

"Repealed Garrison Decree in Korea"

Mun-eon Park, Army Judge Advocate,
Korean Institution for Defense Analysis

Korea was liberated from Japan in 1945 after the end of World War II. In 1950, the Korean War was broke out due to ideological disputes between the two Koreas. Prior to this, the Act on the Organization of National Armed Forces enacted in 1948. Article 21 stipulated that necessary matters for military administration would be decided by Presidential Decree. However, the government was not fully established in 1950, thus Presidential Decree's mobilization article(§12) was enacted without the mandate of law or the Constitution. The purpose of the Garrison Decree is to ensure the safety of the area stationed by troops, to maintain military discipline, and to guard military facilities.

However, a problem with Article 12 is that the troops can be dispatched in the event of a disaster or an emergency, if there is a request for dispatch of troops from the head of the local government. In the case of a disaster, there is a clear mandate. Disaster and Safety Management Basic Law and the Administrative Procedure Act stipulate that the disaster relief and recovery work can be done by armed forces at the request of the heads of local governments.

In times of war or emergency, the President can declare martial law after passing cabinet meeting, according to the Constitution and Martial Law Act. However, Garrison Decree had acknowledged the dispatch of troops with the request of the heads of the local governments without the mandate of the Constitution or other law.

Although the martial law was declared several times by the Martial Law Act in the disordered situations before and after the Korean war, the problem was that military dispatches through Martial Law Act or Garrison Decree mainly were used for suppressing pro-democracy

movement and college students' demonstration since 1960.

There have been legal procedures even though the martial laws were proclaimed several times for maintaining the military regime. The martial law shall be declared by the President through the deliberation of Cabinet meeting and shall be lifted by the request of the National Assembly. However, it was a serious problem that there was no regulation on the control of the National Assembly after military mobilization by Garrison Decree.

In 1965, the military forces were dispatched by Garrison Decree for the first time when the Korea-Japan accord regarding compensation during the Japanese colonial period was signed and the ruling party processed the ratification at the National Assembly, despite the objection of the people and college students. In order to suppress the students' demonstration, the government put military forces into the universities and issued university close order.

In the second case, in 1971, the late President Park Jung-hee extended the drill training time from two hours to three hours each week for strengthening military dictatorship and to weaken the pro-democracy movement of students. As a result, almost 30,000 students protested against it. Approximately 7,000 troops were dispatched to 12 universities in Seoul. Armed Forces suppressed protests by assaulting and arresting students at that time.

Third, opposition party's leader Kim Young-sam(elected President in 1992) was expelled from the National Assembly by the military government in 1979. As a result of that incident, the demonstration by students began in Gyeongnam Province, and 1,000 troops were dispatched.

The problem of Garrison Decree had been consistently asserted by lawmakers and lawyers even though there was neither martial law nor dispatched troops by Garrison Decree after 1981. However, there were

discussions only and no action had been taken to abolish it. Due to corruption and illegality of the former President Park Geun-hye in 2016, candlelight demonstrations were held every weekend, which continued for more than 6 months at Gwanghwamun Square demanding the president's leave. These candlelight vigils were conducted peacefully, and the cumulative numbers of participants exceeded 17 millions including children with their parents and young students regardless distinction of sex or age. During that time, some conservatives talked about dispatching troop by Garrison Decree to suppress the protests and the illegality of the Garrison Decree became a problem again. Finally the former President Park Geun-hye was impeached by Constitutional Court on March 11, 2017.

After the inauguration of President Moon Jae-in, the government reviewed the problems of Garrison Decree regarding its legality and subsequently abolished it in September this year. In the military, there was claim that it is necessary to maintain article of dispatching troops in emergency situations as military troops could be mobilized promptly through the Decree regardless of martial law. In reality, however, Garrison Decree had been criticized as being dead letter and having no legal basis. Especially many military-related laws have regulations to ensure the safety of the area stationed by troops, to maintain military discipline, and to guard military facilities.

The current government, which is emphasizing the civilian control of the military and the democratic legitimacy in the military activity, chose to abolish the Decree. Such a legal determination is based on the assumption that one of the most important military role is to protect the people along with the basic duties of national defense. Indeed, it is firm principle that the military would no longer restrict the fundamental rights of the people and intervene in society for public order without obvious mandate of law or Constitution.