufficient reason.

In April 2008, Mr. Yoon (39) submitted a complaint to the NHRCK, saying that the post office refused to accept his personal accident insurance subscription on the grounds that he was mentally handicapped. Ironically enough, the day he submitted the complaint was the day The Act on the Prohibition of Discrimination against Disabled Persons, Remedy against Infringement of Their Right, etc. (The Disability Discrimination Act) was implemented.

Insurance is a safeguard for people living in "risk society" and the freedom of insurance companies to conduct their business should be guaranteed, but it is inappropriate for an insurance company to refuse to accept an insurance subscription without reason or without valid objective criteria such as accident statistics.

It is discriminatory for an insurance company to reject a subscription application based on a prejudice about a disability or history of illness. Articles 15 and 17 of The Disability Discrimination Act stipulate that financial product/service providers shall not put restrictions on, exclude, or separate a person with disabilities in the provision of their financial products or services, including insurance subscriptions, without a justifiable reason.

The Korea Post explained that the post office under its control rejected Mr. Yoon's insurance subscription based on the judgment that a person classified as having a class-3 mental disability or higher, like Mr. Yoon, or with a history of hypochondria, could not be viewed as having the same accident risk as other subscribers. However, the Korea Post did not actually check accident occurrence statistics for its judgment at that time. Instead, it presumed that people suffering from hypochondria were likely to have a higher accident rate based on a general perception rather than on verified objective and rational assessment.

The Korea Post also pointed to The Commercial Act, Article 732, and the Post Office Insurance Terms and Conditions, Article 4, that stipulates, "A contract of insurance which designates the death of a person under 15 years of age, of an insane person or of a mentally incompetent person as an insured event shall be null and void." However, the intention of the clause is to protect such people from the dangers of fraud or being killed by someone wishing to get their insurance money, and it is not supposed to serve as a reason for rejecting an insurance subscription.

Earlier in August 2005, the NHRCK recommended to the Ministry of Justice that The Commercial Act, Article 732, be deleted, as it was likely to be used in a manner for which it was not intended, that is, as a justification by insurance companies to reject all of the insurance subscriptions of handicapped people, without proper consideration being given to the specific circumstances of each person, and this is in violation of the right to equality provided for in Article 11 of the Constitution. Article 732 is also in conflict with The Disability Discrimination Act, Articles 15 and 17. Furthermore, "insanity" or "mental incompetence" are relative terms, and it cannot be said that all people with mental problems are in the same state. Thus, the NHRCK recommended to the Korea Post that the complainant's insurance subscription be assessed again and that special review procedures be implemented when considering the criteria of "insanity" or "mental incompetence," as stated in Article 732, to prevent the occurrence of similar cases of discrimination.

In September 2011, the Financial Supervisory Service (FSS) announced guidelines for improving the insurance system, including the processing of contracts for person with disabilities, with a focus on avoiding discrimination against handicapped people based on NHRCK's recommendations and precedents set by courts. It is hoped that this will put an end to discriminatory practices in matters concerning insurance preparation in the future.

Need to consider people with mobility restrictions

The need for electronic information devices for the hearing-impaired on city buses

The voice information system on city buses is not helpful for the hearing-impaired for letting them know where to get off. They need a device that displays each bus stop, but not many buses running in Seoul have these devices.

For two months starting in June 2010, the Korea Association of the Deaf inspected buses operating in Seoul and found that most of them were not equipped with display devices. The association submitted a complaint to the NHRCK, pointing out that it was discrimination against the hearing-impaired.

The installation of such devices would mean an additional financial burden on the part of bus companies. Companies operating village buses said that their fleets were excluded from the category of public transportation under the amendment to The Passenger Transport Service Act and that the need to have electronic information devices, as stated under the Act on Improvement of Transportation Services for People with Mobility Restrictions, did not apply to them. Effective March 2009, such devices are being installed on all new buses under guidelines set by the Ministry of Land, Transport and Maritime Affairs (MLTM). MLTM explained that its requirement took in consideration the burden of cost borne by bus companies.

However, the NHRCK judged that bus companies failing to provide proper facilities for hearing-impaired were in violation of the Disability Discrimination Act, Article 19, Paragraphs 4 and 8, which stipulate that facilities should be provided for person with disabilities, so that they may move safely from place to place on public transportation. The NHRCK recommended to the MLTM that it should amend the relevant regulations so the hearing-impaired can use public transportation safely and conveniently and that it should find a way to help bus companies install information display devices on their buses.

The NHRCK's recommendation was based on the following: city buses are subject to the obligation of installing visual information devices under the Disability Discrimination Act; no technological problems were found on buses with such devices installed, that is, the buses newly added to routes beginning March 2009; and the City of Seoul recognized that the expense of installing such devices was a depreciation cost. With regard to the justifications for exemption by companies operating village buses, the NHRCK concluded that they were irrational and recommended that the MLTM arrive at a solution.

No one can dispute the need to provide facilities to people with disabilities who might suffer from restricted mobility. A person with disabilities should not have to be inconvenienced when using public transportation.

School rooms with no doorsills

Schools' refusal to admit handicapped students because of a lack of facilities

Mrs. Kim of Eunpyeong-gu in Seoul had a mentally challenged son attending a middle school. She had planned to send him to a vocational high school, primarily because of its geographical proximity to her home. However, the vocational high schools in her district did not have a class suitable for a handicapped student. So Mrs. Kim, along with over 20 other parents of handicapped children, in the same district, asked two schools to offer special classes for handicapped students. The answer was no.

School authorities said that the school buildings were old and they did not have the relevant facilities or the budget to run a special class for person with disabilities. They added that machines used for skills practice in classes were difficult and dangerous to handle even for non-handicapped students. In March 2006, the parents, together with the Joint Association for the Education Right for the Disabled, submitted a complaint to the NHRCK, saying that the schools' refusal to run special classes for person with disabilities was discrimination.

The NHRCK inspected one school and found that it was possible to remove all impediments to handicapped students on the first floors of the school buildings, including doorsills, and install anti-slip nosings. As for the other school, the school authorities said that if the Eunpyeong New Town Project was started, the school might be relocated or refurbished, and thus it was only possible to consider building facilities for person with disabilities once it was known whether the new town development was going to proceed. Neither school was deemed to have sufficient reason to refuse to run a special class for person with disabilities.

With regard to the difficulties a person with disabilities would have managing hard to handle machinery in skills practice classes, the NHRCK judged that this view was formed out of a prejudice against people with disabilities, without even considering how to provide for them. By that time, the Seoul Metropolitan Office of Education said that it would provide the funds as a priority if the school in question was willing to run a special class.

Ultimately, the NHRCK judged, in consideration of the above-mentioned opinions, that the schools' refusal to run special classes for people with disabilities was a form of discrimination. The NHRCK recommended to the two schools that they run the special classes. It recommended that the office of education exercise strict guidance and supervision concerning the integrated education of disabled students and non-disabled students and the introduction of special classes for people with disabilities.

Article 31 of the Constitution stipulates that all citizens shall have an equal right to receive an education corresponding to their abilities. Article 18 of The Act on the Welfare of Persons with Disabilities stipulates that state and local governments shall supply disabled persons with auxiliary appliances for supplementing their disabilities in order for them to learn or to restore their abilities. Discrimination against people who need special education is also prohibited by Article 4 of The Framework Act on Education and Article 15 of The Act on the Promotion of Education for person with disabilities.

The right to receive an education is an essential right that should be guaranteed so that handicapped people have as much opportunity to receive an education as non-handicapped people. Education is particularly important for person with disabilities because it can help them achieve a self-reliant way of living and become integral members of the society.

An assistive device is part of the body for person with disabilities

Lack of care by the police in taking away person with disabilities

When it is necessary to transport person with disabilities, the police need to provide special care for them, as their human rights are more likely to be infringed upon.

In August 2006, some seriously handicapped people staged a street demonstration to gain more attention over their lack of human rights. Miss O, one of protesters, was taken to police station for a late night investigation. She was taken out of her powered wheelchair and put in a police vehicle, where she had waited before being taken to a police station. When taken out of her wheelchair, Miss O felt uneasy and helpless. Her body was used to the contours of the power wheelchair and she was very uncomfortable on the seat of the police vehicle, which had no safety belt or harness. She was with other women in the same situation and they held on to each other for comfort. There were not enough female police officers available to take care of them.

That night numbers of handicapped demonstrators were taken to a total of 16 police stations around Seoul. The police investigation continued into the night and did not end until after the buses and subway trains had stopped running. The people in a wheelchair needed to take a low-platform bus, subway or a call taxi in the absence of their own private vehicle. That night their wheelchairs had been placed in a different vehicle, and they had to wait until they arrived at police stations. Waiting in temporary detention at a police station, they were not taken care of by anyone and nor did they have access to a toilet for the disabled.

The police and the prosecution have internal regulations to the effect that person with disabilities should be treated the same as the non-handicapped while they are under investigation or kept in temporary confinement. However, Paragraph 1, Article 10, of the Rules on the Performance of Duties by Police Officers for Protection of Human Rights stipulates that police officers, in their performance of duties, shall take meticulous care of the socially less privileged in consideration of their status.

The NHRCK judged that in this particular case the police had not fulfilled their obligations in taking Miss O from a street demonstration to a police station where she had been temporarily detained. An assistive device, including a wheelchair, should have been provided as such devices are equivalent to a bodily part for a person with disabilities. They suffer severe restrictions without them. The failure of the police to provide the proper assistance to people with disabilities, after they had been removed from their wheelchairs, had been an act of discrimination.

The NHRCK recommended to the National Police Commissioner that further steps should be taken to protect the human rights of the physically handicapped and that low-platform police vehicles need to be introduced as soon as possible to prevent incidents similar to what Miss O experienced happening again. The NHRCK also recommended the following: Provision of assistance for person with disabilities during investigations at police stations and transport home after the investigation; steps taken to allay the emotional discomfort of person with disabilities during investigations; and the installation of convenience facilities, including adequate toilets, for the female handicapped.

Who has the right to restrict freedom?

Harsh acts perpetrated against people with disabilities confined to facilities

In December 2008, the media reported on human rights infringements against those kept in a disability rehabilitation center in Jeollabuk-do. According to a local broadcast station, most of those kept there were made to sleep without proper bedding, with their hands and feet often bound with dog leashes. Some of the more seriously handicapped had their hands bound with rope at all times. Numbers of them were accommodated in a room regardless of their gender. At night, only one person per 60 people was on hand to "take care of" them.

In response to the uproar following the media report, the chief of the facility said that he was doing his best to cure them and stabilize their mental states. The local government responsible for supervising the facility said that it would take administrative steps, which might include closing the facility, and launch an investigation, suing those responsible under The Criminal Act. As the case appeared to involve serious human rights infringements, the NHRCK carried out its own investigation under The National Human Rights Commission Act.

The NHRCK confirmed that most of the media reports concerning the facility were true. Unreasonably harsh treatment had been perpetrated against the seriously handicapped, who were incapable of self-recognition or self-defense. The facility had violated the purpose of its existence, as stipulated in The Act on the Welfare of Persons with Disabilities, Paragraph 1, Article 4 ("persons with disabilities shall be respected and accorded the dignity and value of regular human beings and shall be treated as such."). The facility had also infringed on the right to dignity, worth and bodily freedom provided for in Articles 10 and 12 of the Constitution.

In addition, the facility was accommodating more handicapped people than it reported to the local government and failed to employ qualified personnel to look after them. It did not have a system of internal control or supervision to properly monitor care for person with disabilities. The NHRCK judged that person with disabilities were treated improperly under Article 42 of The Act on the Welfare of Persons with Disabilities.

The NHRCK recommended the following to the chief of the facility: Employment of qualified staff who can take care of the seriously handicapped; improvement of facilities; composition of a committee to oversee and improve the facility's human rights situation; and human rights education for all employees.

The NHRCK also recommended to the head of the local government that measures be taken to improve the human rights situation at the facility after a re-investigation of the facility and that punitive actions should be taken against human rights violations perpetrated there.

Uncomfortable truth that should be disclosed

Sexual harassment at a handicapped school

With the 2011 release of Dogani, a film based on a novel by Gong Ji-young, the case of sexual assault at a school for disabled students in Gwangju, which the NHRCK had investigated five years before, came under the spotlight again. In a media interview, Gong Ji-young said, “In fact, the case was more inhumane than was portrayed in my novel or the film.”

At the time the NHRCK investigated the case, in response to a complaint submitted by a civic organization in November 2005, the pupils at the school had already been exposed to years of sexual abuse because of their separation from the local community and negligence by the management. Fact-finding efforts by others had been insufficient and nothing had been done to provide trauma counseling or to better protect the victims. In March 2006, the NHRCK continued the investigation with a view that comprehensive actions must be taken.

The NHRCK found that faculty members had continued to sexually abuse the hearing-impaired and mentally-retarded children, and six suspects were sued under The Criminal Act. The NHRCK focused on the disturbing fact that the sexual crimes had been committed for years in a welfare facility which was receiving taxpayers’ money. Directors of the facility were not involved in any specific crimes. But the foundation running the facility made no effort to find out how the abuses had occurred, to protect students, or to prevent further assaults. The NHRCK judged that the directors were negligent of their duties and recommended to the City of Gwangju responsible for supervision of the school that the directors be replaced, that a special program be established to assist victims with mental trauma from the abuse, that a sexual harassment-related counseling system be adopted by the school, and that the quality of education for the hearing-impaired students be enhanced.

The NHRCK’s recommendation served as a reminder of the seriousness of the human rights situation in facilities designed to care for disabled people. Unfortunately, those indicted and put on trial received only light sentences. Anyone who has read the novel or seen the film will understandably be upset about this outcome.

In October 2011, the NHRCK carried out another investigation at the school, finding that those involved in the sexual abuse used threats or intimidation against moves to close the facility and transfer students elsewhere. The NHRCK also investigated the human rights situation at another disability rehabilitation facility run by the same foundation.

Recently, the City of Gwangju decided to close the school and revoke the license given to the welfare foundation. Another case similar to Dogani may be occurring elsewhere in society. Please keep a watchful eye and help the NHRCK in its efforts to protect the disabled and vulnerable.

9

‘Difference’ and ‘Discrimination’

Age discrimination against wannabe comedians

Do you think age is important in making people laugh? One major broadcasting company in Korea seemed to think so and kept an age limit on comedian applicants for about 20 years. Only "men and women aged 18-30" were eligible to apply. Other broadcasters also held selection tests for comedians but none were strict about imposing upper age limits.

> Kim Se-jong dreamed of becoming a comedian since he was just seven years old. He wanted to become a famous comedian like Shim Hyung-rae. In seeing that comedians like Shim make people laugh and happy, he made up his mind to become just like Shim. (Human Rights, July-August, 2010)

Mr. Kim turned 29 in 2008 and seemed to be just a few steps away from realizing his dream. He had passed the first and second rounds of the comedian screening test at one of the country's major broadcasting companies. But then he failed to pass the final round. One year later, he tried again but this time could not even submit an application. He was no longer eligible to apply because of an age restriction. So, he went to the NHRCK for help.

The broadcasting company told the NHRCK that it had enforced the age limit for the past 20 years. The company explained that even if a person over 30 passes its test, it would be almost impossible for him or her to train and launch a career at a time when the overall debut age for entertainers is getting younger and their working period is getting shorter. The company also argued that since its test is not to select established comedians but only "rookies" it is sensible to have an age limit at its own discretion.

However, the NHRCK saw the broadcaster's age restriction as discriminatory and recommended the company change its policy. Is it impossible to make people laugh after age 30? More time and money might be needed to train older rookie comedians, but is it asking too much to give them an opportunity? The NHRCK did not think so. It concluded that it is impossible to gauge a person's ability to make people laugh based on age. It also noted that other broadcasting companies did not have any age restrictions for comedian applicants.

Fortunately, the broadcasting company accepted the NHRCK's recommendation straight away. It agreed to eliminate its restriction and cease discriminating against applicants based on age starting from its next comedian test in April 2011.

This case is meaningful in that it involves the simultaneous application of the National Human Rights Commission Act and the Anti-discrimination against Age Act. In the past, the NHRCK had often called for many age-discrimination practices to be rectified but its recommendations were never binding. But with the Anti-age Discrimination Law, which went into effect on March 22, 2009, they did become binding. If the NHRCK's recommendations are not accepted by an age-discrimination offender, the victims involved can report such to the Ministry of Employment and Labor, which has the power to order corrections and impose penalties.

The effect of the Anti-age Discrimination against Age Act has been huge. A total of 322 petitions involving age discrimination were filed from 2001 to March 21, 2009, under the National Human Rights Commission Law, but 148 petitions were filed just one year after the Anti-age Discrimination against Age Act came into effect.

Even without recommendations, resolutions sometimes emerge during the investigative process

Usually the NHRCK issues a recommendation to rectify any discriminatory practices after completing an investigation, but there are many cases where issues are settled in what is called "resolution during investigation." On these occasions, the NHRCK has no need to issue recommendations, as relevant parties do their part in fixing any problems. A prime example is Ewha Womans University's revision of its marriage prohibition for students.

In November 2002, a 19-year-old student of Ewha Womans University filed a petition with the NHRCK, saying that the school violates the right to pursue happiness and the right to determine one's own fate by prohibiting students from getting married and allowing its president the right to expel anyone who does not comply with the rule. The NHRCK immediately launched an investigation. At first, the Ewha Womans University authorities showed an unwillingness toward changing the rule, citing the "unique characteristics of the school" and the "age-old practice that has been in place since its establishment." But they soon recognized that the marriage-prohibition rule was constitutionality issue and decided to revise the old regulation. After that, a woman in her 70s who was expelled due to the regulation decades ago come back and eventually graduated from the university.

"Men get stronger and healthier, while women get slimmer and more attractive." This is the copy that appeared on a milk advertisement posted by the Ministry of Agriculture on subway carriages in May 2004. Bong Hyun-sook (24), a law major, filed a petition with the NHRCK, claiming that the advertisement discriminated against women by portraying female bodies as sexual objects. In the process of its investigation, the NHRCK persuaded the farm ministry to take action, and the ministry revised the ad to read as follows: "Milk is power! Drink. White milk provides 114 types of nutrition. A cup of milk every day will make your family healthy."

Mr. "S," a foreign detainee, filed a petition with the NHRCK in November 2002, claiming that it is discriminatory to prohibit gatherings by Muslims in prison and to withhold personal belongings related to their religion. In the process of the NHRCK's investigation, the prison authorities gave the Muslim detainee his religious belongings and allowed Muslims to hold gatherings in the facility.

Mr. Lee (28) filed a petition with the NHRCK in 2008, saying that Gyeongsang City, in South Gyeongsang Province, discriminates against those who have yet to complete their military service by not allowing them to apply for a public official post in the technical field. When the NHRCK started to probe into the matter, the city announced that it would be changing the regulations and lifting the restriction to allow anyone aged 18 or older to apply for its job vacancies.

Mrs. Park, a 30-year-old mother of two, applied for a student consulting job at the Education Information Research Institute in Gyeonggi Province in October 2009. She was rejected on the ground that she had preschool children. The institute gave minus scores to college students and mothers of preschool children on the assumption that they would have difficulty in attending mid-week training sessions, workshops and other events. However, in the process of the NHRCK's investigation, the institute acknowledged that its policy was discriminatory and added that it would remove the scoring standard from future tests.

The NHRCK conducted an investigation into 100 large companies employing 50 workers or more to see if they used any discriminatory standards in selecting new workers. It announced the results twice in 2003. The probe was conducted in the belief that discriminatory qualification standards such as physical size and personal and family background have nothing to do with job performance and employment tasks, and therefore they are tantamount to infringing on the right to equality. Most firms under investigation said that they would voluntarily remove discriminative employment standards such as age and academic background. Not all of those standards have disappeared, but the investigation was a starting point in the process of getting rid of unequal employment practices and helping more people recognize issues of discrimination in daily life.

Other cases resolved in the process of an NHRCK probe include the 2003 petition claiming that it is discrimination not to operate elevators around the clock for disabled people; the 2004 petition taking issue with an Internet portal's decision to prohibit those aged below 17 and above 50 from becoming members; the 2003 petition against the decision to disqualify college entrants due to prior prison terms in connection with involvement in street rallies or violating the National Security Law; and finally, the 2008 case against placing quilt and cooking books separately in a women's section at a book store strengthens gender stereotypes and discriminates against women.

"Resolution during investigation" is one of means the NHRCK uses to resolve disputes. It is a win-win situation, in which all parties involved in a dispute are happy with the result and need not take matters further.

Age Should Not Be a Barrier

Age Discrimination in Applying for a Civil Service Examination

In 2011, seven people in their fifties—the oldest person being 53—passed a civil service exam for the public service's grade nine clerical level. These seven people constituted 0.5% of the total of 1,400 successful applicants, while 37 people in their forties constituted 2.6%. The Ministry of Public Administration and Security announced that the number of people over the age of 33 who passed the grade nine exam came to 272, or 19% of the total, and that the number of people in their thirties to fifties passing the exam was increasing each year thanks to the abolition of age restrictions.

Age limits for civil service examinations were abolished in 2009 as a result of the Ministry of Public Administration and Security acceptance of recommendations by the NHRCK. Before then, there were a series of age restrictions, including a cut-off age of 28 for grade nine exams, 35 for grades six and seven, and 32 for grade five. Private companies also applied age limits on entrance examinations, and Korean society accepted age limits as the norm for employment entrance exams. But imposing age limits in a recruitment process is clearly discriminatory and limits opportunity.

It took the government a longtime to abolish the age limits on its entrance examinations. Initially, the Civil Service Commission declared that the recommendation to abolish the age limits on its Civil Service Examinations was not acceptable. The Commission said that the purpose of the age restrictions was to maintain governmental competitiveness and efficiency by hiring young and capable people. The Commission also insisted that the abolition or easing of the age restrictions would accelerate the overall aging of the governmental staff and would impact on the private sector recruitment market by causing applicants to continue preparing for civil service examinations over an extended period.

However, the NHRCK judged that there was no reason to believe age determines one's capabilities in a job or that an applicant over a certain age cannot be highly qualified.

In addition, it cannot be said categorically that abolishing age limits would lead to a government-staff aging imbalance. Regardless of government employees aging, the NHRCK held that efficacy or organizational competitiveness should be measured according to operational standards and that the belief that aging can lead to inefficiency was prejudice. As for prolonging periods of preparation for government exams, this potential problem should be addressed with social improvements, for example, by expanding employment opportunities or stabilizing employment for the aged.

Article 3 of the Older Workers Recommendation by the International Labour Organization says, "Each Member should, within the framework of a national policy to promote equality of opportunity and treatment for workers, whatever their age, and of laws and regulations and of practice on the subject, take measures for the prevention of discrimination in employment and occupation with regard to older workers." The Age Discrimination in Employment Act of the U.S., the Employment Equality Act of Ireland, the Age Discrimination in Employment Act of Australia, and the Canadian Human Rights Act all consider age-based recruitment rejections or disadvantages to be discrimination. This worldwide trend clearly demonstrates that age limits in employment are outmoded.

Two years after the NHRCK's recommendation, in 2009, age restrictions on public service examinations were abolished. In that year, the number of those over the age of 33 who passed the examination for grade nine—including a 52-year old, the oldest applicant—stood at 394 or 12.4% out of 2,374 successful applicants. The total number of applicants for the exam was 142,879.

Although the age restrictions for the civil service examinations were abolished, many people still experience age-based employment discrimination in Korea. Such employment discrimination will invariably compromise national competitiveness because Korean society is increasingly becoming an aging society and cannot afford to reject those who have a lot to contribute. Age ought not to be a barrier to employment anymore.

Take Your Eyes off a Person's Age and You Can Truly See That Person

Recommendation about the Retirement Age Discrimination of Government Employees

"Government jobs are like unbreakable breadbaskets." This is a term in Korea meaning that government employment is rock solid until the regular retirement age, especially since one never has to worry about national or local government bankruptcy. However, the retirement age for government workers used to vary depending on rank. For example, the retirement age for grade five employees and higher was 60 but for grade six and under it was 57. This variable retirement age system was in place until 2008.

The Civil Service Commission explained that in the past different retirement ages had been necessary because grade five employees had mainly carried out policy-related tasks, and management and supervision, while grade six administrative employees had done the more routine jobs. But, according to an investigation by the NHRCK, grade five employees were found to handle routine office work at central ministries or agencies, while grade six employees often performed managerial level tasks at local government offices. This showed that managerial work was not limited to grade five workers or routine tasks in the office to grade six workers. So job type could not be defined based on a government employee's grade.

This being the case, the NHRCK determined that retirement age based on the grade or position of a government worker violated the worker's right to equality under paragraph 1, Article 74, of the State Public Officials Act, and paragraph 1, Article 66, of the Local Public Officials Act. The NHRCK recommended that the Civil Service Commission and the Ministry of Government Administration and Home Affairs rectify this problem. As a result, in 2008, the variable retirement age system for public officials was abolished. In a 2006 survey of 1,200 law professors in Korea, the professors selected this recommendation as one of the most impressive recommendations to have been put forward by the NHRCK.

However, this issue extends beyond the retirement age of government workers. Many people experience discrimination in Korean society because of their age. In a survey, 64.3% of job seekers responded that they had experienced discrimination due to age. From its establishment until the end of 2007, the NHRCK received 355 complaints regarding age discrimination, though most of the NHRCK's recommendations in response to the complaints were accepted. The followings are examples of practices that the NHRCK recommended be ceased:

- □ Age restrictions at educational institutions, such as colleges: age limits for applicants for employment, training or overseas postings; disadvantages in promotion based on age; forced retirement based on age; and age based qualification limits for participation in a world cup climbing tournament.
- □ Age-based discrimination in the assessment of a supervisor's capacity to perform their job.
- □ The practice of selecting the youngest from among individuals who all have identical college entrance examination results.
- □ Age limits on freshmen entering the Department of Aeronautics at college.

The recommendations put forth by the NHRCK have contributed to helping Korean citizens recognize that age-related prejudice across Korean society violates an individual's right to equality. The NHRCK is continuously receiving complaints to address the issues of early retirement age for contract workers who work for indefinite periods of time and the elimination of variable retirement age in public corporations that are not part of the government but are under governmental supervision.

It leaves one with a profound sense of satisfaction to see how the elimination of the variable retirement age system for government employees has been followed by private corporations. And the Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion was finally implemented on March 22, 2009.

Age discrimination violates the right to equality under Article 11 of the Constitution. There is a saying that age is nothing but a number. The NHRCK hopes to see a day when there age discrimination or disadvantages based on age are a thing of the past in Korea. Capability, not age, should be the measure of a person. If this is realized, a stronger connection between generations will be formed, one that will allow a smoother transfer of knowledge, skills and wisdom. Indeed, if you take your eyes off a person's age, you will be able to clearly see that person.

A Spouse's Stepparents Are Also Family

Health Insurance Discrimination Based on Family Relationship

What should be the scope of coverage for dependents by national health care? "It is discrimination that a spouse's stepparents are not recognized as dependents of a national health insurance policyholder while stepparents of policyholders are." This is part of a complaint filed with the NHRCK in 2005. The complaint asserted that gender or family conditions served as grounds for discrimination.

In 2005, national health insurance rules recognized lineal ascendants of policyholders and their spouses as dependents, and also recognized stepparents of policyholders as dependents, if they met certain conditions such as living with the policyholders. However, the stepparents of the spouse of a policyholder were not recognized as dependents.

The National Health Insurance Corporation reasoned that a spouse's stepparents are not to be recognized as dependents because they are not lineal ascendants. In their view, married stepchildren who have left their parents' home under the Family Registration Act cannot be viewed as sharing a means of living with their stepparents.

The NHRCK sees things differently. First, social insurance benefits are paid from a fund created through copayments by members of society, and it is a basic principle that the premiums of social insurance are also paid by members of society. Therefore, insurers should consider the overall situation, including social, economic, cultural and national conditions in determining the scope of dependents for national health insurance.

The focus of the NHRCK's investigation was on groundless discrimination in the process of determining the scope of the dependents. It revealed that stepparents of both a policyholder and the spouse are legal relatives under Civil Code Section 767, 769, and 777. In addition, a person is under obligation to support the stepparents of his or her spouse according to Civil Code Section 974. This means that parents and stepparents are the same in terms of legal status. Therefore, there is no basis for the idea that a policyholder is exempt from the duty of supporting the stepparents of his or her spouse.

In addition, since the Constitutional Court found the patriarchal family system unconstitutional, the concept of leaving a parent's home under the Family Registration Act has for all practical purposes been invalidated. Even under the patriarchal family system, a married son could remain in the family register (a legal registration that defines family) of his stepparents. Therefore, one's sharing of a livelihood cannot be measured by marital status. The NHRCK also concluded that there was no reason to differentiate between the need to support stepparents of a policyholder and those of his or her spouse, when viewed from the principle of joint responsibility to take care of the health needs of economically incapacitated family members or relatives.

This being the case, the NHRCK recommended that the Minister of Health and Welfare amend relevant provisions so that a spouse's stepparents who live with a policyholder can be recognized as dependents, as long as the stepparents meet the conditions for dependents under the policies of national health care. The NHRCK arrived at this recommendation based on the principle that although each member of a society should pay social insurance premiums, discrimination shall not be tolerated in determining the scope of family dependents since there is an obligation to support economically incapacitated relatives.

In Korean society, the makeup of families has become diverse and traditional types of families are disappearing. However, even though its makeup changes, the concept of family remains and continues to be a pillar that maintains Korean society. And this is another reason to eliminate discrimination on the basis of a policyholder's family situation. The Ministry of Health and Welfare accepted the NHRCK's recommendation and began amending relevant provisions beginning in 2009.

Marital Status Cannot be a Yardstick for Health Insurance

Health Insurance Discrimination against a Divorced Brother

After investigating the spouse's stepparents issue, the NHRCK next focused on investigating whether a divorced older brother could be recognized as a dependent of a national health insurance policyholder.

In April 2004, Mr. Cho tried to register his older brother, a divorcee, as his dependent for national health insurance but was rejected because his divorced brother was ineligible. Mr. Cho then filed a complaint with the NHRCK, claiming discrimination against divorcees in obtaining health insurance.

People who have no income and meet the requirements for a dependent are excluded from the obligation to contribute to social insurance under the National Health Insurance Act. In other words, people who are exempt from social insurance obligations are those who have no income and depend on policyholders for their livelihood. The Enforcement Decree of the national health insurance Act describes a dependent as follows:

- □ an unmarried person who lives with a policyholder and who does not have parents, or whose parents are alive but have no income;
- □ an unmarried person who does not live with a policyholder and who does not have parents or siblings, or whose parents or siblings under the same roof do not have income.

However, the Enforcement Decree states nothing about the eligibility of registering divorced siblings as dependents. The Ministry of Health and Welfare said that married siblings were excluded from being considered dependents because it was unlikely that married siblings would share a means of living. However, there are cases in which economically disadvantaged and divorced siblings do live with and are materially supported by national health insurance policyholders. In relation, the 2006 Guide to National Basic Living, page 5, defines a person who shares a means of living as someone in a relationship that shares income and livelihood. Therefore, there is no reason to reject divorcees, since they meet the criteria for being registered as a dependent.

The Ministry of Health and Welfare also said that it would be difficult to verify the income-earning ability of divorced siblings. However, measuring this is the responsibility of the Ministry in charge of social insurance policy. The Ministry should address the matter by means of a thorough investigation into the income-earning ability of divorced siblings and their annual income.

The NHRCK reached the conclusion that using marital status rather than economic ability to gauge whether a dependent is eligible for national health insurance is discriminatory. The NHRCK recommended that the Minister of Health and Welfare amend conditions of eligibility for a dependent under the Enforcement Decree of the national health insurance Act. In response, the National Health Insurance Corporation, under the Ministry of Health and Welfare, changed its policy regarding dependents and allowed divorced siblings to be recognized as dependents as of February 29, 2008.

This case demonstrates that the status of siblings in health insurance ought not to be different based on a history of divorce. Most importantly, it makes clear that divorce should not be a justification for discrimination.

A Bullet Train Rife with Discrimination

KTX Discriminates against Female Staff

Ms. Kim Young-hee (alias), who used to dream of becoming a flight attendant, applied for a crew member position with KTX, the Korean bullet train system. On April 1, 2004, while the media spotlight was focused on the launch of the KTX service, she received confirmation that she had been accepted as a KTX crew member. She felt a great sense of contentment watching her father proudly delivering the happy news over the phone to neighbors, coworkers, and close and distant relatives. It was a plumb job because KTX female crew members would get tenure when the National Railroad Administration became a public corporation. In other words, their employment status would be practically the same as that of a government employee. This made the position one of the most popular jobs among Korean women in their twenties. Ms. Kim's future certainly looked rosy. Discrimination, however, dashed her hopes of a secure and rewarding future aboard the bullet train.

Unlike other regular male crew, KTX could change the schedules of female crew members arbitrarily. That meant that female crew members often could not enjoy the 14-hour interval between shifts guaranteed to male employees and scheduled to work again even before 12 hours had passed from their last shift. In addition, female workers could only take a day off once a week while regular KTX workers could take six days off a month.

Ms. Kim found herself in the category of female KTX worker, rather than a "regular" KTX worker. She worked alongside male crew and performed the same tasks as them, such stewarding, checking tickets and ensuring safety. However, only male crew members were treated as professionals, while female staffs were treated as if they were there simply for their good looks, with a shelf life of a year. Eventually, KTX female crew members recognized that all their trouble stemmed from an unequal employment status. So they went on strike and submitted a complaint to the NHRCK.

In September 2006, the NHRCK reached a conclusion regarding the complaint, finding that Korail, the state-run Korea railway, unreasonably limited female workers on KTX trains to customer service positions. Korail hired females just to fill these positions and gave them inferior conditions of employment, which amounted to employment discrimination based on gender. The NHRCK recommended that the president of Korail rectify the employment structure that created this gender discrimination.

Korail also limited the age of KTX female attendants to those in their twenties and hired them through Korail Retail, a subsidiary of Korail, as contract workers. There was no reasonable justification for restricting young women to attendant positions. In addition, male workers, who performed the same tasks as female workers, were paid in accordance with Korail's salary structure, while female workers received salaries based on Korail Retail's contract rates. Korail Retail even deducted 44% of the KTX female attendants' salaries for what was referred to as a "management fee." A 300% yearly bonus guaranteed to male workers was also not applied to the salaries of female employees.

In light of these facts, the NHRCK recommended that Korail hire KTX female attendants directly as regular workers and cease discriminating against them in terms of position, salary, and treatment. After the recommendation, both the Seoul district court and the high court ruled in favor of Korail hiring female crew directly, but Korail has yet to implement any changes.

On the day when the plenary committee of the NHRCKK made the decision on this case, female KTX attendants were anxiously awaiting the result on the 1st floor of the NHRCK building. Upon hearing the decision, tears of joy were shed. They knew then that all their worries were over. They had a farewell gathering at the City Hall plaza and left for home with bright, happy faces. We wonder where they are and what they are doing now?

There's No Men's Work or Women's Work

Employment Discrimination based on Gender for Fire Officials

The primary duty of firefighters entails high risk, both physically and mentally, which makes it a difficult role for women to perform. Therefore, currently, female firefighters play only a supportive role for male firefighters. In fact, female applicants are assessed less stringently in physical fitness tests than men.

The preceding paragraph was the response from the National Emergency Management to a complaint submitted to the NHRCK by a women's rights group in April 2005. In fact, the National Emergency Management has a ranking structure and lines of work that differ from men to woman and it hires men and women differently. There are some lines of work from which women are excluded. Although both female and male applicants took the same physical fitness regime, different standards applied depending on gender. In learning of this, the NHRCK recommended that the head of the National Emergency Management end its hiring system based on gender and introduce a universal hiring test system that guaranteed gender equality.

The NHRCK concluded that the physical fitness standard required for male-firefighter applicants can also be applied to female applicants. Some might think it too harsh to end the easier treatment for women. However, even if firefighting requires a certain level of physical strength, this cannot serve as a justification for separate employment standards for men and women. In other words, what matters is that a reasonable physical fitness testing standard be applied equally to both genders, with objective assessment based on that, rather than applying different physical test standards for men and women.

In addition, the NHRCK believes that applying lower physical assessment standards for women is not beneficial to women because it perpetuates the stereotype that they cannot do the same tasks as men. So while in the short term, separate recruitment standards might seem favorable for women, they only reinforce long-held stereotypes about gender roles, which in turn makes it harder to overcome those stereotypes. Making different physical requirements for women just increases the number of women who cannot advance because they cannot compete with men on the same level. This is no benefit to male firefighters, female firefighters, or people who need their services.

We are living in a time when gender roles are changing as more and more women are moving into fields that were once the preserve of men. We need to accept that now there is neither women's work nor men's work. By clinging to stereotypes about gender roles it adversely affects both men and women. Women cannot get career advancement and men are looked down on for doing jobs once considered to be women's work. Of course, there are professions reserved for women and men for convenience, because of their gender characteristics, but the idea of so-called "men's work" and "women's work" should end. Separating gender roles based on outmoded cultural perceptions is clearly discriminatory and in violation of human rights.

A Stay-at-home Dad is Also a Full-time Homemaker

Gender Discrimination in Obtaining Credit Cards

Husbands in increasing numbers are taking housework on full-time to support their working wives. In a recent media report based on statistics supplied by the National Statistics Office, the number of stay-at-home husbands has increased by more than 40%, from 106,000 in 2003 to 143,000 in 2007 to 151,000 in 2008. The report stressed that this did not refer to the so-called "shutter men" of the past—incompetent unemployed husbands—but to "Mr. Mom" homemakers, who represented a change in gender roles between husband and wife. Instead of following the convention that women should remain at home while men go off to work, there is a growing recognition that whoever has the best earning potential or job should be the one to work away from home.

Mr. Baek, Sun-mok, 32, quit the job he had worked in for three years in February 2006. Before quitting, he persuaded his wife that he wanted to spend more time in evangelical activities. He became a full-time stay-at-home dad, although he said the expression "full-time" might not fit his situation because he was not a complete stay-at-home husband like the one played by actor Han Seok-gyu in the movie Mr. Mom Quiz King. But he admitted that from an economic point of view, he was stay-at-home dad without an income. While he would not get compensation for his evangelism work, he now had a flexible schedule, so he chose to take over the housework. The couple had a daughter and a son, and Mr. Baek planned to take care of the children and the housework and participate in volunteer activities. He had no plan to get a job because his wife, an elementary school teacher, agreed to support the family (as told in Human Rights, January-February, 2010).

In March 2009, Mr. Baek, now a Mr. Mom, called a bank to get a credit card based on his wife's credit. The bank, however, denied his request, saying that it limited the term housewife to women, as a rule, and therefore it could not issue a credit card for a husband on his wife's credit.

This case was brought to the NHRCK's attention and it decided to initiate investigations into all financial institutions issuing credit cards. This was done in an attempt to redress gender discrimination in credit card applications, considering that credit cards have become one of life's necessities and that the number of stay-at-home husbands was on the rise. The investigation revealed that four banks had been applying the same kind of discriminatory rules as Mr. Baek's bank. Three banks promised to redress the injustice, and the NHRCK recommended to the fourth bank that it should resolve its discriminatory practices.

The NHRCK did not take Mr. Moms' side at the beginning. The NHRCK felt it was justifiable that banks issue credit cards based on the ability to pay credit card bills, and in the case of a housewife that would require the economic ability of the husband. However, the NHRCK recognized that limiting the term housewife or housekeeper to women was a gender stereotype that could not be justified in the modern era, when the conventional notion of a housekeeper was changing.

Gender equality is not a concern for women only. Gender equality refers to a right for men as well as women to enjoy human dignity, rights and freedom without being subjected to gender discrimination. The above case demonstrates that gender equality is increasingly including men, too. The Convention on the All Forms of Discrimination against Women ratified in 1985 made it clear that the perception of conventional roles of men and women in society and family needs to change. Gender equality can only be achieved when equality is given to both men and women simultaneously.

A Scene from 2005 – "Give Women Suffrage!"

Discrimination against Female Members at the Seoul YMCA

Korean women achieved suffrage in 1948 when the Constitution was written after Korea's independence from Japan. However, the year 2005 saw a dispute in Seoul over this archaic issue of women's suffrage involving a well-known civic group.

The Seoul YMCA was established in 1903 as a civic group, and people participated in its activities regardless of gender or the social classes adhered to in the old days. During the colonial rule of Japan, the Seoul YMCA fought for the country's independence, and under the military dictatorships of the 1970s and 80s it fought for democracy and human rights. Ironically, though, the Seoul YMCA has not given suffrage to its female members for over a century.

Women have long played a role as a major driving force behind the Seoul YMCA, making up 60% of paid members and 90% of voluntary workers. However, the Seoul YMCA has denied women suffrage. This policy led to an investigation by the NHRCK and recommendations for change.

An investigation by the NHRCK revealed that the Charter of the Seoul YMCA did not have any gender requirements. Rather, it limited membership to those over the age of 20, who were of a Christian denomination and who had a record of participating in Seoul YMCA activities for more than two years. However, only males had voting rights, unlike the other 42 YMCAs across Korea, who gave female members voting rights in the general assembly. As for the YWCA, male members enjoyed regular membership and voting rights, including the right to vote in the general assembly.

The NHRCK therefore recommended in 2004 that the Seoul YMCA allow female members to vote in the general assembly because withholding voting rights from female members was gender discrimination and a violation of the right to equality. Despite the NHRCK's recommendation, it took a long time and a lot of pressures before female members were given voting rights in the Seoul YMCA's general assembly.

Despite the NHRCK's recommendation, the Seoul YMCA's general assembly rejected the idea of women's voting rights in 2005. "For the past 30 years, I've never seen women meddling in the YMCA. It's my first time to see it! How dare women meddle in the YMCA! Women shouldn't do that, even if they make up 100% of the YMCA, not to mention the present 60%. The YMCA has traditionally been a men's club" (Human Rights, October, 2005). This was the logic heard by those outside of the general assembly. The Seoul YMCA's attitude led to accusations of hypocrisy in that as civic group that advocated human rights it did nothing about its own internal violation of human rights and clung to an outdated practice.

In February 2006, 73 female members of the Seoul YMCA filed for an injunction to force the YMCA to implement procedures with the court to ensure them voting rights in the general assembly. In December 2006, the Korea Federation of YMCA passed a proposal that it would dismiss the Seoul YMCA from its membership if the Seoul YMCA did not resolve its gender equality issue by the time of its 104th general assembly. However, at the Seoul YMCA's 104th general assembly on February 24, 2007, it once again rejected amending its charter to establish a delegates system that would have women represent 12% or more of its delegates. In February 2009, the Seoul High court decided partially in favor of a plaintiff in a claim for damages in the court of appeals saying, "gender discrimination shall not be tolerated under the Constitutional right to equality." At last, on February 27, 2010, after a long journey of eight years, the battle to achieve women's suffrage at the Seoul YMCA came to an end, when the 107th general assembly approved the women's vote with a majority of 87% or 377 votes.

YMCA Baseball Team, a movie released in 2002, may rightly be called the biggest-hit in the history of the YMCA. Set in the early 1900s, the movie is centered around a modern woman Min, Jeong-lim, played by Kim, Hye-soo, and Oh, Dae-hyun, a Korean student studying in Japan, played by Kim, Joo-hyeok, were are close, supportive friends comforting each other over the loss of their motherland to colonialism. They are portrayed as early members of the Seoul YMCA, and there was no discrimination between them. They were competent individuals enjoying human dignity, helping friends and lovers (Human Rights, April, 2005). That is how it always should be at the YMCA.

Insuring the Identity of Transsexuals

Discrimination Against Transsexuals Seeking Sex Change Procedures

There are people whose legal gender is different from their physical gender. Accurate statistics is not available, but it is said that from the late 1980s, when sex-change operations became available, to the year 2000 about 300 to 400 people had undergone sex changes. At the time, the total number of transsexuals in Korea was thought to be as high as 4,500. Naturally, transsexuals want to change their legal gender to match their physical sex. However, there is no provision for such a gender change in any law, not in the Family Registration Act or the Act on the Registration, etc. of Family Relationship. Given this omission, the Supreme Court enacted the Instructions on the Transactions of Business including the Application for Gender Change of Transsexuals Etc. on September 6, 2006.

Article 10 of the Constitution ensures human dignity and the right to happiness, and transsexuals are entitled to these as much as anyone else. Therefore the decision by the Supreme Court was encouraging. However, the content and form of its instructions were controversial. In fact, only a few days after the Supreme Court's decision, a gender minorities group filed a complaint over the instructions with the NHRCK.

The gender minorities group insisted that nine items in the instructions amounted to human rights violations and gender discrimination. The group pointed out that confidentiality should be included for the protection of privacy guaranteed by the Constitution. It added that a special act would be necessary to address the issue properly.

Requirements in the instructions for those applying for gender change recognition were as follows:

- □ A person who has undergone sex-change surgery;
- □ A person who is over the age of 20;
- □ A person who has never married;
- □ A person who has managed life successfully after a sex change;
- □ A person who has completed compulsory military service or who has been exempted from the military service;
- □ A person whose intention or purpose of the legal change of gender is not to evade the law;
- □ A person whose change of gender would not adversely affect society and would therefore be socially acceptable;
- □ A person who submits a written agreement from parents to sex change.

The NHRCK held that all nine requirements could violate human rights and recommended that the Chief Justice of the Supreme Court correct them. For example, when it comes to a sex change operation, many people are simply unable to afford the surgery. When a person chooses to get medical treatment for a sex change, the first step is to take sex hormones prescribed by a doctor. After achieving a physical change from hormones, the person then gets breast surgery and has testicles or ovaries or the uterus removed. After these operations, people often want to proceed further and get genital surgery. But the cost of a sex change operation costs between tens of millions of won up to a billion won, making it out of reach to most transsexuals, since most live on income of less than 700 thousand won per month. So to make sex change surgery a requirement before a legal gender change is entirely unrealistic.

The NHRCK also recommended the inclusion of confidentiality in the instructions and requested that the Chairman of the National Assembly enact special legislation to cover this. By the time the Supreme Court made the recommendations, the Act on Sex Change of Transsexuals had already twice failed to pass—during the 16th and 17th National Assembly. Strictly speaking, the Supreme Court's move is contrary to the principle of separation of powers. Many countries such as Germany, Sweden and Japan have enacted special laws regarding this matter. The intention of the NHRCK, however, was to prevent any human rights violations in applying the Supreme Court's instructions until the National Assembly enacted a special law.

On January 20, 2009, the Supreme Court removed three requirements from the instructions, including the one that required a person to have managed life successfully after a sex change. However, six requirements still exist. Legislation has also not been passed at the National Assembly. Legal protections for the human rights of sexual minorities therefore remain insufficient, and even those that exist are being ignored. We, however, should continue to fight for the rights of transsexuals because they are Korean citizens, too.

Shouldn't Homosexuals Donate Blood?

Discrimination Based on Sexual Orientation

One of the misconceptions about AIDS concerns its infection route. According to experts, AIDS is contracted through sexual intercourse or blood transfusion. In the case of sexual intercourse, an AIDS infection is caused by the manner of sexual contact. If anyone believes that only homosexual sexual activity can cause an AIDS infection, they would be wrong. It would also be wrong to believe that an AIDS infection is impossible through sexual contact between women, although the probability is extremely low compared to sexual contact between men. Of course, safe sex between men does not lead to AIDs infections.

However, in 2003 the Ministry of Health and Welfare began implementing health rules based on misconceptions about AIDS. A case in point was a questionnaire prior to making a blood donation. In the questionnaire, there was a question asking whether the respondent has had sexual contact with a same-sex partner or with unspecified persons. The intention of the questions was to determine the probability of HIV (Human Immunodeficiency Virus) infection. Anyone who answered "yes" was excluded from donating blood. In learning of this practice, a human rights group for homosexuals filed a complaint with the NHRCK. The group insisted that rejecting donors based on sexual contact between same-sex partners is based on a misconception about what causes AIDS and violates human rights.

According to the Korea Center for Disease Control and Prevention, only 35% of AIDS cases were caused by sexual contact between same-sex partners, all of them men. This statistic both shows that not all AIDS infections come from homosexual activity and that the probability of AIDS infection through sexual contact between women is very low. Because of the low probability between women, questionnaires for blood donation administered in the US, Canada, the UK, Japan, and other countries only ask about sexual contact between male partners. However, the Ministry of Health questionnaire created a negative impression with its questions about homosexuals. The questions also might have prevented homosexuals not infected with AIDS from donating blood. This reinforced a social prejudice founded on the misconception that homosexuality leads to AIDS.

AIDS is not contracted through air or by simple physical contact. However many people try to avoid being with or touching AIDS patients, falsely believing that those acts can lead to an AIDS infection. Some people even view homosexuality as a crime in the belief that all homosexuals carry AIDS. Many homosexuals and AIDS patients have suffered from these misconceptions, and things are only made worse by additional prejudices such those found in the questionnaire for blood donation.

In August 2003, the NHRCK decided that the questionnaire for blood transfusion unreasonably infringes on the right to equality in Article 11 of the Constitution. It made a recommendation to the Minister of Health and Welfare that the questions on homosexuality in the questionnaire be changed to make it clear that homosexuality itself does not lead to AIDS. It also recommended that the question about same-sex intercourse refer to men only.

Changes were made after the NHRCK's recommendation, and now the questionnaire for blood transfusion asks whether an applicant has had sexual contact with partners of the opposite sex and, if the respondent is a man, whether he has had sexual intercourse with a male partner.

The UK permitted male homosexuals to donate blood in 2011. This step was taken based on research by the UK Advisory Committee on the Safety of Blood, Tissues and Organs, whose medical evidence indicated that banning blood donations from male homosexuals and male bisexuals was meaningless. This case was significant compared to the one in Korea involving a simple change in the questionnaire for blood donations, but the change here was still hard to achieve.

Just Because You Are Not a Full-time Instructor

A Recommendation to Improve Conditions for Part-time College Lecturers

On May 30, 2003 Mr. Baek, 34, a part-time lecturer at Seoul National University, committed suicide. He was an SNU graduate and had completed a PhD a couple of years earlier. He was a young man with a promising future whose academic background could not be better in Korea. So, what drove him to suicide?

Mr. Baek failed to receive an appointment as a professor for two years after earning his PhD, and this failure led him to take antidepressants. His income as a part-time lecturer was so small that his wife had to work at an insurance company to get by. He said in his will that his wife's economic burden caused by his situation must have been difficult to handle. He continued that clearing credit-card debt had become a matter of urgency and loan interest payments had to be paid at the end of the month. The case drew attention to the discrimination and low compensation faced by part-time lecturers and became social issue. The NHRCK initiated investigation and policy review after receiving a complaint about it.

During the first semester in 2002, part-time lecturers taught 55% of liberal arts courses and about 31% of major courses at 135 four-year colleges. In addition, part-time college lecturers carried out various roles as teachers and researchers.

However, without any legal basis, colleges were categorizing part-time lecturers as daily laborers and paying them out of miscellaneous funds. Part-time lecturers would work even without a written contract of employment. That meant they could not benefit from regular employee salary packages. They were denied social insurance benefits and received salaries that amounted to less than a fifth of what full-time lecturers were getting. In 2002, the average lecture fee for one hour was only 20,140 won, which meant that if a part-time lecturer worked for nine hours a week, his or her average monthly salary would come to around 600 thousand won. And a monthly salary of 600,000 won was far less than the minimum cost of living at the time. Part-time lecturers were no different from full-time teachers in terms of qualifications or career, but their salary was much lower because of their part-time status.

The NHRCK judged that such low salaries for part-time instructors were irrational, could violate a Constitutional right to equality, and would not promote the intent of the Constitution to facilitate educational independence, professionalism and neutrality by ensuring teachers' status under law. In addition, the NHRCK held that the salary discrimination could infringe the people's educational right. In this context, the NHRCK recommended the Minister of Education & Human Resources Development at the time to resolve the discrimination against part-time lecturers in terms of working conditions, status, salaries and other compensations.

The NHRCK expected that its recommendation would contribute to an improvement in college education salaries and raise the status of some 40,000 part-time college lecturers to a level appropriate for their position.

However, even after Mr. Baek's suicide, many more part-time college instructors have committed suicide because of the poor working conditions and discriminatory treatment. The treatment of part-time college lecturers has become a major intramural issue related to non-regular workers and is in urgent need of improvement. Largely owing to public opinion, part of the NHRCK's recommendation was accepted and thus reflected in a draft by the Presidential Committee to Improve Civil Appeals and Systems. After having come up with a revised improvement scheme for the Ministry of Education, the Committee reported of such to the president in July 2006. On June 25, 2010, the Social Integration Committee announced a plan that would endow part-time instructors with the same status as a regular teacher, ensure an employment period of no less than one year and increase their lecture fee to 80,000 won per hour by 2013. According to this scheme, the government would pay the employers' share of their employees' compensation insurance premium. However, the proposal has yet to be implemented, and a survey has revealed that over 60% of part-time lecturers are actually against this proposal. Korea seems to be nowhere near ending the discrimination against part-time college lecturers.

10

Toward the era of equality

Dreams dashed due to 0.2 centimeters and 0.5 centimeters

Discrimination based on height and weight in selecting public service employees

Kim Hui-sun (alias, female, 21) and Lee Dong-in (alias, male, 27) visited the NHRCK, respectively, in January and March of 2005. Their visits were to file complaints that their rights to equality were violated when they were rejected as applicants for the police force due to height. At the time, men whose height and weight were less than 167 centimeters and 57 kilograms were ineligible for the police force. Women were ineligible if their height and weight were less than 157 centimeters and 47 kilograms. Since Ms. Kim is156.5 centimeters tall and Mr. Lee is 166.8 centimeters tall, their dreams of becoming police officers were dashed because of only 0.5 centimeters and 0.3 centimeters. Apart from their complaint, the NHRCK has received 7 other similar complaints from people who had to give up becoming public servants due to discriminatory regulations about height and weight.

Height and weight limits exist for many government positions, including for police, firefighters, prison staff, juvenile probation supervisors, and train guards.

	Men		Women		Physical test
	Height	Weight	Height	Weight	
Police	167cm or taller	57kg or heavier	157cm or taller	47kg or heavier	○
Firefighters	165cm or taller	57kg or heavier	154cm or taller	48kg or heavier	○
Prison staff, Juvenile probation supervisors	165cm or taller	55kg or heavier	154cm or taller	48kg or heavier	×
Train guards	167cm or taller	57kg or heavier	157cm or taller	48kg or heavier	×

At issue is whether height and weight standards can be valid job-qualification factors. Do people have greater job performance capabilities if their height and weight exceed or are within certain limits? To that question, the National Police Agency said that physical requirements are inevitable as being a police officer often requires physical contact, and they need to be able to protect the public and themselves. As a result, the National Emergency Management Agency claimed that minimum physical standards were a necessity. The Ministry of Justice said that prison employees have to be physically strong and able to cope with the kind of emergencies that can happen in correctional facilities. It added that juvenile probation workers have to meet its physical standards in order to effectively deal with any accidents. As for train guards, the government said that physical strength, on a similar to that of police officers, is required so guards can respond effectively to railway crimes.

These claims still beg a question, Are the set height and weight requirements appropriate standards to evaluate a person's job performance? To back up the claims behind physical requirements, it has to be proven that those who fail to meet those physical requirements are always inferior in strength, defense, and crisis management to those who exceed them. But there might be many cases that contradict this argument. You may remember the adage, "Don't judge a book by its cover."

While the above agencies argue that their jobs require a tremendous amount of physical strength, they do not carry out strength tests on potential employees. Even those tests that have been carried out have failed to present objective proof for a correlation between an organization's set physical standards and physical strength. This indicates that the physical requirements enforced by governmental agencies are based on stereotypes.

Therefore, the NHRCK judged it to be discriminatory for public agencies to have height and weight limits when selecting employees. It infringes upon the basic right of everyone to be free to become a public servant and also to have the freedom to choose a career. The NHRCK recommended that all governmental agencies needed to abolish their inappropriate height and weight constraints. In response, all such agencies, except for the police and prisons, accepted the recommendation. The police and prison authorities are still being urged to reconsider how their actions are being instrumental in ruining the dreams of many youngsters because of their imposed height and weight restrictions.

Can't fat people work?

Employment discrimination against overweight people

"At first, I knew that I had to exercise a little bit more after entering the company. But when I started to work there, I was forced to climb mountains every week. A couple of months later, all employees went on a three-day trip to climb a mountain to mark the anniversary of the company's establishment. I fell out due to back pain caused by sitting down too long at work. Ever since then, I was ordered to lose weight, work out every day, and report the results to my boss. I was wondering how long I'd have to endure all of this in order to continue to work there. Isn't it wrong to force someone to do something even though it is beneficial?"

Mr. Chung (31) tried to adapt to this situation as he wanted to keep his hard-won job. He also tried to see the positive side of doing exercise, thinking that it would eventually help improve his health. So he reported to his boss in emails about such physical exertions as "climbing the stairs three times after lunch" and "not using the elevator as much as possible." He even submitted a workout plan to his boss.

The company, meanwhile, did not measure the obesity or body mass indexes of other employees and nor did it provide them with any guidelines on weight. The company just singled out those who fell behind in mountain climbing, or whose body appearance made them seem heavier than others, and told them to lose weight. Mr. Chung was the only one in his department who had to lose weight. After two months of pressure and stress over the issue, Chung quit his job and filed a complaint with the NHRCK. (Human Rights, March-April issues of 2011)

At issue was whether the company tried to force its employees to lose weight and pressured them to quit if they failed to follow the order. There was also the question of whether it had any rational justification for targeting people perceived as overweight. If Mr. Chung's claims proved to be true, the company discriminated against him based on appearances and other physical conditions. However, the perspective changes if the company's exercise programs and encouragements to workout are seen as a way of keeping its employees healthy, since obesity is now regarded as a growing health problem.

The company denied that it forced its employees to lose weight, saying "We are providing diverse support programs aimed at enhancing our workers' health." The company added that it had extended lunch time to one and a half hours so that its workers can make the most of their leisure time. It added that it built light exercise facilities, opened an artificial turf stadium and an indoor basketball court, and invited professional instructors in to help its employees improve their overall health.

But an investigation found that the company's vice president, in an email to executive members on June 10, 2010, singled out employees who had difficulties in climbing mountains or carrying out their daily routine, saying, "We plan to take action after a month of monitoring so you are required to submit detailed reports." He ordered his staff to receive resignation letters from those employees who could not meet weight loss targets. One executive replied, "I will take steps to achieve the weight loss targets by following the plans attached to the email. I will also receive resignation letters from each employee in the event of their failing to lose weight by the deadline." Another executive submitted a similar reply. All these emails demonstrate that the company pressured its employees to lose weight and to leave the company if they fail to meet the requirement. Thus, Chung's resignation was not a voluntary decision.

Even if the company's exercise management program aimed at improving the health and welfare of its workers, it was excessive to implement a weight loss regime and push employees into quitting if they failed to meet weight targets. The NHRCK concluded that there was no direct link between the company's weight standards and Chung's job performance ability. The NHRCK recommended the company's CEO take necessary actions to prevent such incidents from taking place again and pay 5 million won to Mr. Chung in compensation.

Hoping that schools do not give up on their students

Recommendation to guarantee students' rights for learning

One day in April 2009, a mid-aged woman and her daughter came to the office of the NHRCK with a complicated problem involving the daughter's school and her boyfriend. The daughter, a high-school senior, had an adult boyfriend—with her parents' permission, but she had become pregnant. Her school learned about the pregnancy and pressured the daughter to drop out of school, while threatening to press criminal charges against the boyfriend. She decided to leave the school and submitted the necessary documents, even though she wanted to keep studying. As this was a case in which a school was forcing a student to drop out on account of her pregnancy, the NHRCK sought to determine whether she was being discriminated against.

However, time was running out. The case had to be resolved in 70 days because the daughter had already submitted documents to allow her leave the school without being given a failed grade. But the school's principal and teachers were not willing to change their stance. They said that even though the boyfriend was an adult and the parents of both families had allowed the relationship, the fact she became pregnant was unforgivable and harmed the dignity of all students. The appropriate response was expulsion. They added that the situation could negatively impact on other school matters.

When the NHRCK visited the school for interviews, about 20 parents of other students showed up to protest, saying that they would not sit idle if the NHRCK ruled against the school's action. During the visit, NHRCK investigators happened to meet the mother of the victim. Having nowhere convenient to talk, investigators sat with her on the stairs of a nearby alley. She said, "We are speechless about the fact that our daughter got pregnant. It is surely wrong. Nevertheless, I still doubt whether it is right to force her to leave the school." (Human Rights, November-December issue of 2010)

There are few accurate statistics about teenage single mothers. According to data by the National Youth Commission, about 5,000-6,000 teenagers become single moms every year. Other data by the Health Insurance Review and Assessment Service reveals that around 15,000 teenage girls become pregnant each year. Naturally this is very disruptive to their schooling. A survey by the NHRCK shows that 71.4 percent of teenage single moms left school when they became pregnant, with 9.5 percent dropping out while the survey was underway and 19.1 percent either aborting their babies or having already graduated. However, 86.8 percent of those surveyed said that they hoped to keep studying. Of those, 39.3 percent said they wanted to study using out-of-school courses, followed by 34.4 percent who said they wanted to return to their old schools and 26.2 percent who said they would like to keeping studying but at other schools.

Why is the studying issue so important? Under the United Nations Convention on the Rights of the Child, all children and teenagers have the right to an education and should be offered an equal opportunity to the same social benefits as others. In other words, their right to an education should not be discriminated against under any circumstances and the nation and its schools are obliged to uphold that right. Considering that 89.1 percent of high school graduates go to college, it is equivalent to depriving young people of a chance at a decent future if they have to suspend their education due to pregnancy or giving birth. Without a good education, they might be destined to suffer joblessness and poverty. Therefore, helping teenage single moms to continue studying is necessary to support their development and prevent a cycle of poverty that could affect their children in turn.

The NHRCK recommended that the Ministry of Education, Science and Technology, the Ministry of Gender Equality and Family and the superintendents of education offices of 16 cities and provinces implement systems that will guarantee teenage single moms the right to an education. The Ministry of Education, Science and Technology accepted the recommendation and some others institutions, including the Seoul Metropolitan Office of Education, have opened alternative schools for teenage single moms. The high school senior who filed a complaint with the NHRCK ended up returning to her old school, as was recommended at the time, and nowadays she is studying at a college while raising her child.

Accepting ex-prisons as part of community

Discrimination based on criminal records

"Hate the sin but not the sinner." This well-known saying is significant for those who have already paid the price for their wrongdoings and are preparing to start a new life. In rejoining society, they deserve basic human rights like everyone else.

In September and October of 2006, Mr. Kim (38) and Mr. Lim (35) came to the NHRCK's office with the claim that they had passed the employment examination for supporting-staff positions at the Seoul Metropolitan Office of Education in 2006, but their passes were cancelled because of their criminal records. The two filed a complaint, saying that the Seoul Metropolitan Office of Education's decision is discriminatory. The education office claimed that it did background checks on the two men based on its security-related regulations and found that it would be inappropriate to employ them, given that employees at public elementary, middle and high schools are expected to keep high moral standards. Also, the positions involved not just facility maintenance and banking but also jobs on a daily basis in the vicinity of students who could not defend themselves.

The NHRCK took a close look at whether there are any regulations that allow public agencies to reject employment for those who have already passed examination requirements. It found that there is no regulation that allows for administrative offices to qualified applicants, except when they do not officially ask for their names to be put on the list of newly-recruited workers, when they fail to participate in training courses or fail to achieve minimum training scores, and when they have any other disqualification reasons to become public servants. Mr. Kim and Mr. Lim did not fall under any of these disqualifying criteria.

What the NHRCK looked into next was the security regulations. The regulations were enacted, based on the National Intelligence Service Law, to stipulate rules needed for the effective execution of jobs linked to national or other security. Under the regulations, background checks are done on potential public employees and there is a focus on their allegiance to the nation, sincerity, and trustworthiness. If any information on individuals is found that could harm national security, then heads of relevant agencies are required to implement necessary countermeasures. However, it is still unclear that these regulations allow for cancelling employment for those who have already passed an entry examination.

No regulations exist that specify when to reject employment or when to delegate decision-making powers on such a matter to the Seoul Metropolitan Office of Education. It appeared that the standard security regulations could not be the basis for rejecting the employment of the complainants. Therefore, the NHRCK determined that cancelling the results of employment tests by the Seoul Metropolitan Office of Education due to the complainants' criminal records was discriminatory and infringed on their rights to equality.

The NHRCK recommended that the education office superintendent retract his decision to reject employment of the complainants and streamline rules and regulations that could be used as the basis for any similar decisions in the future. The Seoul Metropolitan Office of Education accepted the recommendation and employed the complainants, effective on January 1 the following year.

This case is a prime example of discrimination based on a previous criminal history. Under the current law, punishment and sentences become automatically invalid after a certain period has elapsed from their date of execution or exemption. This is not simply intended to eliminate unnecessarily excessive criminal records but also to help ex-prisoners that have not reoffended to successfully return to society. In order for such laws to have any meaning, discrimination based on previous criminal records should not occur. To that end, it is necessary to improve the regulatory systems and change society's perception of former prisoners. We need to realize that former prisoners have paid their dues and that for the benefit of everyone they need to be able to successfully rejoin society.

Because university is not religious organization

Employment discrimination based on religion

Students can enter missionary schools regardless of whether they are non-religious or practice other religions. What about school employees or professors? Can professors teach at missionary schools regardless of their religion? They cannot at some universities. In 2008, complaints were filed with the NHRCK against discrimination at three universities because they would only allow professors who were Christian to apply for vacancies.

One of the universities explained that employing Christian professors was in line with its education philosophy and the purpose of its establishment, which focuses on nurturing experts on Christianity. Another university explained that its religious requirement was based on Article 1 and Article 42 of the government-approved articles of incorporation, which present necessary guidelines in selecting people critical to achieving education goals.

This university added that its stance of not accepting the NHRCK's earlier recommendation in 2007 in connection with the same cases remains unchanged. Of the three universities, just one (before the NHRCK's recommendation) said that it would change its employment rules to allow non-Christians to apply for vacancies and that it would work hard to ensure no one is put at a disadvantage because of his or her religion.

Under the Article 20, Clause 1, of the Constitution, all citizens are entitled to enjoy freedom of religion, while under the Article 31, Clause 4, of the Constitution all universities are entitled to autonomy. However, freedom of religious activities, religious education and a university's autonomy are not always guaranteed. They can be restricted under Article 37, Clause 2, of the Constitution, which states that freedoms are guaranteed only when they do not violate the basic rights of individuals and other regulations aimed at maintaining social order.

At issue here is whether being Christian is a necessary qualification that professors and university employees need for better job performances. The three universities in question were not established to educate clerics. They exist under the higher education law to carry out a public responsibility, which is the reason why they do not require all students to be practicing Christians before they can enroll. Under the higher education law, universities come under the supervision of the Ministry of Science, Education and Technology, not any religious authority.

The NHRCK determined that it is not appropriate to have a Christian-only requirement in selecting professors, and the universities should focus on their public responsibility as education organizations and on the curricula they teach. In case of university support staff, the NHRCK concluded that the requirement is also inappropriate, especially when their jobs have nothing to do with religion. Rejecting job applicants because of religious affiliations is discrimination and infringes on their rights to equality.

Accordingly, the NHRCK recommended that the three universities stop their discriminatory practices of employing only Christian professors and employees and improve their overall employment regulations.

Is Education Level in proportion to ability?

Education discrimination in banking recruitment

Is education level a measure of ability? Bank A seems to have thought that it was, at least until 2006. But the NHRCK received a complaint stating that "Bank A set the minimum qualification of applicants for full-time work in the sectors of personal finance and enterprise finance as a bachelor's degree from a 4-year university (including those expected to graduate in August 2005) or an equivalent, and this is employment discrimination based on education."

"The jobs in our bank are divided into two—those that a high school graduate could perform and those that require knowledge at the level of a bachelor's degree or higher. The latter covers the core work of our bank, which includes foreign currency exchange, as well as exports and imports finances, credit review, risk management, project financing, securities management, legal affairs, and asset security. So it is natural to set high educational standards in the recruitment of new employees," bank A said. The bank also added that knowledge of business management, law, or accounting is essential and that high school graduates do not have a background in these areas, cannot learn it effectively, and the bank would have to devote too much time and money to training them.

The bottom line is whether a 4-year bachelor's degree from a university is essential for new employees at bank A who will be in charge of personal and enterprise finance.

Research into the matter revealed that personal and enterprise finance do not refer to a specific job at the bank. Rather, they refer to the overall work of personal and enterprise finance that takes place at bank branches. So, a bachelor's degree from a 4-year university can hardly be considered an essential qualification for everything. Indeed, the job descriptions themselves, given by the bank, do not indicate specific education levels necessary for the knowledge and skills to carry out the work. This led the NHRCK to judge that a4-year degree from a university was not an essential job qualification.

The work that the bank insists requires higher levels of knowledge than a university degree is mostly managed by core organizations within the bank and performed by long-term employees who have received in-house training. Newly hired workers typically do not do these jobs. Furthermore, only 1280 out of a total of 17,317 regular employees are assigned to what the bank classifies as core work.

The NHRCK therefore viewed the bank's requirement of a 4-year bachelor's degree as denying an opportunity to potential employees with a college diploma or lower to join the bank as regular workers, even though their abilities could be nurtured as well as anyone else's through job experience, training and self-development. The commission recommended that the bank change its recruitment systems and end its unreasonable employment discrimination based on education. The bank accepted the recommendation and abolished the education requirement in 2007.

Does education level correspond with ability? If so, an individual with higher education background must show greater ability and one with a lower education level would always have to show poorer ability. However, in real life, it does not work out like this—there are many cases where the less educated are recognized and praised for their abilities. Of course, education level might contribute to a person's ability, but ability does not automatically correspond with education level. In fact, many companies now recognize this and seek to hire talented people through interviews, character tests, and presentations, rather than simply looking at education background. Ability, not education, is the standard by which people should be assessed.

Misunderstanding and prejudice against hepatitis B sufferers

Discrimination against a person because of medical history

Mr. Kim, Chul-Soo (alias) passed the application process and interviews for a job at a civil engineering company we will call K in February 2006. However, on the final day for receiving the results, he was sent a notification saying that the company would not employ him because he had the active hepatitis B virus or HVB.

The company said it rejected him because active HVB is highly likely to be infectious and can develop into hepatitis B overtime, especially if the intensively physically nature of his work—such as working at nights or on weekends at construction sites—affects his health. It also added that regular health care services would be impossible if he were assigned to work in remote locations in a foreign country.

Mr. Kim's disappointment was severe not only because a new career was denied to him because of his health status, but it occurred at a bad time when youth unemployment was a serious problem.

His girlfriend filed a complaint, citing as irrational the company's job discrimination based on health conditions and rejection of someone just because he has hepatitis B.

The commission reviewed expert opinions on hepatitis B from the hospital we will call N that examined Mr. Kim, the Korean Association for the Study of the Liver, and the Ministry of Health and Welfare. The hospital N that examined Mr. Kim did not have opinions on the infection problems of active hepatitis B virus carriers, the work a carrier has to perform and its effect on the disease, or the deteriorating health that might occur due to work intensity. The Ministry of Health and Welfare had the opinion that active hepatitis B is not highly infectious. The Korean Association for the Study of the Liver said that it is not clear whether fatigue or stress affects liver diseases, and it added that just because Mr. Kim is a carrier of the virus does not mean he cannot handle construction work.

Given the opinions from the experts, the NHRCK concluded that the company's excuses for Mr. Kim's rejection were unfounded. So, it recommended that company K repeal its decision not to employee Mr. Kim and take steps to prevent such unfounded health-related discriminations from happening again. The decision from the commission helps to correct some misunderstandings in our society, including at companies like K, about hepatitis B.

Usually people assume that active hepatitis B refers to severe liver infection while non-active hepatitis B refers mild liver infection. However, hepatitis B, whether active or not, is not related to actually degrees of damage to liver functions in daily life. While severe forms can cause liver damage over the long term, the relationships between fatigue, stress and liver diseases are not clearly defined. So, factual medical opinion should be taken into account when judging whether hepatitis B is infectious or prevents people from performing work.

The NHRCK's investigation and the outcome of this case helped resolve another complaint that was filed by a hepatitis B virus carrier against job discrimination. It involved a company that had rejected a candidate, who had even passed the third interview stage, just because he had active HBV. During the investigation, the company recognized that it had acted with prejudice and misunderstanding over what "active virus" meant and eventually decided to employ the candidate.

For the most part, only blood or sexual transmissions can cause hepatitis B virus infections. It is highly unlikely for them to occur in everyday social interactions. Furthermore, experts say the common perception that overwork and stress can cause or worsen hepatitis B, hepatocirrhosis, and liver cell cancer has no basis in medical or scientific fact. In conclusion, misunderstandings about hepatitis B carriers and their disease that are not based on fact often lead to discriminations against the carriers.

Don't trample down a second chance

Discrimination against people with discharged bankruptcy in a loan secured on subscription savings

The harder the times, the more bankruptcies there are. Personal bankruptcy is filed to the court by those who have no ability to pay back their debt. Those who have been given a chance to financially recover through discharge procedures are classified with the status of discharged bankruptcy. The common sense view is that from the moment their debt has been discharged by law, they are once again allowed to engage in ordinary financial transactions. But the reality is different.

On October 31, 2011, the Constitutional Court ruled that the articles excluding people with discharged bankruptcy from being qualified for rental or Jeonse home loans, provided by the National Housing Fund, are not against the constitution.

The Constitutional Court had ruled in a complaint against 3 people who were judged unqualified for the home loans. Among them was Mr. Yoon, who complained that the decision to exclude people from financial support with Jeonse loans just because they had been declared bankrupt violates basic human rights.

The court had said in its verdict, "We cannot see the exclusion of people with discharged bankruptcy as a voluntary discrimination, since they undeniably lost their independence as economic subjects at a time when the possibility of debt repayment should be considered in providing Jeonse loans for low income families." Then, is it possible for people with discharged bankruptcy status to borrow money against their subscription savings?

Mr. Kim, Chul-Soo (alias) had delayed paying credit card bills for bank A since March 2003 and was declared discharged, including from his bills, in August of 2005. In 2010 April, he visited the same bank to get a loan worth 5 million won by using as collateral his subscription savings of6 million won, which he had accumulated since his first installment in March2005.

But the bank rejected his loan application, citing that according to its regulations say holders of credit sold by banks who are applying for credit recovery assistance, as well as personal recovery plans, or those with bankruptcies declared as discharged cannot become debtors.

The NHRCK's investigation found out that each bank has different rules on secured loans for people with discharged bankruptcy. Bank B, a commercial bank similar in size to bank A, does not provide loans to people with discharged bankruptcy, while bank C does allow loans to them.

The Financial Supervisory Service sided with the people who have discharged bankruptcy status. It asked bank A to provide the loan after Mr. Kim had filed a complaint. It reasoned that giving loans based on subscription savings to people with discharged bankruptcy does not carry additional risks and also serves a social value in aiding in their recovery. But bank A did not accept FSS's proposal.

Initially, the NHRCK understood the position of bank A and conceded that should be at a bank's discretion to review the credit status and repayment risk posed by a customer in order to decide if it will provide them with a loan. As a business, a bank has to maintain its financial health by minimizing the risks involved in its financial transactions and prevent bad loans. But when credit exists in the form of subscription savings and can be used as security, as in Mr. Kim's case with bank A, the bank faced minimized risk because it was able to manage the credit through the security. Thus, the FSS recommended that bank A make corrections, saying it was irrational to reject Mr. Kim's application for a loan secured by his subscription savings just because of a past discharged bankruptcy.

The discharge system was introduced as part of the country's social security system. So it is only logical that the country supports people whose bankruptcies have been discharged, since that officially wipes the slate clean and gives them a second chance to stand on their own two feet financially. Discrimination should not exist at all towards people with discharged bankruptcy.

Harassment stemming from power property

Sexual harassment at the workplace

On August 20, the NHRCK judged it to be sexual harassment a case where the head of a local autonomous government authority and a head of a local council encouraged a casual female staff member to take nude photos of herself.

The NHRCK has to handle consultations and complaints about sexual harassment every day. Since 2005, when the authority for sexual harassment correction was handed over from the Ministry of Gender Equality and Family to the NHRCK, sexual harassment cases have been on the rise. However, there are many misunderstandings and prejudices regarding this form of harassment. So, we need to carefully examine the articles in the NHRCK laws.

First, sexual harassment refers to harassment conducted by employees of a public organization. So, sexual harassment by a third party, such as a customer who harasses a government worker, is not classed as sexual harassment under NHRCK law. That means the commission has no authority to investigate sexual harassment committed in an everyday situation, such as between people on public transportation, at restaurants or stores, or on the Internet.

Sexual harassment is often a case of a person using a position of authority in the workplace to subject someone else to inappropriate sexual language and behavior. Usually, it is a problem involving men in positions of power.

Victims of sexual harassment have described their experience as feeling disgusted and humiliated, being subjected to sexual language and behavior, or facing disadvantages at work for saying no to demands. Even though offenders sometimes say they were just expressing affection and intimacy, this is no excuse. How any reasonable person would feel in the same situation is taken into consideration in NHRCK judgments.

Sexual harassment is defined under NHRCK Law as the following.

- ***Sexual harassment among same sexes***

Sexual harassment is not just between different sexes but can occur between same sexes. Sexual remarks and behaviors happen among female workers at a workplace, and for example might be perpetrated by male medical staff toward male patients in mental institutions.

- ***Broad interpretation of those committing sexual harassment***

All kinds of employees might be involved, including irregular managers, directors and advisors. Even though they are not regular managers, if they have practical powers either to limit or reduce the work of others, they are included.

- ***Practical work situations are used to decide if a work relationship is involved or not***

Judgment of the relationship based on real work situation and what is applicable or not applicable. An example is sexual harassment during a strike at a university by a professor, representing the university, towards university workers.

- ***New types of sexual language and behaviors are included.***

Indirect and new types of sexual harassment are included, such as having food and drinks in suggestive and provocative places, or handing out an unwanted letter asking someone to live together

- ***Sexual harassment in schools or camps***

Sexual harassment by teachers or professors towards students is handled as part of securing a right to study. The harassment by wardens towards female inmates is included in this category.

Stop discrimination

Recommend anti-discrimination law

Before the advent of the NHRCK, no one ever dreamed of creating separate laws to ban discrimination. Only the NHRCK recognized the necessity of such laws as way of setting standards and eventually preventing discrimination.

An advisory team consisting of 4 members wrote a draft of laws from scratch and released the completed draft in June of 2004. It was submitted to the NHRCK executive panel after dozens of inside as well as outside reviews and public hearings. The commission confirmed the final draft of the anti-discrimination law in July of 2006 and recommended it to the prime minister. (Human Rights, November-December, 2010).

The NHRCK judged the anti-discrimination law as absolutely necessary in that it enhances the security of basic human rights, recognizes the concept of equality in the constitution, addresses the issue of discrimination based on international human rights standards, and provides the means for more active investigations. The major recommendations for the anti-discrimination law at that time were as follows:

• Substantiate, extend, and complement the definition of discrimination

- Define discrimination as something that includes direct as well as indirect discrimination and harassment
- Twenty discrimination categories defined, such as sex, disability, age, race, and education
- Discrimination includes the offer or withholding of employment, goods and services, as well as the wielding or withholding of public power in laws and their enforcement.

• The NHRCK recommends basic plans to correct discrimination

The NHRCK asked the president to make basic plans to correct discrimination. The commission made it clear that detailed yearly action plans should be made by heads of central government agencies, mayors of special and metropolitan cities, mayors, governors, heads of provinces and counties, and education superintendents.

• Properly stated regulations to prevent discrimination

These include banning discrimination in employment, education, goods and services, and preventative measures in voting rights, government services, investigative and judicial procedures.

• Raise the effectiveness of resolution efforts and diversify solutions.

- Introducing general resolution measures, such as proposed adjustments or corrections for different situations, as well as legal support if it is judged that the case is important or a perpetrator is not complying with the commission's decisions.
- Introducing a converted legal system in which the side that has to bear the responsibility is made to prove its innocence
- Making rules on resolutions though the court, such as banning discrimination and temporary solutions.

The anti-discrimination law was announced in advance by the Ministry of Justice and sent to the National Assembly on October 2, 2007, after some fierce debates. But it was automatically abrogated when the session of the 17th National Assembly expired and came to nothing.

However, some good did result, such as the creation of the disability anti-discrimination act and the age anti-discrimination act. Efforts to make the education anti-discrimination act and the race anti-discrimination act are still currently underway.

What is being debated is whether they will entail individual legislation based on different causes or come under comprehensive legislation.

Creating general and comprehensive laws covering all discrimination causes is necessary. This is because these can cover diversity in discrimination, prevent discrimination factors from becoming hierarchal, enable a cohesive and unified response to various discrimination causes, and properly respond to redundant discriminations.

So, it is necessary to make general and comprehensive anti-discrimination laws even when there are individual anti-discrimination laws based on specific discrimination causes, since it is difficult in reality to create individual anti-discrimination laws that cover all possible discrimination causes.

Against this backdrop, in April2010 the Justice Ministry created a special subcommittee for anti-discrimination laws to prepare a draft to decide the solutions, which brought this issue to the forefront of discussion once again. Now is the time to consider what to do for the creation of comprehensive anti-discrimination laws.

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