Abstract

**Purpose:** As rallies inevitably have a direct impact on social order as a collective freedom of expression, the need for autonomy inherent in basic rights and the need for batting average regulation to maintain social order need to be harmonized with each other.

**Method:** To Study the judicial discussion and improvement of the police line in rallies and demonstrations

**Results:** If a rally, demonstration group, or individual intentionally staged violent demonstrations to carry out their demands and claims by any means, collide with the police, and as a result, the public fully bears the social costs of violent protests, it will only undermine the nation’s external image with huge economic losses.

**Conclusion:** For the police responsible for the order of well-being of the nation and the people, strict legal action and concrete countermeasures are required against illegal and violent rallies and demonstrations that turn violent beyond their original intentions, and it is time to review judicial discussions and improvement tasks on the police line.

**Keywords** Police Line, Gathering, Protests, Freedom of Assembly, Control of Assembly Demonstration

1. Introduction

Freedom of assembly is a basic constitutional right, a form of freedom of expression, and refers to the freedom of assembly or union in an atmosphere where the majority are trying to resolve common purposes. If the press and publication are in the form of personal expression, assembly and association are a method of collective expression[1]. On the other hand, Korea is so used to rallies that it is called a rally republic. In the past, rallies and demonstrations in our country have been a trigger for democratization, with political power being replaced by rallies and demonstrations led by students and citizens against dictatorships, but as our society was democratized, rallies and demonstrations centered on political and ideological struggles in the past have lost their validity and have recently been held due to conflicts of interest, ranging from individuals and local citizens to national policies, and only through rallies are the so-called "collectionalism" and the so-called collectivism and the law[2].

The police are exercising police power for the purpose of maintaining order, but in the process, it is amplified by serious social conflicts that cause mutual clashes and even deaths, including tear gas and firebombs. And these social conflicts are causing a decline in the international credibility of our country and a decline in national competitiveness, and the increase in social and economic costs caused by rallies and demonstrations is also a big burden on our economy. In addition, recent rallies and demonstrations have emerged in the form of international violent protests in connection with foreign labor organizations. In Toronto, Canada, where the G20 Summit was held in June 2010, more than 10,000 people from international labor
organizations and non-governmental organizations (NGOs) attacked banks and stores, and several international conferences attended by world leaders were canceled at the London Conference in April 2009, killing one citizen and wounding one after another.

As above, rallies and demonstrations are not simply a matter between the police and rally and demonstration groups, but also a matter of national or international affairs related to the people. Here, a rally refers to the act of a particular or unspecified majority meeting temporarily at a certain place with a common purpose, and unlike a rally that gathers in one place, it is classified as a demonstration when marching together. And since rallies inevitably have a direct impact on social order as a collective freedom of expression, the need for autonomy inherent in basic rights and the need for batteproof regulation to maintain social order need to harmonize with each other.

In addition, in order to achieve the purpose of rallies and demonstrations, organizations or individuals may fully convey their opinions through peaceful demonstrations or various media outlets, not violent demonstrations. He is by no means a socially weak man who can only speak out through the style of past authoritarian regimes, when the basic rights of the people were excessively limited as in the previous era. In some cases, it is the current democratic social pattern in Korea that rally and demonstration groups are exerting great influence to change the government’s policies through large-scale rallies and demonstrations. If a rally, demonstration group or individual intentionally staged violent protests to carry out their demands and claims by any means, collide with the police, and as a result, the public fully pays for the social costs of violent protests, it will only undermine the nation’s external image with huge economic losses. Therefore, in order for illegal and violent rallies and demonstrations to be eradicated, social consensus among the three main players - assembly and demonstration organizations, police, and the public - should now be formed. In particular, the police, who are in charge of the order of well-being of the nation and the people, are required to take stern legal action and concrete countermeasures against illegal and violent rallies and demonstrations that turn violent beyond their original intentions[3].

2. Concepts and Legal Grounds of Assembly and Demonstration

2.1. Concept of assembly and demonstration

It is common to define freedom of assembly as the same as freedom of association in that freedom of assembly is freedom of collective expression, but in particular, the German Basic Law stipulates freedom of assembly and freedom of association in separate clauses. In Korea, however, the Constitution or the Assembly and Demonstration Act (hereinafter referred to as the Assembly Act) does not have a definition of the concept of assembly. Therefore, it is necessary to confirm the concept of the assembly before considering the freedom of assembly.

On the definition of a rally, Korean scholars say, ’temporary union in which many people meet with common purpose in certain places’, ’the act of meeting temporarily in certain places with common purpose’[4], ’the act of voluntary meeting of many people with common purpose’[5], ’the act of two or more people voluntarily expressing their common intentions in certain places’[6], ’the temporary gathering of many people with common purpose’, ’the temporary gathering of specific or unspecified persons for the purpose of gathering in public’[7]. ’Enemy meetings and temporary meetings of the majority to achieve a certain common purpose’ are defined, and Constitutional Court precedents define ’any specific or unspecified majority to be temporarily assembled at a certain place for a particular purpose, and there can be no restriction on the number of places or people to be gathered.' In addition, Germany has generally defined 'temporary meetings in certain places of natural people with a common purpose of discussing or expressing their opinions on any matter'.
2.2. Legal basis for assembly and demonstration

Freedom of assembly belongs to the basic right of freedom, among which it is classified as the right of freedom. That's because freedom of assembly, along with freedom of speech, is recognized as a means of free expression by human beings. In that sense, freedom of assembly, like freedom of speech, is closely related to freedom of inner mental activity[8]. When new ideas, new arguments or ideas were introduced through freedom of religion, freedom of conscience, and freedom of thought, they could be spread around through freedom of speech or freedom of assembly. Therefore, freedom of assembly as modern human rights is directly related to popular rallies that were widely used as a means of disseminating democratic ideas along with the development of democratic ideas.

Freedom of assembly is a fundamental right that has been secured in Britain since the late 18th century through the process of political struggle. Freedom of assembly was widely used in Britain, especially with regard to the right to petition, for the purpose of influencing public opinion. The laws enacted in this regard began with the Riot Act of 1714 and developed into the Sedient Meeting Act of 1817, the Public Meeting Act of 1908 and the Public Order Act of 1935.

The first codification of freedom of assembly in succession to British tradition was the United States, where Article 1 of the United States Constitution stipulated, "The United States Congress shall not enact laws that prohibit the creation of religion, the exercise of freedom of religion, restrict freedom of speech or publication, or violate the people's rights to rally peacefully and petition the government for relief of pain," and the freedom of assembly was widely recognized through the interpretation of these regulations.

On the other hand, France's Declaration of Human and Citizens' Rights sets forth a number of important basic rights, but does not have any stipulations on freedom of assembly. Of course, from the time of the Great Revolution, assembly was an important means of civil revolution, and it was not denied that freedom of assembly should be guaranteed. However, it is recognized that it is derived from the "freedom of expression of will" in the absence of a constitutional stipulation.

In Germany, where progress in democratization was slower than in neighboring countries, there was a tendency to ban political rallies under the constitutional national tradition, and in response efforts continued to establish freedom of assembly as a basic right. The Frankfurt Constitution(the draft) of 1849 stipulated freedom of assembly in Article 161, but it was not actually implemented, and Article 123 of the Weimar Constitution of 1919 stipulated freedom of assembly and guaranteed it as a basic right. Under the influence of these countries, the Korean Constitution has continued to recognize freedom of assembly as a basic right since Article 13 of the 1948 Constitution stipulated that "all citizens are not restricted from freedom of speech, publication, assembly, or association without the law."

3. The Concept and Legal Basis of the Police line

As the government came to assume more responsibilities on the citizens the voters, measurement of the performance of police service grew more important. Perhaps the most effective way of evaluating performance is to focus on the degree of citizens' satisfaction[9]. In a modern society where the importance of personal information is widely known and awareness of the people's right to informational self-determination is high, the infringement and restriction of the people's basic rights by state public power requires special attention. In particular, the importance of digitized personal information, including personal video information, is doubled. Therefore, measures such as identification of identity and belongings, filming and transmitting surveillance cameras, and sharing personal information for investigation should be balanced with the freedom of individuals whose legitimacy or constraints are legally guaranteed even if they are terrorist measures[10].
Many nations are experiencing restrictions in budget and manpower for the prevention of crimes, and efforts are continuously being made by the police and academic circles to apply more effective crime prevention techniques[11]. Therefore, when predicting each other between the organization and its members and trying to perceive what is the appropriate row between each other, it is possible to perceive each other through a psychological contract from the perspective of the contractor[12]. Government wide overall measures for safety of elders are required to solve all the problems of worsened health conditions of elders, increase of poverty rate from bi-polarization, generational conflict with the young and mid-aged and loneliness, emotional instability. It’s essentially required to establish security strategy aiming at prevention of elder crimes and reducing the victims at the time of introducing local community policing system by area in step with the changing trend of the aged population[13].

The police line is one of the tools of police action. From a formal point of view, the understanding of the concept of the police line can be defined as a control line set up by the police to maintain and protect public well-being and order.

In utilizing the police line, the utilization measures should first be reviewed from the perspective of the police function, but at the same time, they should be discussed in consideration of the changing public’s legal sentiment and political consciousness.

Moreover, the police line has a power factor called crowd control, so if it is abused, there is room to tarnish the public's image of the police. Conversely, since the police line is a tool for police action, there is a great deal of room for this to be used, but there is a possibility that if the concept is narrow-minded, the potential utilization may not be fully utilized. Therefore, the precise setting of the concept, name, purpose, etc. of the polyline has a very important significance for the long-term success of the polyline system.

The purpose of the installation of the police line shall be derived from the general purpose of the police. In other words, the police are the police because they are the main focus of maintaining and protecting the public peace and public order. However, it is necessary to stress that the police are not installing the police to control the crowd, but the police are installing it to protect and maintain the public well-being and order, which is the function of the police. In other words, the police aim to protect the people’s bodies, lives and property and maintain social order through the establishment of the police line. From this point of view, understanding the polyline as a 'control' concept is not appropriate in this era of democratization. The police line should not be a tool of "control" but a tool of "protection" and a tool for "risk prevention," the purpose of a comprehensive police function.

If you look at the police line as one of the means of police, its use does not necessarily have to be limited to the control of crowds of rallies and demonstrations. Police lines can be used throughout the police administration, including traffic control, factor security, police measures in the event of a disaster, and investigative needs, and the use of police lines may be newly developed unless they are contrary to their nature. On the other hand, as long as this is available for a variety of applications, the installation patterns of the polyline need to be devised in a variety of ways. Sometimes tape can be used for situations and purposes, sometimes barricades, or blockage signs, sometimes vehicles, etc.

The polyline is a restriction of the people’s right to general freedom of action, but basically exists for the protection of the people or social order, so it cannot take effect even in areas unrelated to the purpose of protection.

4. National and Internal Judicial Sanctions for Violating the Police Line

4.1. United States of America's police line legal grounds and sanctions in case of violation
The police line is generally used as a useful tool for performing duties by the U.S. police. In the case of administrative capitals and large cities where political rallies and demonstrations are frequent, the police line is used to control crowds and protect public order in rallies and demonstrations. However, in areas where rallies and demonstrations are not frequent, police lines are usually used for ordinary purposes such as crime scene preservation, disaster, civil protection and order maintenance in hazardous areas.

Independent legislation on the legal basis of the installation of the polyline, violations, and sanctions in case of incursions are not found anywhere, such as federal and state legislation or municipal ordinances of local governments.

First of all, in the case of the police line installation, if it is necessary to find the basis for the police line installation, it would be the basis clause for general police activities. However, for the establishment of restricted areas for crowd and traffic control, which is a precursor to the establishment of the police line, it is usually regulated in the Police Regulations, which are close to the nation's legal order. In addition, practical guidelines on the installation and operation of the police line are sometimes provided for in the manual, policy, etc. within the police. However, in the United States, the concept of administrative legislation is not the same as in Korea, so even if it is defined in Manual and Policy, it may have some legal meaning. In general, however, it is not necessarily clear what legal characteristics are of what is provided in the Manual and Policy within the administrative agency.

Under this conceptual definition, the discipline in the internal manual or policy of the U.S. police, which sets the working standards for the police line, is a rule. However, the legal nature of the rules may vary depending on whether the legislation is delegated or what is regulated. Rules, which usually regulate the establishment and operation of the polyline, may be understood as a Professional Rule under U.S. Administrative Laws. Therefore, regulations on these polylines have legal effect to detain courts unless their effect is limited through precedent in the U.S. Therefore, the working-level rules within the U.S. police against the police line are understood in our country. However, it is somewhat questionable whether such a weak sense of binding force constitutes a law as a concept of our style. In short, the working-level rules of the U.S. police, which regulate the police line, are generally understood in a similar legal sense to the administrative rules of Korea, such as directives and established rules.

**4.2. South Korea's sanctions on the police line**

The police line, or the police line system, was introduced in earnest after the revision of the Assembly Act in 1999, but the effectiveness of the system has been insufficient at the sites of rallies and demonstrations. However, it is necessary to secure the effectiveness of the police line to establish a culture of advanced rallies and demonstrations, and to change it to a police line-based method of responding to the police force.

Violation of the polyline shall be punished by the Gypsies Act. Legitimate procedures must be followed, such as notifying the organizers in advance when installing the police line, and those who violate the police line at the site of rallies and demonstrations can be notified of the Miranda principle and arrested in the act. If on-site detection is not easy, a request for attendance may be issued and a subpoenaed investigation may be conducted by collecting evidence against those who violate the police line.

The nation's police line trespassers face up to six months in prison or a fine of up to 500,000 won for obvious offenses, but have not been properly implemented. Article 12-2 of the Assembly and Demonstration Act stipulates that the chief of the competent police station can set up a police line by setting a minimum scope when deemed necessary for the protection of rallies and demonstrations and the maintenance of public order, but only in October 2004 was the case in which police booked people who crossed the police line after 1989 when the Assembly Law was revised.
5. Outro

That the general function of the police is to maintain public well-being and order and to prevent danger is something that can be recognized from the concept of the police.

Therefore, the goal of installing the polyline also needs to be set from the perspective of this risk prevention and protection by default. As self-evident in the inherent limitations of the police, the police line cannot be used to promote active welfare, but can only be used to maintain passive order and prevent danger.

Furthermore, it needs to be widely recognized that the police line is not used as a means of aggression, but as a defensive and protective means of police enforcement to protect the interests of individuals or society from immediate danger or disruption. Therefore, as already mentioned above, it is not very desirable for the police line to give the image of a 'control line' and as far as possible, efforts should be made to make it widely perceived to the public that it is a means to protect and defend the lives and property of the people and the social and public interests.

The situation requiring the installation of the polyline is difficult to list. In the United States, police lines are used when necessary for crowd control during rallies and demonstrations, preservation of crime scenes and traffic accident sites, protection of tolerance, blocking criminals from fleeing, protecting and maintaining crowd protection and order in disaster areas, bombing buildings, and bomb threat areas, but if not in such cases, police lines can generally be installed if necessary to prevent danger, maintain public well-being, and order.

Meanwhile, in situations requiring the establishment of a police line, the fact that crowd control during rallies and demonstrations is quite different from other situations cannot be overlooked. Therefore, the establishment of a police line in the event of a rally and demonstration requires more careful consideration and situation management skills. When it is necessary to establish internal police regulations on the establishment and operation of police lines, it is also necessary to distinguish between the cases of rallies, demonstrations and other cases in consideration of advantages. If the police line is perceived as a tool for ordinary police officers to perform their duties, the right to install the police line can be any police officer facing the situation. However, it is also worth considering allowing only police officers at the scene to make decisions on the installation of the police line if their nature requires rationality in a broader range of judgments, such as rallies, demonstrations or disasters.

This consideration will also be needed in balance with the fact that the right to set up a controlled area under the Disaster Management Act or the Fire Control Act lies with the mayor, the county governor, the chief of the fire department, the chief of the fire station, and the chief of the fire department.

Various practical factors should be considered in determining the installation of the polyline, but in light of the protective and defensive nature of the polyline, the establishment of a controlled area beyond the required scope will be subject to social criticism and should be restrained. It should be said that the installation decision maker's most basic duty is to establish a control zone within the indispensable range. Therefore, the installation judge shall endeavor to install the police line only if the violation of the police line itself violates or seriously threatens public well-being and order.

Another aspect to consider in determining the installation of the polyline in Korea is that it is necessary to gradually expand the scope of the polyline by installing the polyline from the initial stage when the polyline can be observed if possible to prevent the authority of the polyline from being trampled.

In addition, in the settlement stage of the polyline, severe legal responsibility should be held, especially for encroachment and damage to the polyline. It will not be easy to discuss criminal penalties if they are not intentional intrusions, and in such cases, if the liability for
damages can be imposed, it should be actively considered. And punishment must be made for the intentional violation or damage of the police line.

Demonstrations along the police line can effectively express the political will of the protesters, are safe and not condemned by the general public, but unless they are those who planned illegal or violent protests from the beginning, there is no reason for them to violate the police line. If the practice of compliance with the police line gradually accumulates, it could finally be used as a meaningful control tool even in illegal demonstrations and violent demonstrations.

6. References

6.1. Journal articles


6.2. Thesis degree


6.3. Books


7. Authors profile

7.1. Authors contribution
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