SOUTH KOREA: The South Korean verdict on Chairman Lee: COVID-19 and Religious Liberty

The decision absolving Shincheonji's leader from charges of obstructing the anti-pandemic efforts has important international implications.

By Massimo Introvigne

Bitter Winter (29.01.2021)- https://bit.ly/2NRaKU3 – On January 13, 2021, the Suwon District Court acquitted Chairman Lee Man Hee, the founder and leader of the South Korean Christian new religious movement Shincheonji, from charges

that he had obstructed the anti-COVID-19 efforts by the health authorities. Debunking widespread fake news, the judges concluded that, in fact, after one of its members was diagnosed with COVID-19 and it became clear that, before the diagnosis, she had attended church events and infected co-religionists, "Shincheonji actively cooperated with the submission of data [requested by the authorities] and promptly provided them to the Central Disease Control Headquarters [CDCH]."

The decision was based on an argument of fact, i.e., that Chairman Lee had not been uncooperative and had done his best to cooperate with the health authorities, and on one of law. I examined the argument of fact in the first article of this series, and discuss here the argument of law, which is particularly important for the broader question of limiting individual rights during a pandemic, and has implications going beyond South Korea.

South Korea has generally been praised for its quick reaction to the pandemic, although human rights issues have also been noted. This quick reaction derives from South Korea's experience with another epidemic, MERS, in 2015. After MERS, a law called Infectious Disease Control and Prevention Act (IDCPA) was passed in 2016, which allows the government to derogate from certain provisions of other laws (including the Data Protection Act, which protects privacy) in case of an epidemic.

The IDCPA allows the health authorities to collect data they would not normally be authorized to collect under the South Korean Data Protection Act, including (IDCPA, section 76) (a) personal information, such as names, resident registration numbers, addresses, and telephone numbers; (b) prescriptions and records of medical treatment; (c) records of immigration control; and (d) other information for monitoring the movement of patients with infectious diseases. Article 76-2 of the IDCPA grants the Ministry of Health and the Director of the

Central Disease Control Headquarters (CDCH) legal authority to collect personal data, without a warrant, of those already infected or likely to be infected.

One problem with the IDCPA is that key terms such as who is "likely to be infected" and what are "other information" are left undefined. This calls for an even increased vigilance about the effect of the law on human rights. Clearly, the IDCPA's application should respect the general principles of non-discrimination and proportionality, and the international conventions on human rights that South Korea has signed and ratified.

It is important to note that, under Article 4 of the International Covenant on Civil and Political Rights, "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin." However, in this case, "any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation." Article 4.2 explicitly states that, not even in a public emergency, derogations to the provision of Article 18, which guarantees freedom of religion and belief, are admissible.

In fact, during the COVID-19 emergency, several states notified the United Nations that they will apply temporary

emergency measures that may supersede certain human rights as allowed by Article 4 ICCPR. However, South Korea did not.

Probably, South Korea was persuaded that this was not needed, since the IDCPA is an ordinary law. However, it is an ordinary law whose enforcement may create human rights problems, and at any rate not even a communication to the United Nations would have allowed South Korea to violate the international provisions on religious non-discrimination and religious freedom.

As Professor Ciarán Burke, a well-known human rights scholar at Friedrich Schiller University in Jena, Germany, wrote about the IDCPA, "the legislation, drafted in the name of efficiency and flexibility, leaves too much room for interpretation by the state authorities, allowing them to employ the Act in a manner contrary to the ICCPR and Korea's human rights obligations, and particularly the proportionality and non-discrimination principles."

Now, the Suwon District Court has issued a decision that seems to agree with Professor Burke's concerns. When an epidemic strikes, the court explained, the IDCPA is supplemented by an Enforcement Decree, which prescribes what data the Central Disease Control Headquarters (CDCH) is entitled to collect, and how they should be collected.

The court stated that requesting information on persons and properties "regardless of whether they are infected" or can reasonably be regarded as at risk of being infected, goes beyond the IDCPA as interpreted by the Enforcement Decree. Article 76-2, the court said, should not be interpreted extensively.

Requesting the complete list of a religious group's members is not part of the "epidemiological investigation," the court said, but can be considered at best as being part of "a preparation stage of an epidemiological investigation." This

difference is all-important, because private citizens and associations cannot refuse to submit data relevant for the "actual epidemiological investigation," but are not compelled to answer requests for data only relevant for "the preparation stage of an epidemiological investigation," although they can do so voluntarily.

The prosecution also claimed that under Article 76-2 of the IDCPA the CDCH was entitled to receive a full list of real estate properties owned by a religious movement. The court disagreed, and stated that "the request for submission of facility status [i.e., the list of real estate properties] does not fall under the epidemiological investigation, nor does it fall with the scope of requests for information provision under Article 76-2 of the IDCPA."

Those who voluntarily submit to requests they are not legally compelled to answer, as Shincheonji did, are good citizens and should be praised but, during the whole process, they do not come under any obligation to provide the requested information, so that omitting part of it is not a crime.

The court thus confirmed that the IDCPA should be strictly interpreted, by considering the principle of proportionality and without extending its provisions beyond what the text of the law or the relevant Enforcement Decree allow.

Interpreting health control statutes otherwise would run counter international human rights law, and when religious organizations are involved, would also unproperly limit their religious liberty and privacy rights. While the prosecution against Shincheonji and its leader was largely a by-product of a pre-existing hostility directed at this movement in South Korea, the court decision reaffirmed principles protecting the right to privacy of all citizens and organizations, and the religious liberty of all religions.

Photo: Anti-COVID-19 disinfection through drones in South

Korea (credits).