ROK Authorities Try to Bring Park Sang-hak and his Associates into Line, but the US Gets in the Way

Remember how the actions of anti-Pyongyang NGOs provoked the aggravation of the summer of 2020, when North Korea finally got fed up with the “fighters for a free North Korea,” led by the odious defector Park Sang-hak, launching balloons with leaflets and other propaganda across the border in violation of the inter-Korean agreements?

As defector Hong Gang-chul pointed out in an interview with the leftist newspaper Hangyore Sinmun, there is a lot of money to be made from balloon launches. Sponsors pay them about 1.5 million won ($1234) for each launch, while the actual cost of the balloon ranges from 80,000 to 120,000 won ($65.81-98.21). To make matters worse, amid the coronavirus pandemic, the idea of “filling balloons bound for North Korea with dollar bills smeared with the substance breathed on by COVID-19 patients” was genuinely discussed in certain NGOs. This is an act of terrorism using biological weapons, and it is in this context that the harsh tone of the DPRK should be considered.

Although the “fighters” had their accreditation from the Ministry of Association withdrawn, Pak said that the launches would continue, and then the government began seriously preparing a special law.

On December 14, 2020, the National Assembly passed an amendment to the Inter-Korean Relations Act to prohibit
the sending of propaganda leaflets to the North. All 187 members of the plenary session voted for the amendment. Deputies from the main opposition People Power Party did not participate in the meeting.

Now those who send flyers, banners and other items such as USB and SD cards to the North will face up to three years in prison or a fine of up to 30 million won ($27,700).

The uproar made by the conservative media in the ROK and Western NGOs professionally concerned with human rights in the DPRK was quite remarkable, and conservative activists jokingly dubbed the amendment the “Kim Yo Jong Law.”

The general tone of the conservative media was as follows: “Certainly it is necessary to try to improve inter-Korean relations and promote peace on the peninsula. But this does not mean that the dire human rights situation in the North can be ignored. The law looks like a concession to Pyongyang’s pressure and can be seen as a restriction on freedom of expression guaranteed by the Constitution.”

Before the law was even passed, Human Rights Watch Asia Advocacy Director John Sifton said that “the ROK government seems more interested in keeping Kim Jong-un happy with North Korea than in allowing its own citizens to exercise their basic rights on behalf of their northern neighbors,” and participating in human rights activities would become a criminal offense.

Lawyers for Human Rights and Unification of Korea, a conservative NGO, expressed a similar stance, calling the amendments to the law a violation of the constitution and promising to file a complaint. Park Sang-Hak was going to do the same, saying that the law was a travesty of free speech.

On December 29, 2020, nearly 30 other South Korean human rights groups filed a constitutional complaint alleging that the leaflet ban violates human rights and supports an autocratic regime in Pyongyang.

The odious deputy and “handicapped storyteller” Ji Sung-ho also made a special trip to the US and “explained the unconstitutional factors of the bill” at a special meeting attended by Sam Brownback, US Ambassador-at-Large for International Religious Freedom, Morse Tan, US Ambassador-at-Large for Global Criminal Justice, and senior State Department officials among the participants. They all expressed concern about it, and Senator Chris Coons, a close aide to President-elect Joe Biden, said he would explain the bill’s problems to America’s new leadership.

The UN Special Rapporteur on Human Rights in the DPRK, Tomas Ojea Quintana, told US media that he hoped South Korea would review the legislation before it went into effect.

The International Coalition to Stop Crimes Against Humanity in North Korea (an association of 47 groups representing 300 nongovernmental organizations) wrote an open letter to President Moon Jae-in, mentioning both the passage of the law and Seoul’s unwillingness to co-sponsor a resolution on the human rights situation in North Korea at the UNGA.

“Freedom of expression is a basic democratic value. The future of the Korean Peninsula depends on North Korea becoming more like South Korea, not the other way around,” said US Congressman Michael McCaul. Another congressman, Gerald E. Connolly, urged President Moon Jae-in to seek critical changes to the bill before it was signed. “As it stands, this law could harm the ability of Korean human rights organizations to disseminate independent and diverse information to the North Korean people.”

Chris Smith, co-chairman of the US House of Representatives’ Human Rights Committee, has been particularly diligent: “I am concerned that lawmakers in a supposedly lively democracy would consider criminalizing behavior aimed at promoting democracy and providing spiritual and humanitarian assistance to people suffering under one of the world’s most brutal communist dictatorships.”

Declaring that the party’s move violated South Korea’s constitution and its obligations under the International Covenant on Civil and Political Rights, Smith saw in it not only “unjustified connivance” with the DPRK, but also “a diplomatic tilt toward Communist China”. To this end, back in December 2020 Smith pledged to “reconsider the Republic of Korea’s commitment to democratic values” in both his annual human rights report and his report on international religious freedom.

As a result, the Human Rights Commission of the US House of Representatives decided to hold a special hearing on the ban on sending propaganda leaflets to North Korea. They were first scheduled for January 2021, but then moved to a later date after the commission renews its membership. It will most likely happen in late February or early
March.

On January 28, 2021, Park Sang-hak — according to his lawyer — left for the United States “for the purpose of attending US Congressional hearings and for other reasons with a plan to return in early March.” According to other reports, it was to avoid arrest.

The ruling circles represented by South Korean Foreign Minister Kang Gen-hwa, ruling party chairman Lee Nak-yong, Gyeonggi-do governor and presidential candidate Lee Jae-men and others are actively defending their point of view. Their arguments are repetitive and boil down to the following:

- According to a press release from the Ministry of Unification, the law was passed “after a democratic debate in accordance with the procedure prescribed by the Constitution and the law, having done so in the National Assembly, which represents the consensus of public opinion.”
- Freedom of opinion is a constitutional right, but it cannot take precedence over the right to life: the launching of leaflets “threatens the lives and safety of 1.12 million residents of border areas,” and restrictions on freedom of speech are allowed by the international community if they threaten the rights of others or national security.
- The current ban is rather consistent with the International Covenant on Civil and Political Rights, which allows restrictions on actions that are harmful or dangerous to civilian life. The amendment is not a restriction on freedom of speech in general, but a minimum restriction on a certain mode of expression, such as a leaflet. Moreover, the punishment is not for sending out leaflets at all, but only if the action causes harm to people or causes serious danger.
- There is no evidence that distributing leaflets improves human rights in North Korea. On the contrary, it strengthens the social control of the North Korean authorities, and leads to negative consequences and deterioration of the human rights situation in North Korea. In addition, as the defectors say, leaflets containing unsubstantiated data or obscene language are ineffective.

The mayors of the 10 border cities and counties also said passage of the bill was necessary to ensure the safety of border residents worried about possible military retaliation by the North in protest of the balloons with leaflets.

Pro-government NGOs also joined in. On December 18, a group of 17 civil organizations condemned criticism from the US as interference in the internal affairs of the ROK and stressed that the distribution of leaflets had nothing to do with freedom of expression, but was an act of inciting conflict.

In January 2021, some 420 left-leaning NGOs called on the US Congress not to hold hearings, calling such a move a clear infringement on their country’s sovereignty and interference in internal affairs. “Interference in the internal affairs of the relevant American organizations and politicians who financially and politically sponsored the mailing of the leaflets to the north is going too far”.

In any case, experts are very concerned about whether the new law will worsen relations with the United States and the “international community,” and whether it will test Seoul’s ability to defend its opinion. Joe Biden’s administration is likely to give greater priority to democratic values and civil liberties than the Trump administration, and there are growing fears that Seoul will face more pressure from the US to get complicit in the struggle for human rights in North Korea. There are also image concerns: if international human rights groups raise the issue at the UN, or if Chris Smith carries out his threat, Seoul could find itself “complicit in Pyongyang’s oppression of human rights.” Even the relatively centrist Korea Times noted that “Moon Jae-in’s government should make an effort to ensure that the leafleting issue does not turn into a diplomatic scandal with the incoming Joe Biden administration, which will focus its foreign policy on promoting human rights and democratic values. Moon should listen more to international criticism. He must not sidestep human rights issues in order to achieve reconciliation with Kim Jong-un’s repressive regime.”

From the author’s point of view, the arguments against the leaflet launches are valid, and such measures should have been taken much earlier, but it is more interesting how the situation will unfold, given Moon’s last year in the office. There are several options:

- The most realistic and pessimistic one is that, having broken down and blowing off steam into pathetic statements, Seoul will “do as they are told”. And the fact that they did not sit in the American chair right away, and rather sideways, will prove to be a diplomatic victory. Either the law will be amended to limit its effectiveness, or it will be repealed if Moon’s opponents come to power, or the law will exist but not be enforced.
- To the latter choice adjoins the following option. The law will only be applied to very odious individuals like Park Sang-Hak and/or after the DPRK has struck the table with its fist again. There will be high-profile cases on it, but
only against those who have gone beyond the informal limits.

- The law will be a bargain of sorts, with Washington turning a blind eye to it in exchange for much more important steps by Seoul toward “strengthening the alliance between the two countries.” For instance, participating in the containment of China.

**Konstantin Asmolov, PhD in History, a leading research fellow at the Center for Korean Studies of the Institute of the Far East at the Russian Academy of Sciences, exclusively for the online magazine “New Eastern Outlook”**.