Abstract

As Korea is the only divided nation in the world, it can be said that Korea has been maintaining a little negative attitude toward terrorism while considering the military preparedness against North Korea and prevention of war provocation. However, with the 9/11, the government and all citizens made it possible for the nation to recognize that there was not a safe country for terrorism. Moreover, since the French terrorist attacks, countries have been more alert to terrorist groups like the Islamic States (IS). In Korea, the controversy over the enactment of the Anti-Terror Law has been raised, but some people have raised public opinion that anti-terrorism measures should be prepared as soon as we are not a safe zone of terrorism. In the 19th National Assembly, a bill called "Anti-Terrorism Act for the Protection of the People and Public Safety" was initiated in the 19th National Assembly, and the enactment of the Anti-Terrorism Act was concluded with the enactment of Law No. 14071 on March 3. On March 3, 2016, the Anti-Terrorism Act for National Protection and Public Safety was enacted and promulgated, followed by the State Planning Office and the National Intelligence Service, which enacted the Law on Terrorism for National Protection and Public Safety. The enforcement decree was enacted on June 4, 2016.

The enactment of the "Anti-Terrorism Act", which has been controversial in the meantime, has great significance in terms of securing the legitimacy of counterterrorism administration and establishing and enforcing related laws that directly and uniformly regulate terrorism. However, there are a few things to consider in terms of complementary aspects. Since the Law on the Prevention of Terrorism for Public Protection and Public Security, which was promulgated on March 3, 2016, was accompanied by political and social controversy during the legislative process, it is expected that there will be a lot of controversy in the future operation of law and enforcement ordinance have. It is also pointed out some legislative problems as it fails to legislate all of the important issues contained in existing legislative initiatives.

The Act on the Prevention of Terrorism for the Protection of the Public and the Public Security, known as Anti-Terrorism Act, is a law to prevent terrorism as it is, and it is true that such a law is necessary because the Republic of Korea is on the list of designated target by IS. However, it is hard to say that the controversy has subsided. Moreover, it has growing concern on three parts of the law: (i) the authority of the National Intelligence Service expanded excessively in the name of counterterrorism; (ii) military operations against civilians which are restricted in case of exercise of National Emergency Right on Constitution; and (iii) overly comprehensive and unclear definition of authority and organization of Center for Counterterrorism.

From this point of view, this article is intended to analyze the changes caused by the enactment of Anti-Terror Law and the direction of future counterterrorism policy development.

[Keywords] Anti-Terrorism Act, Counterterrorism Policy, Counterterrorism Human Rights Officer, Reimbursement, Compensation
1. Introduction

As Korea is the only divided nation in the world, it can be said that Korea has been maintaining a little negative attitude toward terrorism while considering the military preparedness against North Korea and prevention of war provocation. However, after 9/11, the government and all citizens made it possible for the nation to recognize that there was not a safe country for terrorism. Unlike ordinary criminal offenses, terrorism is a serious crime, which can determine the State’s existence through cruelty and unpredictability. Therefore, since 9/11, various discussions on terrorism have been made, and in particular, discussions on legislation on terrorism have become a key issue. According to the discussions on the legislation, the legislation of the anti-terrorism law was initiated and accordingly, a lot of efforts were made for legislation. However, the law has not been enacted due to differences of opinion on enactment laws[1].

But since the French terrorist attacks, countries have been more alert to terrorist groups like the Islamic States(IS) In Korea, the controversy over the enactment of the Anti-Terror Law has been raised, but some people have raised public opinion that anti-terrorism measures should be prepared as soon as we are not a safe zone of terrorism. In the 19th National Assembly, a bill called "Anti-Terrorism Act for the Protection of the People and Public Safety" was initiated in the 19th National Assembly, and the enactment of the Anti-Terrorism Act was concluded with the enactment of Law No. 14071 on March 3, On March 3, 2016, the Anti-Terrorism Act for National Protection and Public Safety was enacted and promulgated, followed by the State Planning Office and the National Intelligence Service, which enacted the Law on Terrorism for National Protection and Public Safety. The enforcement decree was enacted on June 4, 2016[2].

The enactment of the "Anti-Terrorism Act", which has been controversial in the meantime, has great significance in terms of securing the legitimacy of counterterrorism administration and establishing and enforcing related laws that directly and uniformly regulate terrorism. However, there are a few things to consider in terms of complementary aspects. Since the Law on the Prevention of Terrorism for Public Protection and Public Security, so called Anti-Terrorism Act, which was promulgated on March 3, 2016, was accompanied by political and social controversy during the legislative process, it is expected that there will be a lot of controversy in the future operation of law and enforcement ordinance have. It is also pointed out legislative problems as it fails to legislate all of the important issues contained in existing legislative initiatives[2].

This is because, from the time of the legislation, the claim that the legislation is essential for national security and national security and the control methods for the possibility of abuse of human rights and the abuse of authority of national intelligence agencies prior to the enactment of the law should be given priority, and the anti-terrorism law passed the plenary session[3].

In other words, the Act on the Prevention of Terrorism for the Protection of the Public and the Public Security, known as Anti-Terrorism Act, is a law to prevent terrorism as it is, and it is true that such a law is necessary because the Republic of Korea is on the list of designated target by IS. However, it is hard to say that the controversy has subsided. Moreover, it has growing concern on three parts of the law: (i)the authority of the National Intelligence Service expanded excessively in the name of counterterrorism; (ii)military operations against civilians which are restricted in case of exercise of National Emergency Right on Constitution; and (iii) overly comprehensive and unclear definition of authority and organization of Center for Counterterrorism[2].

In particular, our Constitution strictly regulates the requirement in exercising the power of the State in emergency in order to guarantee basic rights of the people. Therefore, all laws and regulations cannot
escape the boundaries and limitations of the Constitution, and these principles apply in the controversy related to the current Anti-Terrorism Act and the Enforcement Decree.

From this point of view, this article is intended to analyze the changes caused by the enactment of the Anti-Terrorism Act and the direction of future counterterrorism policy development.

2. Basic Grounds of Anti-Terrorism Act

On March 3, 2016, the "Anti-Terrorism Act for the Protection of the People and Public Safety" was enacted and promulgated. The Enforcement Decree of the Anti-Terrorism Act (hereinafter referred to as the "Enforcement Decree") for public protection and public safety was enacted on June 4, 2016.

The Enforcement Decree of the Anti-Terrorism Act for the Protection of the People and the Public Safety is intended to protect national security, public safety and its citizens’ lives and properties.

The Enforcement Decree establishes the National Anti-Terrorism Committee (hereinafter referred to as the "Anti-Terrorism Committee"), in which 19 chief of the relevant organizations including the head of the State Coordination Department, the Ministry of National Defense, the Minister of Foreign Affairs. Also, there is a "counterterrorism center" to coordinate. In addition, in order to carry out prevention of terrorism and its response professionally, it is necessary to operate a "dedicated organization" that utilizes the currently operated organization, and to establish human rights protection center for preventing human rights violations and protecting human rights through counterterrorism activities.

3. Analysis on Contents of Anti-Terrorism Act

The first plan is to impose an obligation to share information with the terrorist organization, which is the primary source of terror information. The second plan is to impose an obligation to share information with the counter-terrorism.

3.1. National anti-terrorism committee and counterterrorism center

In the composition and operation of the National Anti-Terrorism Committee (Articles 3 to 5), the National Anti-Terrorism Committee, such as the Minister of Strategy and Finance and the Minister of Foreign Affairs, or upon a request by a majority of the members of the committee. The secretary shall be appointed as the head of the counter-terrorism center (Article 3) in accordance with Article 6 of the Law[2].

Article 6 of the Enforcement Decree allows the Counter-Terrorism Center to deal with matters necessary for the smooth conduct of the national anti-terrorism activities and the office work necessary for the operation of the Committee, and to request the cooperation of the heads of the relevant agencies for the necessary cooperation and support. The Counterterrorism Center acts as a control tower for counter-terrorism tasks in accordance with the Anti-Terrorism Act for National Protection and Public Security. It is an affiliate of the Prime Minister's Office of State Coordination[4].

3.2. Counterterrorism human rights officer

In addition, Article 7 to Article 10 of the Enforcement Decree provides the matters related to the Counterterrorism Human Rights Officer, which is a member of the Committee in order to prevent human rights violations that might occur in the course of counterterrorism activities. The Counterterrorism Human Rights Protection Officer (hereinafter referred to as the "Human Rights Protection Officer") shall be appointed by the chairperson of the council committee, so that the term of office may be renewed in two years and shall not be invoked against the doctor except in cases of criminal cases. The qualification is determined by a
lawyer who has worked for more than 10 years, a person who has expertise in the field of human rights, and has worked for more than 10 years as an associate professor[2].

The role of the Human Rights Protection Officer is to provide human rights protection advice and recommendations related to anti-terrorism policies and systems proposed by the Countermeasures Committee, and to deal with civil complaints related to human rights violations through counter-terrorism activities. In other words, the Counterterrorism Human Rights Protection Officer advises and recommends the improvement of the human rights of the counter-terrorism policies and systems related to the counterparts proposed by the Counter-Terrorism Committee(Chairman, Prime Minister), And other activities to protect human rights are human rights education for related institutions, for example. If there is a reasonable reason to admit that there is an act of violation of human rights during the performance of the duties, it may be recommended to the head of the concerned agency after reporting to the chairperson[3].

Although it is clear that it is only an advisory role without compulsory authority or inquiry, it is the only person who is legally given authority to check and prevent human rights violations in the process of counter-terrorism activities by the government.

### 3.3. A dedicated organization for counterterrorism

Article 11 to 21 of the Enforcement Decree establishes a "professional organization" composed of joint institutions for the prevention and countermeasures against terrorism, or established by heads of related organizations. In the case of terrorism response system, if terrorist attacks occur or there is a high possibility of occurrence, the heads of related organizations in five sectors (Minister of Foreign Affairs: Foreign Affairs Countermeasures Headquarters, Minister of National Defense: Military Terrorism Countermeasures Headquarters, The headquarters of the countermeasures headquarters will set up and operate the countermeasures against terrorism, and the head of the headquarters of the countermeasures headquarters will be the headquarters of the countermeasures against terrorism. And the organization of all the related organizations that are dispatched to the field such as rescue teams.

In order to prevent and respond to terrorism, the regional agencies are allowed to hold regional terrorism councils and airport / port terrorism councils. If the terrorist attacks are likely to occur or are likely to occur, the chiefs of related agencies should establish and operate a terrorist incident countermeasure headquarters based on the types of terrorist incidents, such as the countermeasures against terrorism and the countermeasures against terrorism. Terrorism response support headquarters, terrorism recovery support headquarters, counterterrorism special teams, and terrorist response teams.

In other words, if the head of the relevant organization is necessary to prevent and respond to terrorism in addition to the 'professional organization', the subordinate organization that performs counter-terrorism work can be designated and operated as a dedicated organization. In particular, in order to organically cooperate and coordinate the prevention of terrorism among municipalities, municipalities, special autonomous regions, provinces and special autonomous regions, and the related institutions, and to implement deliberations and decisions of the countermeasures committee. Director of the relevant department of the National Intelligence Service is responsible for this performance.

In order to carry out the operation against the terrorist attacks, the Minister of National Defense, the Minister of National Security and the Director of the Police shall establish and operate a "counterterrorism special team." In order to promptly rescue and
rescue a terrorist incident, Minister Suh and the city and provincial governors have set up and operated a "counterterrorism rescue team."

Also, in order to manage the information related to terrorism, the National Intelligence Service establishes and operates an ‘Integration Center for Terror Information’ consisting of public officials. In addition, when terrorist incidents occur at home or abroad, or when terrorist intelligence is obtained or reports of terrorism are filed, the NIS director can organize and operate a counterterrorism joint investigation team with related agencies.

3.4. Procedures for response to terrorism

Articles 22 to 24 of the Enforcement Decree provide procedures for dealing with terrorism. The head of the Center for Counterterrorism, when there is a significant level of terrorist threat, is required to issue a terror alert after deliberation by the Task Force on Counterterrorism Measures, and the head of the related organization shall strengthen the control, preservation and security of the incident site. The Head of the Terrorism Countermeasures Headquarters has established an on-site command center in order to respond to the terrorist incident, maintain the situation propagation and response system, and systematically implement the measures.

3.5. Safety management measures to prevent terrorism

Articles 25 to 28 of the Enforcement Ordinance provide safety management measures for preventing terrorism. The head of the concerned organization shall establish safety management measures for the terrorism prevention measures of the national important facilities and multi-purpose and multi-use facilities and the manufacturing, handling and storage facilities of the terrorist use means, and check the appropriateness evaluation of the countermeasures established. In addition, the head of the relevant organization shall consult with the head of the counterterrorism center to establish and implement sector-specific safety management measures in accordance with the characteristics of the state’s important events. If necessary, the countermeasures against terrorism and safety measures are taken to be organized and operated.

3.6. Reimbursement for prevention of terrorism

Article 29 to 34 of the Enforcement Decree provides for reward for prevention of terrorism. The head of the organization concerned has made it possible to prevent terrorism in advance or to report a person who has participated in or supported terrorism, or to give a reward to a person who has been apprehended after deliberation by a reward committee. In order to deliberate on the payment of rewards, the reward committee will be composed and operated by the head of the counter terrorism center. The reward committee will review whether the reward will be paid and how much the amount of reward will be paid. The rewards are paid in the range of 100 million won in consideration of the accuracy of the declaration contents and the credibility of the evidence.

3.7. Support for terrorist damage

Recently, the issue of terrorism has always been a hot topic in the international community and has become a premise and target of discussion in all areas of state relations. In particular, the September 11 terrorist attacks in the United States, which have occurred in 2001, have developed into a form of war. New terrorism, such as India’s Mumbai terrorist attack in 2008, will cause terrorist countries to be hit and confused politically and economically as possible as it can[5].

Articles 35 to 44 of the Enforcement Decree provide support for terrorist damage. The state or municipal government is able to support the recovery cost of medical treatment and property damage caused by terrorism. In addition, for those who have
suffered from the death of a person who died of terrorist attack and for those who have suffered from physical disability or long-term treatment, a special survival benefit, special disability benefit, or special severance benefit is provided.

4. Conclusion

Since the collapse of the Communist countries in the 1990s, terrorism has attracted attention as a major international issue that threatens international peace, including human rights and poverty. Terrorist environment and the environment surrounding Korea are gradually diversified in accordance with changes in domestic and overseas security environment. In other words, international terrorism is a frequent trend all over the world, and there are concerns about the possibility of domestic terrorism due to the increase of international marriage, migrant workers, and North Korean Refugees in Korea, and the threat of terrorism, as an asymmetric warfare, by North Korea[1].

As of June 4, 2016, the National Intelligence Service(NIS), which is a public information organization, is responsible for (i)collecting personal information(including sensitive information such as thoughts, beliefs, and health), site of location, and use of communication (ii)monitoring and inquiry on information of immigration and financial transaction, (iii)suspension of financial transaction. The NIS is also given the right to investigate and track down terrorist threats. The Anti-Terrorism Act has made it possible for the NIS to directly exercise its powers held by investigative agencies such as the prosecution, police, etc., following legal procedures such as a court warrant and written request[6].

The dramatic conclusion of the issue of the enactment of the Anti-Terrorism Act in 15 years is fortunate in the face of growing threats to terrorism both domestically and internationally. However, there is a concern that the 19th National Assembly was in a hurry to pass, and it is concerned that remaining contents in the act lacks key points. In the course of future operations, additional controversy may arise in details such as initiative of information and invasion of privacy. It is necessary to ask how much terrorism prevention law has actual efficiency and value to prevent terrorism. We know that even if there is 'law', we cannot prevent all illegal activities. Even if there is a punishment for robbery, it is the same as the strength does not disappear. The Anti-Terrorism Act also provides a degree of legal protection against terrorism, but it cannot be a safety barrier to all acts.

In order to protect the life, body and national security of the people in an emergency situation called terrorism, it is a national obligation to prepare and prepare for countermeasures against terrorism in advance. Of course, in order to prevent terrorism, it is necessary to build an integrated information system. In the past, the United States has separated and controlled many intelligence agencies, but now it maintains an integrated framework for effective terrorist surveillance. However, if the efforts of these countries cannot guarantee their effectiveness with unnecessary controversy, it will be difficult to achieve the original purpose. In other words, the Korean government's efforts to counteract terrorism are indispensable measures for the security of the nation and the public, but it would be difficult to ensure the effectiveness without guaranteeing national consensus on the functional and systematic efficiency and constitutional limitations related to human rights[7].

In the perspectives of the fact that the Anti-Terrorism Act violates the basic rights of the people, it is needed to consider the cases of the United States and the United Kingdom, which enacted the law in the past, have been used to violate the rights of their citizens. Thus, it is expected that the controversy over the national security and violation of basic rights will continue. What is important in the direction of future development in counterterrorism policy is 'tolerance' of the
law guaranteeing basic rights and dignity of the people in the Constitution. As seen in the case of former National Security Agency (NSA) agent Edward Snowden, who disclosed the NSA’s indiscriminate collection of personal information, it is a matter of social normative debate on the relationship between security and human rights, rather than how appropriate and proper the power was exercised.

In the future, it will be necessary to improve and strengthen the legal system so that the Anti-Terrorism Act can be effectively applied to prevent terrorism. However, due to the existence of strong counter-terrorism laws, hundreds of terrorist simulations are detected in a year to prevent terrorism in advance. We should do our best to prevent terrorism by comparing and developing terrorism related laws and experience cases of these countries. The study of relevant legal systems and empirical cases in countries that have enacted and enforced the Anti-Terrorism Act prior to us can help us a great deal.

The Anti-Terrorism Act should have procedures and contents that meet the constitutional standards, not the authority to end and end the intelligence agency. The most important thing in the national counterterrorism policy is how harmoniously two values of human rights and security can be operated. The Anti-Terror Act has been passed, but future challenges remain. No matter how good a law or system is, it does not make any sense if we cannot get the people's understanding and bring the power of the people together. In the process of legislating and revising the detailed legislation in the future, it is necessary to minimize the infringement of the basic rights of the people. State power should be used to minimize the violation of the people's freedom.

5. References

5.1. Journal articles


5.2. Additional references


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