

Case on Prohibiting Media Coverage of Identifiable Information of Child Abuse Offenders
[2021Hun-Ka4, October 27, 2022]

* First Draft

In this case, the Court held that the part of Article 35, Section (2) of the Act on Special Cases Concerning the Punishment, Etc. of Child Abuse Crimes regarding “child abuse offenders” does not infringe freedoms of speech and the press and a citizen’s right to know. The relevant part provides that no employee of a broadcasting company, etc., shall, *inter alia*, broadcast personal information, etc. of child abuse offenders relevant to a child protection case, which enable the identification of those offenders.

Background of the Case

Petitioner is a reporter of a broadcasting company. Around September 2, 2019, he reported a case on child abuse crime through a news program of the broadcasting company, broadcasting the personal information of the child abuse offender, including her real name. He received a summary conviction from the Seoul Western District Court for such broadcasting.

Petitioner then moved to request a full trial. Thereafter, while his case was pending before the trial court, he petitioned that court to request constitutional review of the part “child abuse offenders” of Article 35, Section (2) of the Act on Special Cases Concerning the Punishment, Etc. of Child Abuse Crimes (hereinafter referred to as the “Child Abuse Punishment Act”). He contended that the relevant part infringes freedoms of speech and the press and a citizen’s right to know. The court granted the petition and on January 26, 2021, requested the constitutional review in this case.

Subject Matter of Review

The subject matter of review in this case is the constitutionality of the part of Article 35, Section (2) of the Child Abuse Punishment Act (amended by Act No. 12341 on January 28, 2014) concerning “child abuse offenders” (hereinafter referred to as the “Provision at Issue”). The Provision at Issue reads as follows:

Provision at Issue

The Act on Special Cases Concerning the Punishment, Etc. of Child Abuse Crimes (amended by Act No. 12341 on January 28, 2014)

Article 35 (Duties, including Duty of Confidentiality)

(2) No editor, publisher, or employee of a newspaper, no chief editor, head, or employee of a broadcasting company, and no author or publisher of any other publication shall include in publications, including newspapers, or broadcast through broadcast media, the address, name, age, occupation, or appearance of child abuse offenders, child victims, complainants, accusers, or informants relevant to a child protection case, or other personal information and photographs of them, which enable their identification (emphasis added).

Summary of the Decision

Society cannot yield the important legal interest of specially protecting children from abuse by adults and furthering their healthy development (2018Hun-Ba388, March 25, 2021). It includes not only the protection from child abuse itself, but also the protection from secondary victimization, including exposure of private life that may occur in the process of dealing with cases.

Most of the child abuse offenders have a close relationship with their child victims. Thus, it is highly likely that reporting by journalists, including editors of newspapers and employees of broadcasting companies, of personal information, etc. enabling the identification of the offender (hereinafter referred to as “Identifiable Information”) will lead to secondary victimization of the child victim.

The court requesting this constitutional review first points out the unconstitutionality of a blanket prohibition against reporting Identifiable Information of child abuse offenders, indicating that this prohibition applies even to cases involving a low likelihood of secondary victimization of child victims, for example where there is a low risk of identity exposure or is an insurance against it. However, given the high level of development of information and communications technology and media, it cannot be ruled out completely that reporting Identifiable Information of child abuse offenders may lead to secondary victimization. There is also an apprehension that permitting such reporting in this circumstance will discourage child victims from voluntarily giving statements or making a report. Thus, a uniform prohibition against reporting Identifiable Information of child abuse offenders is inevitable in

this respect.

The court requesting this constitutional review secondly points out that the Provision at Issue can be an undue restriction, considering that in general criminal cases the identity of a prime suspect is disclosed after an internal evaluation by investigative agencies if the case involves a public figure or draws national attention. However, the prohibition against reporting Identifiable Information of child abuse offenders does not fall within the context of criminal protection or a matter of interest to citizens. Rather, it serves to protect child victims, who are in a developmental stage. As such, the prohibition against reporting Identifiable Information of child abuse offenders is, in terms of protected object and of purpose, distinct from cases disclosing Identifiable Information after an internal evaluation by investigative agencies. Thus, they cannot be compared on the same scale.

Meanwhile, it could be viewed that, in the case of media coverage following voluntary reporting on the part of a child victim, the need to protect that victim is reduced, or such protection is already achieved, and thus, there is no need to prohibit reporting of Identifiable Information of the child abuse offender. However, the intent of the Provision at Issue is to specially protect children and further their healthy development. Therefore, whether to permit reporting cannot be entirely left up to the will of a child victim. Child victims may on occasion wish the Identifiable Information of their abuser to be reported, running the risks of, *inter alia*, exposing their identity and private life, but it is necessary for the State to ban such reporting in order that they avoid secondary victimization, such as identity exposure, and grow up healthy.

The Provision at Issue does not completely prohibit the reporting of child abuse cases. It merely prohibits the reporting of Identifiable Information of child abuse offenders. Thus, in cases receiving national attention, even if there is a substantial need for reporting in the interest of prevention of recurrence of crimes, the method of releasing reports of cases in redacted form would both perform the function of media faithfully and satisfy the right of a citizen to know.

All in all, the private interest restricted by the Provision at Issue is no more than the releasing of sensational reports of child abuse cases containing the Identifiable Information of child abuse offenders. By contrast, there is a vital public interest in healthy development of

children which the Provision at Issue aims to protect.

Accordingly, the Provision at Issue does not infringe freedoms of speech and the press and a citizen's right to know by violating the rule against excessive restriction.