



PSPD People's Solidarity for Participatory Democracy
16, Jahamunro 9-gil, Jongno-Gu Seoul ROK 03036
Tel +82 2 723 5300 Fax +82 2 6919 2004
Email pspdint@pspd.org
Web www.peoplepower21.org/english

**THE FIFTH PERIODIC REPORT ON THE INTERNATIONAL COVENANT ON
CIVIL AND POLITICAL RIGHTS
CONCERNS AND RECOMMENDATIONS ON THE REPUBLIC OF KOREA**

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Submitted by

People's Solidarity for Participatory Democracy (PSPD)

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PSPD is a non-governmental organization based in the Republic of Korea and with the Special Consultative Status of the UN ECOSOC. PSPD has been promoting people's participation in the government's decision-making process and socio-economic reforms.

Contact Details

Ms. Eunkyung Cheon, Coordinator, pspdint@pspd.org, +82 2 723 5051

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Measures against “Abuse of Authority of Judicial Administration” [State Party Report 152-159]

There has been an allegation that during former Chief Justice Yang Sung-tae’s incumbency from September 2011 to September 2017, he and judges at the National Court Administration (hereinafter ‘the NCA’) abused their judicial administrative power to conduct massive surveillance on the individual judges and interfered with the cases, hence posed a serious threat to judicial independence. The NCA used trials as a means of bargaining with the Presidential Office, the National Assembly, and the government. These conducts are in clear violation of the ROK Constitution and international human rights standards which guarantee the independence of the judiciary and also violate people’s rights to be tried by competent, independent, and impartial tribunals.¹

A. Attempt to Break up International Human Rights Law Society

The International Human Rights Law Society (IHRLS) is an academic society of judges within the Court. Their research focus is mainly on the rights of the social minority and judicial reformation. IHRLS also reviews international human rights norms and tries to apply and implement them within the national legal system. IHRLS was planning to hold an academic conference in March 2017 with a critical viewpoint on the judicial administrative power of the Chief Justice of the Supreme Court of Korea, whose power encompasses authority over personnel affairs, distribution of budget, and other relevant judicial administrative works. The then-Vice Minister of the NCA ordered member judges of the IHRLS to minimize the scale of the event as well as the IHRLS’s overall activities. Then, on February 13, 2017, the NCA announced that “Measure on banning judges’ double membership of academic societies” seeking to withdraw judges’ membership in the IHRLS.

While protesting against Vice Minister Im Jong-heon’s unduly oppression and minimized trial toward the IHRLS, suspicions arose that the NCA had been writing and managing judges’ personal profile reports to monitor the propensity and whereabouts of judges who were critical to the Chief Justice and these judges were disadvantaged in personnel affairs and overseas study opportunities. Meanwhile, one judge, who was a member of the IHRLS and protested against the NCA’s oppression toward the IHRLS, and who held double duties at the court and the NCA, had to return to the ordinary court after working at the NCA for 11 days.

B. Attack on the Individual Judges’ Independence

The former Chief Justice Yang Sung-tae tried to impose disciplinary measures on a judge at the Seoul Central District Court who made a ruling recognizing state responsibility of temporary measures that were imposed during the military dictatorship, Park Chung-hee. The decision was contrary to the Supreme Court’s precedent and when Chief Justice Yang couldn’t find any precedents imposing disciplinary measures to a

¹ On 7 June 2018, People’s Solidarity for Participatory Democracy (PSPD) and MINBYUN-Lawyers for a Democratic Society submitted a letter of allegation to the Special Rapporteur on the independence of judges and lawyers about judicial corruption allegations of the Republic of Korea. On 15 November 2018, the Special Rapporteur sent a letter to the Republic of Korea calling for attention to and response to judicial corruption.
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24183>.

judge because of his/her particular decision, he even directed other judges to research similar cases in other countries to justify his intention.

Furthermore, Chief Justice Yang instructed the NCA judges to draft a report on a judge's financial status when the judges in question wrote articles for liberal newspapers and posted his criticism on the Court's Intranet.

C. Undue Influences on the Politically Sensitive Cases

During Yang's incumbency, many politically sensitive issues, such as conflict over the construction of the Jeju Civilian-Military Complex Port, Miryang residents' fight against electricity towers, the Sewol Ferry disaster, were tried at the Courts. For these matters, the UN Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the rights to freedom of peaceful assembly and of association visited the country, conducted site visits, and listened to the victims. The rapporteurs' recommendations to the government were included in their annual reports.

Some of these cases have lost in their appeals ruling and numerous victims of human rights violations are still suffering from physical, emotional, and financial pain because of the excessive fines and criminal convictions. According to the third investigation committee's report, there is circumstantial evidence that Yang had been exercising undue influence on these cases.

The NCA used politically sensitive trials as bargaining chips in the top court's dealing with the presidential office over organizational changes, and delivered directions to the judges and judges' opinions to the Park Geun-hye administration. The NCA also tried to undermine the particular research associations and meetings of the judges because these judges were against the NCA's policies. In addition, the NCA had conducted massive surveillance on individual judges' private matters and deleted numerous electronic files to cover up once the surveillance allegation arose. This shows that the NCA under former Chief Justice Yang Sung-tae not just abused its judicial power but committed organized crimes. It poses a grave threat to the independence of the Judiciary in the ROK.

Nevertheless, the criminal trials involving the implicated judges have primarily culminated in acquittals, with only minimal disciplinary measures taken against certain judges. The National Assembly passed a resolution to impeach former judge Lim Seong-geun for the first time in the ROK's constitutional history, but the Constitutional Court dismissed the case, citing the expiration of his term.

The core causes of judicial manipulation are rooted in the bureaucratic judicial administration structure, which heavily concentrates the power of judicial administration within the Chief Justice of the Supreme Court, bureaucratizes judges around the NCA, and reinforces hierarchy through the personnel structure. To prevent the recurrence of judicial manipulation, institutional reforms are imperative to reduce bureaucracy within the judiciary. While the Supreme Court launched the Judicial Administration Advisory Council in September 2019, it is only an advisory body ill-suited to achieve the goal of decentralizing and monitoring the Chief Justice's power.

Suggested Recommendations

- Amend the Court Organization Act to abolish the NCA and establish a consensus body, the Judicial Administration Commission, to decentralize the power of judicial administration from the Chief Justice.

Decriminalization of defamation [State Party Report 175-176]

The UN Special Rapporteur on the Rights to Freedom of the Peaceful Assembly and of Association(2011), UN Human Rights Committee(2015), and UN Universal Periodic Review(2017) repeatedly recommended the decriminalization of defamation to the government of the Republic of Korea. However, the State Party has yet to establish truth as a complete defense to criminal defamation. The central problem with the criminal defamation laws is that criticism against state policies or opinions about illegal or unlawful acts, political satire, parodies, as well as articles, commentaries, and even product reviews are punishable as defamation, regardless of their truthfulness. It is estimated that there are over 60,000 complaints and accusations of defamation and insults per year.²

The government claims to seek a compromise between the protection of individual reputation and freedom of expression. However, protecting individual reputations by suppressing people from telling the truth is a facade and hypocrisy. Those in power, perpetrators, and others who are targets of criticism can abuse the law of defamation as a means of private retaliation, threatening the democratic public forum and impeding the development of social trust based on facts.³

Indeed, the President's Office, the Minister of Justice, and the Minister of the Interior Safety have filed defamation lawsuits against journalists who raised criticisms against them.⁴ Furthermore, the government stated that the prosecutors have a system to dismiss a case without investigation when the suspicion at issue is not worth being punished to prevent indiscriminate accusations of defamation. Nevertheless, there is no predictability as the outcome depends on the discretion of the police and prosecutors, and the fact that the victim has to bear the burden of proving the statement's public interest raises problems.

Suggested Recommendations

- Amend criminal defamation laws so that truth is a complete defense to defamation and not subject to any further requirements.

² Daily Joongang, "More than 100 cases of accusations of insults a day", 28 Sep 2016 (Korean)
<http://www.dailiang.co.kr/news/articleView.html?idxno=101113>

³ Hankyoreh21, "Ordinary people become criminals for telling the truth" 9 Jan 2021(Korean)
https://h21.hani.co.kr/arti/society/society_general/49789.html

⁴ Ohmynews, "Yoon Seok-yeol government's silencing accusation and charge policy" 15 Mar 2023 (Korean)
https://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0002908091

Freedom of Assembly [State Party Report 190-197]

In its state party report⁵ for the fifth periodic review by the UN Human Rights Committee submitted in 2020, the government of the Republic of Korea stated, "the police minimize banning demonstrations even if the report thereon contains a flaw, but instead considers a notice of supplementation or restriction first to guarantee the freedom of assembly to the fullest." It also added, "As for an assembly at night, no demonstration has been banned or restricted just for the reason being held at night since January 2017." Contrary to this report, however, just three years later, in 2023, the ROK response to rallies was significantly changed.

President Yoon Seok-yeol has emphasized a strict response to 'illegal' protests since the beginning of his tenure. In May 2023, the government ordered a crackdown on protests in response to the 1-night-2-day rally organized by the Korean Construction Workers' Union(KCWU). Under the leadership of National Police Chief Yoon Hee-geun, the use of batons at rallies has been resumed. There have also been reports of arbitrary restrictions on simultaneous one-person protests, forced dissolution of non-violent cultural events, and the use of batons against workers participating in high-altitude sit-ins. The police granted a special promotion to the officer who was involved in suppressing rallies. Additionally, they are reportedly considering purchasing riot control agents and dispersal devices to dissolve protests, and they are also contemplating reintroducing water cannons. The ruling party, the People Power Party has pledged to revise the Assembly And Demonstration Act in order to prohibit nighttime rallies, limit rallies during peak traffic hours for groups with a history of 'unlawful' protests, and provide legal protection to police officers who disperse rallies.

A. Prohibition of Rallies in front of the Presidential Office

President Yoon Seok-yeol, who took office in May 2022, relocated the Presidential Office to Yongsan, at least thirty-nine rally notifications near the Presidential Office were prohibited. This decision was made based on the police's arbitrary interpretation of the Presidential Office within the scope of the Presidential Residence designated as a restricted area for rallies under Article 11 paragraph 3 of the current Assembly And Demonstration Act. The Court consistently reaffirmed that the presidential office and the presidential residence are distinct entities, thereby allowing the rallies to proceed as scheduled. However, the police appealed, seeking a decision from the Supreme Court, and they are still issuing rally prohibition notices based on their arbitrary interpretation of this provision. MPs of the ruling party, including Park Dae-chul of the People Power Party, introduced an amendment bill on June 10, 2022, to include the Presidential Office as one of the areas where assembly is absolutely prohibited under the Assembly And Demonstration Act.

B. Expanded Application of Prohibition orders under Article 12 of the Assembly and Demonstration Act, citing transportation disruptions

Article 12 of the Assembly And Demonstration Act is a toxic clause that prioritizes transportation over the freedom of assembly and enables the proactive prevention of gatherings.

⁵ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FKOR%2F5&Lang=en

Article 12 (Restriction on Assembly or Demonstration for Smooth Flow of Traffic)

(1) The head of the competent police agency may ban an assembly or demonstration on a main road of a major city as determined by Presidential Decree or may restrict it, specifying conditions for the maintenance of traffic order if it is deemed to be necessary for smooth flow of traffic.

(2) If the organizer of an assembly or demonstration assigns moderators for the occasion of parading along the road, the ban as referred to in paragraph (1) shall not be ordered: Provided, That if such assembly or demonstration could cause obstruction to the smooth flow of traffic on the road concerned and other roads nearby, thus giving rise to serious inconvenience to traffic, the ban as referred to in paragraph (1) may be ordered.

Article 12 was the most frequently utilized provision of the Assembly And Demonstration Act between 2011 and 2015, during the administrations of Lee Myung-bak and Park Geun-hye. It accounted for over 40% of all prohibition notices. Following the court's rulings and the recommendations of the Police Reform Commission in September 2017, the police refrained from issuing "prohibition notices" invoking Article 12 of the Assembly And Demonstration Act. However, after President Yoon Seok-yeol's government took office in May 2022, the police began actively employing this provision once again. In 2022 alone, there were 219 cases where Article 12 of the Assembly And Demonstration Act was cited as the basis for a ban in Seoul. Among these cases, Article 12 alone served as the grounds for prohibition in 154 instances. Notably, out of these 154 cases, 100 were attributed to the Yongsan Police Station, which is located near the Presidential Office.

The Yoon Seok-yeol administration is currently pursuing an amendment to the Enforcement Decree of the Assembly And Demonstration Act to include Itaewon Road in front of the Yongsan Presidential Residence, newly designated as a location where rally prohibitions can be enforced due to potential traffic disruptions, under article 12 of the Assembly And Demonstration Act. The National Police Agency published the "Decree on Partial Amendment of the Enforcement Decree of the Act on Assemblies and Demonstrations" (National Police Agency Public Notice No. 2023-2) from February 24 to April 5, 2023. It is expected to take effect in the second half of the year after undergoing a Cabinet decision.

C. Attempt to Ban Nighttime Gathering

The ban on nighttime gatherings in the Assembly And Demonstration Act was repealed by the Constitutional Court in 2009. The court found it unconstitutional because it violated the principle of using the least restrictive measures. However, on May 24, 2023, the Yoon Seok-yeol administration and the People Power Party announced their intention to amend the Assembly And Demonstration Act through a government-party consultation. The proposed amendment will prohibit gatherings and demonstrations after midnight.

The government and ruling party's push to amend the law to prohibit nighttime gatherings contradicts the stance of the UN Human Rights Committee. The Committee has stated that "restrictions on the precise time of day or date when assemblies can or cannot be held raise concerns about their compatibility with the Covenant."⁶

⁶ CCPR/C/GC/37, para. 54

D. Announcement of the De Facto Rally Permit Policy Restricting Demonstrations by Groups with a History of 'Illegal' Gatherings.

Under the Yoon Seok-yeol administration, the police have launched special crackdowns on violent behavior at construction sites since November 2022. Following these special crackdowns, there have been 19 office searches and seizures, 1,200 summonses, and 28 detentions of the Korean Construction Workers' Union as of August 10, 2023, for violations of the Assembly And Demonstration Act and Criminal Act (obstruction of business, defamatory insults).

Additionally, on May 16-17, the KCWU's resolution congress and rallies (submitted 24 reports in advance) faced disapproval and/or partial prohibition notifications (citing article 12 of the Assembly And Demonstration Act) by the police, inducing the assemblies to be nothing but illegal gatherings. Police prohibition/restriction notices against assemblies are being used as a means to neutralize assemblies and significantly reduce the spatial and temporal scope of assemblies. Any deviation from such minimized scope of the approved parameters is being used as punishment for violating the Assembly And Demonstration Act.

After the Party-Administration Council Meeting on the "Establishment of Public Order and Protection of Citizen's Rights," held at the National Assembly on May 24, 2023, Yoon Jae-ok, the floor leader of the People Power Party (PPP), stated, "We intend to examine restrictions on assemblies and demonstrations that clearly pose a direct threat to other people's rights and to public security and order by groups with records of breaking the law, such as this latest [KCWU] demonstration."⁷ Regarding rallies and demonstrations on major urban roads during commuting hours, he added, a "consensus was reached" that there "was no other choice but to apply restrictions at the reporting stage," declaring the PPP and the government's intention to pursue anti-human rights and unconstitutional policy that restricts freedom of assembly and association.

In practice, police banned certain areas of the reported protest procession route based on the protest organizer's previous record of violation of administrative orders during rallies with similar content. This essentially establishes a de facto permission system, where the approval of the rally is contingent upon the host organization's history of compliance.

E. Forced Dissolution of Nonviolent Protests, Violent Suppression, and Forced Removal of Cultural Events or Memorial Services not Subject to Report.

On May 25, 2023, the police suddenly installed a long line of fences on the sidewalk in front of the Supreme Court, preemptively blocking the nighttime cultural events organized by the Korean Metal Workers' Union and the Joint Struggle for Irregular Workers. The police also forcibly disbanded the event by deploying police forces and arresting participants who sought to prevent this action. On June 9 and 10, 2023, when artists and irregular workers attempted to hold a cultural event on the sidewalk in front of the Supreme Court, they were equally violently dispersed and harassed throughout the night. This resulted in many injuries.

During the strike by POSCO Gwangyang Steel Plant workers, in accordance with the Trade Union and Labor Relations Adjustment Act, the head of the FKTU Metal Workers' Union, who was engaging in a one-person high-altitude protest, encountered a police baton.

⁷ Hankyoreh, As Korea's ruling party and government move to restrict public assemblies, police train to break up protests, May 25, 2023, https://english.hani.co.kr/arti/english_edition/e_national/1093345.html

A memorial altar, set up in front of the Seoul Finance Building to honor the death of a construction worker and leader of the KCWU Gangwon Branch 3rd Section, Mr. Yang Hoe-dong, who self-immolated to protest the government's oppression against the KCWU, was prescribed as an unauthorized installation by the police and the police unilaterally declared that they would implement administrative vicarious execution without any prior notice. Eventually, the memorial altar was forcibly dismantled within 26 minutes. Four people were detained, and four people were injured during the execution.

The People's Committee for the Itaewon Disaster of 29 October, which had planned to hold a candlelight memorial for the victims of the disaster from April 29th to May 26th in front of the headquarters of the People Power Party, submitted a protest notification to the police. However, due to the partial ban and interference by the police, the event could not proceed as originally planned in terms of location and execution. The police also disallowed the setup of tents for the vigil and warned of noise violations during the event, disrupting the smooth progress of the cultural event.

In 2021, the Supreme Court ruled that "an outdoor gathering or demonstration cannot be dispersed simply because it is an unreported gathering," and that "dispersal can only be ordered if there is a clear and present danger to the rights of others or public order." The term "clear and present danger" to public order refers to conditions that escalate to the point of riots, which may involve acts of arson and property damage. The police's forcible dispersal of a nonviolent cultural event, even though there was no riot-level violence, was a serious violation of the right to freedom of assembly and demonstration.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association, as well as the Special Rapporteur on extrajudicial, summary, or arbitrary executions, emphasized the importance of proper management of assemblies in their joint report. They stated that "Failure to notify authorities of an assembly does not render an assembly unlawful, and consequently should not be used as a basis for dispersing the assembly."⁸

F. Resumption of Crowd Dispersal Drills and Reintroduction of Potentially Harmful Equipment, such as Capsaicin and Water Cannon

On May 26th, the operational headquarters of the Seoul Metropolitan Police Agency conducted an exercise to detect and apprehend individuals participating in illegal rallies. The exercise involved eight units, about 480 personnel in total. The drill reportedly focused on step-by-step forced dispersal and apprehension scenarios, assuming situations in which protesters refused to comply with dispersal orders.

The police have established a policy to use the potent irritant capsaicin spray for countering illegal violent rallies and demonstrations, disregarding any concerns.⁹ After the last use of capsaicin during a rally in the heart of Seoul amidst the political turmoil surrounding the impeachment of President Park Geun-hye's government in March 2017, the police have not employed capsaicin even once. However, they newly purchased 1463 liters of capsaicin and 280 sprayers in March 2023. This is said to be more than double the amount of capsaicin (678 liters) used in the first two years of the Park Geun-hye administration (2013-2014).

⁸ A/HRC/31/66, para. 23.

⁹ Yonhap, "Police chief: Spray capsaicin at illegal gatherings, arrest on-site suspects", May 30, 2023, <https://www.yna.co.kr/view/AKR20230530108200004>

In fact, during the May 31 rally organized by the KCTU, police officers were observed carrying bags containing capsaicin.¹⁰

The Constitutional Court ruled in 2018 that the use of water cannons was unconstitutional, citing the death of farmer Baek Nam-gi,¹¹ who was fatally struck by a water cannon fired directly by the police in November 2015.¹² This ruling effectively prohibited the use of water cannons at rallies, and all water cannons were reportedly discarded in 2021. However, recent reports indicate that the police are internally discussing the reintroduction of water cannons as part of their response to protests, following a firm declaration against demonstrations.¹³

G. Violation of the Constitutional Right to Freedom of Assembly by Local Ordinances

Several local governments, including Seoul and Daegu, have implemented and modified ordinances to restrict rallies in public squares or near public buildings. They have accomplished this by categorizing the use of squares as a matter that requires "permission." They then employ a tactic of rejecting the applications for rally usage, effectively blocking them. There are also instances where local governments make it difficult to hold rallies by physically installing fences or flower beds. In the case of Daegu City, a sign was posted at the city hall prohibiting one-person protests, and a flower bed was constructed to prevent individuals from gathering, which is unconstitutional.

Suggested Recommendations

- Stop policies that suppress the constitutional rights to freedom of assembly and guarantee the right to peaceful assembly under Article 21 of the ICCPR and General Comment No.37.
- Stop anti-human rights attempts to restrict and ban rush hour and nighttime rallies.
- Stop banning rallies near the president's office and on major roads and remove Article 11 of the Assembly and Demonstration Act, which stipulates places to ban outdoor rallies, and Article 12, which stipulates restrictions on rallies for smooth flow of traffic.

¹⁰ Police issue 1st order to disperse downtown KCTU rally (The Korea Herald, 31, May)

https://www.koreaherald.com/view.php?ud=20230531000833&ACE_SEARCH=1

¹¹ <https://www.amnesty.org/en/latest/campaigns/2016/09/after-south-korean-farmers-death-family-continues-fight-for-justice/>

¹² Yonhap, Constitutional Court ruling on police's use of water cannon, April 23, 2020,

<https://en.yna.co.kr/view/PYH20200423144500315?section=search>

¹³ Newsis, Capsaicin followed by water cannons?...Police also cautious inside [Water cannon controversy 上], June 10, 2023, https://mobile.newsis.com/view.html?ar_id=NISX20230609_0002332993