

CONSTITUTIONAL COURT
DECISIONS

2017



CONSTITUTIONAL
COURT OF KOREA

CONSTITUTIONAL COURT
DECISIONS

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Preface

The publication of this volume is aimed at introducing to foreign readers important cases decided from January 1, 2017 to December 31, 2017 by the Constitutional Court of Korea.

This volume contains one full text and six summaries of the Court's decisions in six cases.

I hope that this volume becomes a useful resource for many foreign readers and researchers.

October 31, 2018

Kim Heon-Jeong
Secretary General
Constitutional Court of Korea

EXPLANATION OF ABBREVIATIONS & CODES

- KCCR: Korean Constitutional Court Report
- KCCG: Korean Constitutional Court Gazette
- Case Codes
 - Hun-Ka: constitutionality case referred by ordinary courts according to Article 41 of the Constitutional Court Act
 - Hun-Na: impeachment case submitted by the National Assembly against certain high-ranking public officials according to Article 48 of the Constitutional Court Act
 - Hun-Da: case involving adjudication on the dissolution of a political party
 - Hun-Ra: case involving adjudication on dispute regarding the competence of governmental agencies filed according to Article 61 of the Constitutional Court Act
 - Hun-Ma: constitutional complaint case filed by individual complainant(s) according to Article 68 Section 1 of the Constitutional Court Act
 - Hun-Ba: constitutionality case filed by individual complainant(s) in the form of a constitutional complaint according to Article 68 Section 2 of the Constitutional Court Act
 - Hun-Sa: various motions (such as motion for appointment of state-appointed counsel, motion for preliminary injunction, motion for recusal, etc.)
 - Hun-A: various special cases (re-adjudication, etc.)

* For example, “96Hun-Ka2” indicates a constitutionality case referred by an ordinary court, the docket number of which is No. 2, filed in the year of 1996.

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I. Full Opinions

1. Case on the Impeachment of the President (Park Geun-hye)

Case

Impeachment of the President (Park Geun-hye), Case No. 2016Hun-Na1

Petitioner

National Assembly

Impeachment Prosecutor, Chairperson of the Legislation and Judiciary
Committee of the National Assembly

Legal representatives listed in Appendix

Respondent

Park Geun-hye, President of the Republic of Korea

Legal representatives listed in Appendix

Decided

11:21, March 10, 2017

Holding

The respondent, President Park Geun-hye, is removed from office.

Reasoning

I. Overview of the Case

A. Outset

The press reported in July 2016 that Cheong Wa Dae, the Office of the President, had intervened in the establishment of the Mir Foundation

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and K-Sports Foundation (hereinafter referred to as “Mir” and “K-Sports,” respectively), previously believed to have been established under the leadership of the Federation of Korean Industries (hereinafter referred to as the “FKI”), and had raised over 50 billion Korean won from conglomerates in the process. The motivation behind Cheong Wa Dae intervening in the establishment of these foundations was a major issue in the inspection of state affairs of the National Assembly held in September 2016, but Cheong Wa Dae and the FKI denied the allegations.

While this developed into a political issue, the press reported on October 24, 2016, that key Cheong Wa Dae documents had been leaked to Choi ○-Won, whose former name was Choi ○-Sil, and that she had been secretly involved in running state affairs. Much of the public was shocked at reports claiming that this so-called unofficial confidante had intervened in national affairs, and criticism grew stronger against the respondent for allowing this to occur. Thereupon, the respondent delivered a public address on October 25, 2016, to the effect that “Choi ○-Sil is a friend that helped me in difficult times, and I admit to have heeded her opinion on the wording of some speeches and publicity documents. However, this stopped after the Cheong Wa Dae secretarial staff was fully established. My actions only had pure intentions, but I sincerely apologize for having raised public concern.”

Notwithstanding the respondent’s national address, there were continued reports on Choi ○-Won’s intervention in state affairs, and on November 3, 2016, Choi ○-Won was detained on charges including abuse of authority to obstruct the exercise of rights. The next day, on November 4, the respondent delivered a second public address stating, “I apologize once again for causing great disappointment and concern on account of the Choi ○-Sil incident. It is devastating to know that intentions to benefit the national economy were used by a specific individual to gain interests and commit crimes. Anyone who is found in the investigation to be at fault must take responsibility, and I am determined to do the same.”

Then, on November 6, 2016, Ahn ○-Beom, the former Senior Secretary to the President for Policy Coordination, was detained on charges of attempted coercion and abuse of authority to obstruct the exercise of rights, while Jeong ○-Seong, the former Personal Secretary to the President, was detained for allegedly disclosing secrets related to the performance of official duties. From around November 14, the National Assembly began discussing whether to proceed with a resolution to impeach the respondent, and on November 17, passed the ‘Resolution on the Approval of the State Investigation Plan on the Intervention in the State Affairs of the Park Geun-Hye Administration by Civilians including Choi ○-Sil et al.’ and the ‘Legislative Bill on the Appointment of a Special Prosecutor to Investigate the Intervention in the State Affairs of the Park Geun-Hye Administration by Civilians including Choi ○-Sil et al.’

Choi ○-Won, Ahn ○-Beom and Jeong ○-Seong were indicted on November 20, 2016, and several of the allegations charged against them stated the respondent as an accomplice. On November 24, the Democratic Party of Korea, the People’s Party and the Justice Party decided to jointly prepare a motion to impeach the President, completed the motion on November 28, and agreed on December 2 to put it to vote.

Thereupon, the respondent delivered a third public address on November 29, 2016, saying, “I apologize profoundly for causing such deep public concern. I believed that the events in question were for the public benefit of the nation, and did not make any personal gains whatsoever. However, I admit to have been greatly in the wrong for failing to properly manage my personal ties. I will leave it up to the National Assembly to decide whether I should resign from or remain in office, and whether my remaining term as President should be shortened. Once the ruling and opposition parties arrange a plan for the safe transfer of government power, in a way that minimizes any disorder and vacuum in state affairs, I will step down from the presidency.”

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B. Petition for Adjudication on Impeachment

Notwithstanding that the respondent had publicly announced her intention to resign from the presidency in accordance with the National Assembly's decision, the National Assembly formed a special committee and conducted an investigation of state administration into suspicions that a civilian had intervened in state affairs, and on December 1, 2016, appointed a special prosecutor. On December 8, the National Assembly presented to the plenary session a 'motion for the impeachment of the President (Park Geun-hye),' proposed on December 3, 2016, by 171 National Assembly members including Woo ○-Ho, Park ○-Won and Roh ○-Chan. The motion to impeach the respondent passed with 234 members in the 300-seat National Assembly voting in favor, at the 18th plenary of the 346th session (regular session) on December 9, 2016. The impeachment prosecutor requested impeachment adjudication against the respondent by submitting the original copy of the impeachment resolution to the Constitutional Court pursuant to Article 49 Section 2 of the Constitutional Court Act.

C. Summary of the Grounds for the Impeachment Resolution

The petitioner requested adjudication of this case, claiming that the respondent had extensively and gravely violated the Constitution and law in performing duties, and included in the impeachment resolution five counts of violation of the Constitution and four counts of violation of the law.

(1) Violations of the Constitution

(A) The respondent divulged confidential information related to official duties to Choi ○-Won, and allowed Choi ○-Won and her relatives and close acquaintances (hereinafter referred to as "Choi ○-Won et al.") to intervene in national policies and the personnel affairs of high-ranking

public officials. The respondent also debased state authority into a means for pursuing personal interests, for instance by abusing her authority as President to make private companies donate tens of billions of Korean won, and to coerce them into giving favors to Choi ○-Won et al. This damages the essence of the principles of popular sovereignty and representative democracy, destroys the rule of law by running state affairs by rule of man, led by an unofficial organization, violates the provisions of the Constitution on the State Council, and violates the President's obligation to protect and observe the Constitution.

(B) The respondent appointed persons recommended by Choi ○-Won et al., or persons protecting them, as senior Cheong Wa Dae officials and the Minister and Vice Minister of the Ministry of Culture, Sports and Tourism, and enabled them to aid and abet or encourage the pursuit of personal gains by Choi ○-Won et al. The respondent also arbitrarily dismissed or transferred public officials that stood in the way of the personal interests of Choi ○-Won et al. This infringes on the essence of the professional civil servant system, is an abuse of the President's power to appoint and dismiss public officials, violates the principle of equality that prohibits unfair treatment in law enforcement, and leads to a waste of government funds.

(C) The respondent accepted bribes by coercing private companies to contribute money and goods, pressured them to give favors to Choi ○-Won et al., and interfered with the personnel affairs of their top executives. This infringes upon the property rights of enterprises and the freedom of occupation of individuals, is an abandonment of the obligation to protect basic human rights, destroys the order of the market economy and violates the President's obligation to protect and observe the Constitution.

(D) The respondent suppressed the media that reported on the abuse of authority of the unofficial advisers, or Choi ○-Won et al., and pressured the owner of a press agency into dismissing the president of a newspaper. This infringes upon the freedom of press and freedom of occupation.

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(E) The respondent, during the Sewol ferry disaster, failed to take active measures to protect the lives and safety of the people, thus violating the obligation to protect the right to life.

(2) Violations of the law

(A) Crimes related to the creation and funding of the Mir Foundation and K-Sports Foundation

Under the pretext of developing culture and the sports industry, the respondent decided to create foundations controlled by herself or Choi ○-Won et al. and receive money in the name of contributions from member companies of the FKI. The respondent ordered Ahn ○-Beom, the Senior Secretary to the President for Economic Affairs, to establish Mir and K-Sports by receiving contributions from companies through the FKI, while Choi ○-Won dominated the personnel affairs and operation of Mir and K-Sports by arranging the appointment of certain people to executive management, including the foundation's chair, through the respondent.

Through Ahn ○-Beom, the respondent compelled companies to contribute 48.6 billion Korean won to Mir, and 28.8 billion Korean won to K-Sports. Before the foundations were created, the respondent held one-on-one meetings with the chairs of seven business groups, and received material from Ahn ○-Beom containing information on the agendas these groups were faced with. Around the time the conglomerates paid their contributions to the foundations, the respondent implemented a number of measures favorable to the companies, including those involving their current priorities. Meanwhile, companies that were asked by Ahn ○-Beom to make contributions to the two aforementioned foundations did so for fear of being directly and indirectly disadvantaged in their overall business activities should they fail to comply.

Through such conduct, the respondent has committed a violation of the Act on the Aggravated Punishment, etc. of Specific Crimes (bribery),

and abuse of authority to obstruct the exercise of rights and coercion under the Criminal Act.

(B) Crimes related to additional contributions from Lotte Group

Choi ○-Won compelled companies to provide funds to K-Sports for a project it was leading, involving the establishment of sports facilities in five key venues nationwide, and sought to benefit by giving the construction rights of the aforementioned project to The Blue K Inc. (hereinafter referred to as “The Blue K”), a corporation she had founded. These business plans were delivered to the respondent. After a one-on-one meeting with Shin ○-Bin, chair of Lotte Group, the respondent ordered Ahn ○-Beom to check on the progress regarding Lotte Group’s decision on providing 7.5 billion Korean won for the construction of sports facilities in Hanam City. Under orders from Shin ○-Bin, Lotte Group mobilized six affiliates to remit 7 billion Korean won to K-Sports.

At this time, Lotte Group was bidding for a license for a duty-free store in downtown Seoul, and was under investigation by prosecutors for, inter alia, a dispute over management rights and slush funds. The respondent, by compelling Lotte Group to contribute money to K-Sports through the Senior Secretary to the President for Economic Affairs under such circumstances, has committed a violation of the Act on the Aggravated Punishment, etc. of Specific Crimes (bribery), and abuse of authority to obstruct the exercise of rights and coercion under the Criminal Act.

(C) Crimes related to the provision of favors to Choi ○-Won et al.

① Choi ○-Won was asked by acquaintance Moon ○-Kyung to arrange for a company run by her husband Lee ○-Wook, KD Corporation Inc. (hereinafter referred to as “KD Corporation”), to become a supplier to conglomerates. Thereupon, Choi ○-Won delivered material related to KD Corporation to the respondent, through Jeong ○-Seong. The

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respondent ordered Ahn ○-Beom to ascertain whether Hyundai Motor Company could adopt the technology of KD Corporation. Ahn ○-Beom delivered the respondent's orders to Chung ○-Koo and Kim ○-Hwan, chairman and vice chairman of Hyundai Motor Company, respectively, upon which Kim ○-Hwan ordered the contract manager to make Hyundai Motor Company and Kia Motors Corporation sign supply contracts with KD Corporation. Choi ○-Won also helped Lee ○-Wook join the business delegation that accompanied the respondent on her visit to France. In return for the successful arrangement of the supply contract, Lee ○-Wook gave Choi ○-Won money and goods worth 51.62 million Korean won. Through such conduct, the respondent has committed a violation of the Act on the Aggravated Punishment, etc. of Specific Crimes (bribery), and abuse of authority to obstruct the exercise of rights and coercion under the Criminal Act.

② Through Ahn ○-Beom, the respondent asked Kim ○-Hwan to allow Playground Communications Inc. (hereinafter referred to as "Playground"), founded by Choi ○-Won, to win advertising contracts for Hyundai Motor Company. Although it had already been settled that these contracts would be awarded to a Hyundai Motor Company affiliate, Kim ○-Hwan arranged for them to be given to Playground. As a result, Playground raised profits worth 918.07 million Korean won. Such conduct of the respondent constitutes abuse of authority to obstruct the exercise of rights and coercion under the Criminal Act.

③ Choi ○-Won prepared a project proposal related to the creation of a badminton team by POSCO Inc. (hereinafter referred to as "POSCO"), and the subsequent acquisition of the team's management rights by The Blue K for commercial gain. The respondent, in a one-on-one meeting with POSCO chairman Kwon ○-Joon, requested that POSCO found a women's badminton team, adding that The Blue K would be able to provide consultation. Upon the respondent's request, POSCO discussed this with the secretary-general of K-Sports and founded a fencing team under POSCO P&S, a POSCO affiliate, at the cost of 1.6 billion Korean won, and assigned the operation and management rights to The Blue K.

Such conduct of the respondent constitutes abuse of authority to obstruct the exercise of rights and coercion under the Criminal Act.

④ Through Ahn ○-Beom, the respondent requested that KT Inc. (hereinafter referred to as “KT”) hire Lee ○-Soo and Shin ○-Seong, and then that they be reassigned as chief director and assistant director in charge of advertising. The respondent then ordered Ahn ○-Beom to arrange for Playground to be chosen as KT’s advertising agency. Ahn ○-Beom asked KT chairman Hwang ○-Gyu and Lee ○-Soo to make KT award seven advertisement deals to Playground, upon which Playground was able to earn 516,696,500 Korean won in revenue. Such conduct of the respondent constitutes abuse of authority to obstruct the exercise of rights and coercion under the Criminal Act.

⑤ Through Jeong ○-Seong, Choi ○-Won asked the respondent to arrange for The Blue K and Grand Korea Leisure Inc. (hereinafter referred to as “Grand Korea Leisure”), a subsidiary of Korea Tourism Organization, to sign an agency service contract involving the establishment and management of a sports team. The respondent gave orders to Ahn ○-Beom to this effect, and Ahn ○-Beom asked Grand Korea Leisure CEO Lee ○-Woo to sign an agency service contract with The Blue K. Kim ○, Vice Minister of Culture, Sports and Tourism, also helped Grand Korea Leisure found a wheelchair fencing team and arranged for The Blue K to sign an athlete commission contract with Grand Korea Leisure in the capacity of an agent. Under the pretext of an agency commission, The Blue K received 30 million Korean won, which was half of the money given by Grand Korea Leisure to the athletes as an exclusive contract fee. Such conduct of the respondent constitutes abuse of authority to obstruct the exercise of rights and coercion under the Criminal Act.

(D) Crimes related to the disclosure of documents and divulgence of classified information acquired in the performance of official duties

The respondent delivered to Choi ○-Won, via email or by hand, 47

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documents containing classified information related to official duties, including a document titled, “Additional Candidate Venues for the Sports Facilities Complex (draft).” Such conduct of the respondent constitutes the divulgence of official secrets under the Criminal Act.

II. Subject Matters of Review

The subject matters of review in this case are as to whether the President violated the Constitution or law in the course of performing her duties and whether the President should be removed from office by order of the Constitutional Court.

III. Proceedings of the Adjudication

(1) The Constitutional Court adjudicated this case applying the Constitutional Court Act, the Constitutional Court Adjudication Rules, and laws and regulations relating to criminal litigation *mutatis mutandis*, to the extent that they do not conflict with the nature of the adjudication on impeachment. From when this case was first filed until when the oral arguments were concluded on February 27, 2017, the Constitutional Court proceeded with three pretrial conferences and 17 oral arguments, and examined the evidence set forth in the process. The documentary evidence that was admitted from among Documents A-1 to A-174 submitted by the petitioner and Documents B-1 to B-60 submitted by the respondent were examined. The Court interrogated three witnesses called upon by both the petitioner and the respondent (Choi ○-Won, Ahn ○-Beom, Jeong ○-Seong), nine witnesses called upon by the petitioner (Yoon ○-Chu, Lee ○-Seon, Ryu ○-In, Cho ○-Il, Cho ○-Kyu, Yoo ○-Ryong, Jeong ○-Sik, Park ○-Young, Roh ○-Il) and 14 witnesses called upon by the respondent (Kim ○-Ryul, Kim ○, Cha ○-Taek, Lee ○-Cheol, Kim ○-Hyun, Yoo ○-Bong, Mo ○-Min, Kim ○-Deok, Jo

○-Min, Moon ○-Pyo, Lee ○-Woo, Jeong ○-Chun, Bang ○-Seon, Ahn ○-Beom), and Ahn ○-Beom appeared twice to testify. In addition, a total of 19 counts of inquires were made, once by official authority, once at the request of the petitioner, and 17 at the request of the respondent; 70 institutions and companies provided responses. The final decision on this case, as seen here, is drawn from admissible facts based on legally examined evidence.

(2) At the pretrial conference, the Constitutional Court categorized the issues of this case into intervention in state affairs by Choi ○-Won and abuse of presidential authority; infringement of the freedom of press; violation of the duty to protect the right to life; and numerous violations of the Criminal Act including the acceptance of bribes. The petitioner, in a brief submitted on February 1, 2017, organized the grounds for impeachment into specific categories based on facts, and in the process, simplified the categorization by placing the numerous violations of the Criminal Act including the acceptance of bribes under the category of intervention in state affairs by Choi ○-Won and abuse of presidential authority.

IV. Review of Legal Prerequisites

A. Whether the Grounds for Impeachment Have Been Specified

(1) The respondent claims that the impeachment resolution is not justiciable. The argument is that although Article 254 Section 4 of the Criminal Procedure Act on specifying facts charged applies *mutatis mutandis* to the impeachment adjudication procedure - which means that the facts pertaining to the grounds for impeachment should be specified in detail - the facts charged in the impeachment resolution are vague and do not specify the time and date, place, method and nature of the acts.

Adjudication on impeachment is a constitutional procedure that protects the constitutional order by depriving high-ranking public officials of their

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authority when they abuse that authority to violate the Constitution or law (2004Hun-Na1, May 14, 2004). A decision on impeachment shall not extend further than removal from public office, although this does not exempt the person impeached from criminal liability (Article 65 Section 4 of the Constitution). Thus, the impeachment adjudication procedure differs in nature from criminal procedures or general disciplinary procedures. The ground for impeachment as provided by Article 65 Section 1 of the Constitution is the fact that ‘a public official has violated the Constitution or other Acts in the performance of official duties,’ and the Acts provided here are not limited to the Criminal Act. It is often the case that the provisions of Acts other than the Criminal Act, not to mention those of the Constitution, are not as specific and clear as the Criminal Act. Thus, the grounds for impeachment cannot be required to be specified in the manner of facts charged under the Criminal Procedure Act. It is sufficient for the impeachment resolution to list facts in detail to the extent that the respondent can exercise the right to defend herself, and that the Constitutional Court can determine the subject matters of review. In the case of disciplinary action imposed on public officials, when specifying the grounds for disciplinary action, it is sufficient for the misdeed in question to be distinguishable from other facts (Supreme Court Decision 2004Du14380, March 24, 2005). Therefore, it is sufficient for the grounds for impeachment to be stated in specific circumstances to the extent that they can be clearly distinguished from other facts. It is true that to a certain degree, the grounds for impeachment are not distinctly classified by category in the part of the impeachment resolution pertaining to acts in violation of the Constitution, since it is not centered on the articulation of facts. However, when considered together with the acts in violation of law, the aforementioned grounds for impeachment are detailed enough to be clearly distinguishable from the other grounds for impeachment.

At the pretrial conference, the Constitutional Court, with the consent of both parties, organized the grounds for impeachment into five fact-based categories: ① violation of the principle of popular sovereignty

and rule of law by running state affairs by rule of man, led by an unofficial organization; ② abuse of presidential authority; ③ infringement of the freedom of press; ④ violation of the duty to protect the right to life; and ⑤ numerous violations of the Criminal Act including the acceptance of bribes. In the pleadings that followed, the petitioner and respondent presented their arguments and evidence in accordance with these categories. At the 10th pleading on February 1, 2017, the petitioner reorganized the grounds for impeachment into four categories: ① violation of the principle of popular sovereignty and rule of law by running state affairs through an unofficial organization, including Choi ○-Won et al.; ② abuse of presidential authority; ③ infringement of the freedom of press; and ④ violation of the duty to protect the right to life and to faithfully execute duties, removing the category listing the numerous violations of the Criminal Act, the facts of which would be redundant under the other categories. The respondent proceeded with the pleadings without raising any objection against the petitioner's reorganization of the categories of the grounds for impeachment until the 16th pleading on February 22, 2017, at which the respondent began claiming that the request for adjudication in this case lacked several counts of legal prerequisites, arguing to the effect that the grounds for impeachment had not been specified and that the petitioner's reorganization of the grounds for impeachment was illegal. However, it was not difficult to specify the grounds for impeachment since the detailed facts were provided in the impeachment resolution, and both parties had already held 15 rounds of pleadings after agreeing to the organization of the categories of the grounds for impeachment at the pretrial conference. Judging by these facts, the respondent's claim that the grounds for impeachment have not been specified cannot be accepted.

The part concerning the divulgence of official secrets among the grounds for impeachment in the impeachment resolution merely provides the fact that 47 documents containing classified information related to official duties, including the document titled, "Additional Candidate

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Venues for the Sports Facilities Complex (draft),” was delivered to Choi ○-Won, and fails to specify the explicit details of the 47 documents. However, in the indictment against Jeong ○-Seong, attached as evidence to the impeachment resolution, the details of the 47 documents are provided in the part, ‘crime of collusion between Jeong ○-Seong and the President to divulge official secrets.’ Furthermore, the petitioner and respondent proceeded with 15 rounds of pleadings under the assumption that the 47 documents mentioned in the impeachment resolution were equivalent to the 47 documents provided in the evidence, which means that the respondent sufficiently exercised the right to defend herself against this ground for impeachment. The petitioner also supplemented the details of the 47 documents in a brief submitted on January 13, 2017. Thus, it cannot be said that this ground for impeachment is nonjusticiable for being unspecified just because the list of the 47 documents was not attached to the impeachment resolution itself.

(2) The respondent claims that the impeachment resolution is nonjusticiable, for the grounds for impeachment and the violated provisions under the Constitution or law that apply thereto are listed in a complex manner, making it impossible to specify which laws each ground for impeachment has violated.

In principle, the Constitutional Court is bound by the grounds for impeachment stated in the National Assembly’s impeachment resolution, and thus no other grounds for impeachment except those stated in the impeachment resolution constitute the subject matter to be adjudicated. However, the Constitutional Court is not bound with regard to the ‘determination on legal provisions,’ the violation of which is alleged in the impeachment resolution. Therefore, the Constitutional Court may determine the facts that led to the impeachment based on legal provisions other than those which the petitioner alleges have been violated. Further, when determining the grounds for impeachment the Constitutional Court is not bound by the structure of the grounds for impeachment as categorized by the National Assembly in its impeachment resolution. Therefore, the question as to under which associative

relationship the grounds for impeachment are legally examined is entirely up to the determination of the Constitutional Court (2004Hun-Na1, May 14, 2004). Thus, the respondent's claim in this regard cannot be accepted.

(3) The respondent claims that the brief submitted by the petitioner on February 1, 2017, is an addition or alteration to the grounds for impeachment, and that it cannot become a subject matter for review since it was not voted on by the National Assembly as part of the impeachment resolution.

After the National Assembly has requested adjudication on impeachment, a ground for impeachment is prohibited from being added or altered to the extent that it cannot be admitted as the equivalent to its original form, without being subjected to a separate vote. Therefore, among the grounds for impeachment laid out in the brief submitted by the petitioner on February 1, 2017, parts that may be interpreted as additional or altered grounds for impeachment that are not provided in the impeachment resolution are excluded from the scope of determination in this case.

B. Whether the Voting Procedure of the National Assembly Was Illegal

(1) The National Assembly voted to undertake an investigation of state administration and investigation by a special prosecutor to collect the evidence required for voting on the impeachment motion. The respondent claims that the vote on the motion for impeachment in this case is illegal for, notwithstanding that an impeachment resolution against the President should be based on facts that are backed by objective investigation and evidence, the National Assembly voted on the impeachment motion without referring to the outcomes of those investigations or carrying out an investigation by the Legislation and Judiciary Committee, and instead using the prosecution's indictment and newspaper articles reporting on suspicions as the only evidence.

It is no doubt desirable for the National Assembly to thoroughly

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investigate the grounds for impeachment prior to introducing a resolution to impeach the President. However, the self-regulating authority of the deliberative process of the National Assembly should be respected under the doctrine of separation of powers, as long as it is not marked by any clear violation of the Constitution or law. Furthermore, Article 130 Section 1 of the National Assembly Act prescribes that as to whether to investigate the grounds of a proposed impeachment bill is at the discretion of the National Assembly. Therefore, the fact that the National Assembly did not perform a separate investigation into the grounds for impeachment, or that it voted on the impeachment motion without waiting for the results of its investigation of state administration or the investigation results of the special prosecutor, does not mean that the vote was in violation of the Constitution or law (2004Hun-Na1, May 14, 2004). Thus, the respondent's claim in this regard cannot be accepted.

(2) The respondent claims that the resolution on the impeachment in this case is illegal for proceeding without any debate.

Given the gravity of an impeachment resolution, it is indeed desirable that sufficient discussions for and against the resolution precede the vote. However, the National Assembly Act does not explicitly prescribe that a debate is required before an impeachment motion is put to vote. Further, under Article 106 of the National Assembly Act, any National Assembly member who desires to debate an agenda presented to the plenary session can do so after notifying the Speaker in advance of his or her opposition or support thereof. In this case, however, no National Assembly member wished to debate the vote for impeachment, which was why the vote proceeded after an explanation of the proposal for the impeachment motion, without involving any debate. The Speaker did not intentionally prevent or hinder any National Assembly member from engaging in a debate against his or her wishes. Thus, the respondent's claim in this regard cannot be accepted.

(3) The respondent claims that each of the grounds for impeachment constitutes an independent ground for impeachment and should therefore be separately voted on, and that the National Assembly has violated the

Constitution by voting on the several grounds for impeachment as a single motion.

Whether each ground for impeachment in the motion should be separately proposed or whether the grounds should be proposed as a single motion is at the discretion of the National Assembly members proposing the motion for impeachment. If there have been a number of violations of the Constitution or law by the President and just one of those violations is deemed sufficient to justify removal from office, then that single ground can serve as the basis for proposing a motion for impeachment. Likewise, if the combination of the grounds for impeachment is deemed sufficient to justify removal from office, then the numerous grounds can be integrated and proposed under a single motion for impeachment.

If 171 National Assembly members, the majority of members on the register, prepare a single motion including several grounds for impeachment, and it is proposed and presented to the plenary session without being amended as in this case, then that motion for impeachment can be voted on. In taking a vote on a bill presented to the plenary session, the Speaker only has the right to ‘declare the title of the matter to be voted on’ (Article 110 Section 1 of the National Assembly Act), and cannot *ex officio* separate the individual grounds for impeachment provided in the motion in this case, convert them into a number of motions for impeachment and put each of them to vote. Thus, the respondent’s claim in this regard cannot be accepted.

(4) The respondent claims that the impeachment resolution in this case has violated the principle of due process since the National Assembly, when voting on the motion for impeachment, did not notify the respondent of the alleged facts nor provide the respondent with an opportunity to submit her opinions.

The impeachment procedure concerns the relationship between two constitutional institutions, the National Assembly and the President, and the impeachment resolution of the National Assembly merely suspends the exercise of the authority vested in the President as a state institution

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and does not infringe upon the basic rights of the President as a private individual. Therefore, the due process principle, formed as a legal principle that should be observed in the exercise of governmental power by a state institution on its citizens, cannot be directly applied to an impeachment procedure that is designed to protect the Constitution against a state institution (2004Hun-Na1, May 14, 2004). Furthermore, there was no occasion on which the National Assembly, in the course of the impeachment proceedings, refused to provide the respondent with an opportunity to state her opinions when she requested to do so. Thus, the respondent's claim in this regard cannot be accepted.

C. Whether or Not Adjudication on Impeachment Can Be Undertaken by Eight Justices

The respondent claims that, due to the current vacancy of one Justice of the Constitutional Court, while the case can be reviewed under Article 23 of the Constitutional Court Act, adjudication on impeachment cannot be undertaken by only eight Justices, and therefore, the adjudication of eight Justices is an infringement of the respondent's 'right to a fair trial by the Full Bench composed of nine Justices.'

Sections 2 and 3 of Article 111 of the Constitution provide that the Constitutional Court shall be composed of nine Justices in total; three appointed by the President, three selected by the National Assembly, and three nominated by the Chief Justice of the Supreme Court. Thus, given that the Constitutional Court is equally composed of the judicial, legislative and administrative branches, it is clear that in principle, a constitutional adjudication should be assigned to the Full Bench consisting of nine Justices.

In reality, however, on certain occasions Justices will inevitably be unable to participate in trials for various reasons including official travel, illnesses, or time differences between the retirement of a Justice and the appointment of a new Justice. If a constitutional adjudication is deferred every time such a vacancy arises, the Constitutional Court will suffer a

severe limitation in its function of safeguarding the Constitution. Thereupon, the Constitution and the Constitutional Court Act clearly provide that a case can be reviewed and decided on with the attendance of at least seven Justices notwithstanding a vacancy or vacancies, to prevent any interruption in the role of the Constitutional Court to protect the Constitution. Article 113 Section 1 of the Constitution provides that when the Constitutional Court makes a decision as to the unconstitutionality of a law, a decision of impeachment, a decision of the dissolution of a political party or an affirmative decision regarding a constitutional complaint, the concurrence of at least six Justices is required. Further, Article 23 Section 1 of the Constitutional Court Act prescribes that the Full Bench shall review a case by and with the attendance of seven or more Justices, while Article 36 Section 2 of the same Act prescribes that the written decision shall be signed and sealed by all the Justices ‘participating in the adjudication.’

If the case in question does not urgently require a decision, it could be desirable to wait until any vacancy that has arisen is filled and nine Justices can participate in the adjudication. However, under Article 65 Section 3 of the Constitution, the President is suspended from exercising power once a motion for his or her impeachment has been passed. Under the current circumstances where a vacancy has occurred due to the retirement of the President of the Constitutional Court, whose term had expired, there is controversy over whether the Prime Minister, who is the Acting President, can appoint the successor. Political parties within the National Assembly are divided on this matter, and the appointment of the President of the Constitutional Court is currently completely suspended in accordance with the view that the Acting President cannot assume this responsibility. The current situation, in which the President has been suspended from exercising power and the scope of authority that can be exercised by the Acting President is being debated, is a serious constitutional crisis. Moreover, in accordance with the view that the Acting President cannot appoint the President of the Constitutional Court, there is no way to compose the Full Bench with nine Justices by

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filling in the vacancy that has arisen due to the expiration of the term of the President of the Constitutional Court.

Thus, that the vacancy of one Justice has caused the Bench to consist of eight Justices presents no issue under the Constitution or law in reviewing and deciding on an impeachment trial. Furthermore, given the realistic constraints under which the current constitutional crisis cannot simply be neglected until a new President of the Constitutional Court is appointed, there is no alternative but for the current Full Bench, composed of eight Justices, to adjudicate this case. The concurrence of at least six Justices is required to validate a decision of impeachment, and the vacancy of one Justice has the same effect as the corresponding vote being cast against the impeachment. Thus, the respondent's right to a fair trial has not been infringed upon, for the vacancy of a Justice would actually work in favor of the respondent. Thus, the respondent's claim in this regard cannot be accepted.

V. Requirements for Impeachment

A. Violation of the Constitution or Law in Performing Official Duties

The Constitution provides that the ground for impeachment is the 'violation of the Constitution or other laws,' and by giving the Constitutional Court jurisdiction over adjudication on impeachment, prescribes that the impeachment procedure is normative, and not political. The purpose of the impeachment system is to realize the principle of the rule of law which prescribes that nobody is above the law, and to protect the Constitution. The considerable political chaos that may occur by removing a President elected by the public from office should be deemed an inevitable cost of democracy paid by the nation in order to protect the basic order of liberal democracy.

Article 65 of the Constitution provides that the ground for

impeachment is a ‘violation of the Constitution or other laws in the performance of official duties’ committed by the President. The ‘official duties’ as provided here mean the duties that are inherent in particular governmental offices as provided by law and other duties related thereto as commonly understood, and thus is a concept that includes not only acts based on law, but also all of those performed by the President in his or her office with respect to the implementation of state affairs. The ‘Constitution’ includes the unwritten constitution formed and established by the precedents of the Constitutional Court as well as the express constitutional provisions. ‘Other laws’ include not only statutes in their formal context, but also, inter alia, international treaties that have the same force as statutes and international law that has been generally accepted (2004Hun-Na1, May 14, 2004).

B. Gravity of the Violation of the Constitution or Law

Article 53 Section 1 of the Constitutional Court Act provides that the Constitutional Court shall pronounce a decision that the respondent be removed from office ‘when there is a valid ground for the petition for impeachment adjudication.’ As the decision to remove a President from office would deprive the democratic legitimacy delegated to the President by the national constituents through an election during his or her term in office, it may bring about significant national loss such as an interruption in state affairs and political chaos, which is why the decision must be made with discretion. Therefore, for the impeachment of a President to take place, the benefits of upholding the Constitution by removing the President from office on account of the severity of the negative impact on or harm to the constitutional order caused by the President’s violation of law, should overwhelmingly outweigh the national loss incurred by the removal of the President from office. That is, ‘the existence of a valid ground for the petition for impeachment adjudication’ means the existence of a grave violation of the Constitution

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or law sufficient to justify the removal of the President from office.

The decision as to whether the gravity of a violation of the Constitution or law is sufficient to justify the removal of the President from office can be made from the perspective that impeachment adjudication proceedings are a system designed to protect the Constitution, and that the decision to remove a President from office deprives that President of the public trust vested in him or her. From the standpoint that the impeachment adjudication proceedings are a procedure ultimately dedicated to protecting the Constitution, a decision to remove the President from office may be justified only when the President's violation of the law holds such significance in terms of safeguarding the Constitution to the extent that a removal from office is requested to restore the impaired constitutional order. Meanwhile, from the standpoint that the President is a representative institution in which the public has directly vested democratic legitimacy, a valid ground for impeaching the President can only be found when the President, by violating the law, has betrayed the public's trust to the extent that such public trust vested in the President should be forfeited before the presidential term ends (2004Hun-Na1, May 14, 2004).

C. Order of Review

This case will review whether the respondent has violated the Constitution or law in performing official duties by examining: (1) whether a private individual was permitted to intervene in state affairs and whether the authority of the President was abused; (2) whether the power to appoint and dismiss public officials was abused; (3) whether the freedom of press was infringed upon; and (4) whether the duty to protect the right to life was violated, in this order. This will be followed by a review as to whether, if the violations of law are acknowledged, those violations are sufficiently grave to justify removing the respondent from office.

VI. Whether a Private Individual Was Permitted to Intervene in State Affairs and Whether the Authority of the President Was Abused

A. Background

The respondent was born as the first daughter of former President Park Chung-Hee and former First Lady Yook Young-Soo, and was the acting First Lady after Yook Young-Soo died on August 15, 1974, until Park Chung-Hee died on October 26, 1979. Around the time of the death of Yook Young-Soo, the respondent became acquainted with Choi ○-Min, who was the president of the National Salvation (Daehan Guguk) Mission, and was made honorary president of the mission. The respondent continued to work with Choi ○-Min for a long time, appointing him as an adviser for the Yookyoung Foundation after she took office as the foundation's chairperson of the board in 1982. The respondent also maintained a relationship with Choi ○-Min's daughter, Choi ○-Won, arranging for a kindergarten run by Choi ○-Won to become a sister school with the Yookyoung Foundation's Korean Children's Center, and receiving assistance from Choi ○-Won with regard to her personal matters.

The respondent began her political career in 1997, when she joined the Grand National Party (GNP) and supported then GNP presidential candidate Lee ○-Chang, who was running for the 15th presidential election. She was elected as a National Assembly member for Dalseong-Gun, Daegu, in the special election held on April 2, 1998. After the respondent's political career was launched, Jeong ○-Hoe, who was Choi ○-Won's husband, led the team that assisted the respondent, and was referred to as the respondent's chief of staff. Jeong ○-Seong, Lee ○-Man, Ahn ○-Geun, and Lee ○-Sang (who died in 2012) served as the respondent's team of staff when the respondent ran for the special election, and served as the respondent's aide or secretary when she was a National Assembly member.

After the respondent was elected as President on December 19, 2012,

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Jeong ○-Seong, Lee ○-Man and Ahn ○-Geun joined the Presidential Transition Committee, and after the respondent took office, served as secretaries in the Office of the President. While in office as President, the respondent received most reports in writing, instead of in face-to-face meetings with the relevant public official, except in the case of official meetings. Jeong ○-Seong, Lee ○-Man and Ahn ○-Geun were also called the ‘doorknob trio,’ alluding to the fact that they had dominated the reporting and communication channels linked to the respondent. Jeong ○-Seong, in particular, was in charge of organizing and reporting most of the documents addressed to the respondent, serving as the ‘First Personal Secretary to the President’ after the respondent took office, and as the ‘Personal Secretary to the President’ after January 23, 2015, when the first and second personal secretarial offices merged.

The respondent continued to hold personal meetings with Choi ○-Won at the Presidential residence after taking office. Choi ○-Won consistently contacted several of the respondent’s aides including Jeong ○-Seong on a mobile phone registered to a borrowed name, checking on the respondent’s schedule and preparing suitable outfits. Several of the respondent’s aides provided the various conveniences necessary for the respondent and Choi ○-Won to meet privately, for instance by using an official Cheong Wa Dae car to bring Choi ○-Won to the presidential residence so she could come and go freely without having to undergo the identification procedure.

B. Orders and Tacit Approval to Divulge Documents on State Affairs

After taking office as President, the respondent worked in a manner that minimized face-to-face reports and orders, by receiving reports in writing and giving orders over the telephone except in the case of official meetings. Most of the documents reported to the respondent were collected and organized by Jeong ○-Seong before being conveyed. Among the documents being reported to the respondent, Jeong ○-Seong emailed or hand-delivered to Choi ○-Won several documents on state

affairs, related to information on personnel affairs, reports on various pending issues and policies, speeches or talking points required for making statements at meetings, and the official schedule of the respondent. Choi ○-Won has admitted that she received and read documents on state affairs delivered to her by Jeong ○-Seong. In the case of some documents, the respondent checked with Jeong ○-Seong whether Choi ○-Won had given her opinions, and ordered that these opinions be reflected without fail.

When being examined by the prosecution for allegedly disclosing official secrets, Jeong ○-Seong testified to the effect that the divulgence of documents was on the whole in accordance with the respondent's will; that under the general orders of the respondent, most speeches and talking points were delivered to Choi ○-Won, while reports and reference data were delivered when necessary, and the document on the appointment of public officials was also delivered because the respondent had asked for Choi ○-Won's opinions. Jeong ○-Seong was indicted on November 20, 2016, for divulging official secrets by delivering to Choi ○-Won 47 documents containing secrets related to official duties from around January 2013 to April 2016, and is being tried in criminal proceedings at the Seoul Central District Court. The prosecution, concluding that Jeong ○-Seong had divulged official secrets at the order of the respondent, wrote in the indictment that the respondent and Jeong ○-Seong colluded in divulging official secrets classified by law.

In her first public address on October 25, 2016, the respondent stated, "Choi ○-Sil is a friend who helped me in difficult times, and shared her personal opinions or thoughts on how my election campaign was being communicated to the public during the presidential election, mostly regarding speeches or publicity. In line with this, I received her assistance regarding expressions in some speeches or publicity documents. I did listen to her opinion on some material for a certain period after I took office, but this stopped after the Cheong Wa Dae secretarial office was fully staffed." The respondent is also claiming in the course of this adjudication that although she heeded Choi ○-Won's

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opinion to make expressions in her speeches clear and comprehensible to the general public, she did not order that documents other than speeches or talking points be sent to Choi ○-Won, for instance documents on personnel affairs or policy reports.

However, in November 2014, the press reported that Jeong ○-Hoe, the former husband of Choi ○-Won, was intervening in state affairs together with several Cheong Wa Dae secretaries, and at the time suspicions were raised that confidential Cheong Wa Dae documents had been leaked to the public. Jeong ○-Seong stated to the prosecution that, around that time, he suggested to the respondent that, “Given the circumstances, it would be best to stop sending Choi ○-Won documents for her opinion,” and the respondent agreed. Meanwhile, Cha ○-Taek, who was appointed as a member of the Presidential Committee for Cultural Enrichment at the recommendation of Choi ○-Won, testified that around April 2015 he had written down some phrases using companies Samsung, Google, and Alibaba as examples when he was explaining the concept of the creative convergence of culture to Choi ○-Won, and that the same phrases were used by the respondent at a Cheong Wa Dae meeting. It has also been acknowledged that, as further specified below, in the course of establishing Mir and K-Sports from approximately February 2015 to January 2016, documents prepared by Choi ○-Won regarding the names, office locations and list of executives of the foundations were delivered to the respondent. Meanwhile, information from reports addressed to the respondent on the foundations’ establishment was also delivered to Choi ○-Won. It can be deduced from these facts that the respondent, for more than two years after taking office, delivered documents such as speeches to Choi ○-Won and listened to her opinions. Thus, the respondent’s claims that she listened to Choi ○-Won’s opinions only until the Cheong Wa Dae secretarial staff was fully established do not accord with the objective facts.

Jeong ○-Seong also stated to the prosecution that aside from various speeches, he had delivered to Choi ○-Won, at the order of the respondent, documents related to several personnel affairs, including

personnel plans for the Chairman of the Board of Audit and Inspection and for the second deputy director and the executive director of the National Intelligence Service, and appointment plans for 21 Vice-Minister-level officials, a report from the office of the Senior Secretary to the President for Civil Affairs reviewing whether to accept the results of judicial mediation, and documents containing instructions for senior secretaries. While working as a Cheong Wa Dae Secretary, Jeong ○-Seong delivered numerous classified documents to Choi ○-Won, not only those containing speeches or talking points but also those containing schedules for the President's visits abroad, among others. The leaking of so many documents for such a long period from Cheong Wa Dae, where security is strictly enforced, would have been impossible without the orders and tacit approval of the respondent. Meanwhile, upon receiving beforehand the classified schedules of the President's visits abroad through Jeong ○-Seong, Choi ○-Won decided what the respondent would wear, and imposed her advice on revising plans for cultural events that had been prepared for the visits. Given that Choi ○-Won knew the details of the respondent's schedules of visits abroad and advised thereon, and that this input was accommodated by the respondent, it is unreasonable to say that the respondent was completely oblivious of the fact that relevant documents or information had been delivered to Choi ○-Won. In light of these circumstances, it is also hard to believe the respondent's claim that her orders to send documents to Choi ○-Won were limited to talking points, and did not include those containing information on personnel affairs or policy reports.

Choi ○-Won gave her opinion on the documents she received through Jeong ○-Seong or returned them after personally making revisions, and based on the information she had gathered, intervened in official duties, for instance by making adjustments to the respondent's schedule. Through access to reports on the pending issues or policies of administrative branches or the Office of the President, Choi ○-Won was able to acquire, in advance, information on the interests of the respondent,

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the policy directions of the government, or the personnel affairs of high-ranking public officials. Drawing from such information, Choi ○-Won pursued personal interests by getting involved in the appointment of public officials and intervening in the establishment and operation of Mir and K-Sports, and was consequently indicted on charges including abuse of authority to obstruct the exercise of rights.

C. Appointment of Public Officials Recommended by Choi ○-Won

The respondent appointed a number of people recommended by Choi ○-Won as public officials. Choi ○-Won's recommendations to the respondent included candidates for key public official positions in the culture and sports sectors. As further specified below, Choi ○-Won pursued interests by creating Mir and K-Sports, arranging for these two foundations to undertake government-funded projects, and making companies under her management win contracts for those projects. Several of the public officials recommended by Choi○-Won assisted her in seeking such interests.

On October 29, 2013, at the recommendation of Choi ○-Won, the respondent appointed Kim ○, Professor of Sports Industry at Hanyang University, as Second Vice Minister of Culture, Sports and Tourism. After taking office as Second Vice Minister, Kim ○ readily cooperated with Choi ○-Won, sending her classified documents on sports sector issues and policies belonging to the Ministry of Sports, Culture and Tourism, and reflecting her demands in policies.

At the recommendation of Choi ○-Won, around August 2014, the respondent appointed Cha ○-Taek, who was running an advertising agency, as a member of the Presidential Committee for Cultural Enrichment. Choi ○-Won was also influential in helping Cha ○-Taek take office as the head of the Creative Economy Initiative, a public-private partnership, and the head of the Creative Center for Convergence Culture, around April 2015. Cha ○-Taek recommended, to Choi ○-Won, his acquaintance to an executive position at Mir, and they

both actively cooperated with Choi ○-Won's pursuit of personal interests, managing Mir in accordance with Choi ○-Won's demands. At the recommendation of Choi ○-Won, the respondent appointed Kim ○-Deok, Cha ○-Taek's former professor, as Minister of Culture, Sports and Tourism on August 20, 2014, and Kim ○-Ryul, Cha ○-Taek's maternal uncle, as Senior Secretary to the President for Education and Culture on November 18, 2014.

D. Regarding KD Corporation

Lee ○-Wook, CEO of KD Corporation, asked Choi ○-Won to arrange for his company to become a supplier to Hyundai Motor Company, upon which Choi ○-Won delivered material related to KD Corporation to the respondent through Jeong ○-Seong. Around November 2014, the respondent ordered Ahn ○-Beom to ascertain whether Hyundai Motor Company could adopt the newly developed technology of KD Corporation, a small and medium-sized enterprise (hereinafter referred to as "SME"). On the day of the respondent's meeting with Hyundai Motor Company chairman Chung ○-Koo on November 27, 2014, Ahn ○-Beom delivered the respondent's orders to Kim ○-Hwan, the vice chairman who had accompanied the chairman, and requested that Hyundai Motor Company sign a deal with KD Corporation.

KD Corporation was unknown to Hyundai Motor Company, to the extent that Kim ○-Hwan had to double-check the name and contact number of the company with Ahn ○-Beom. Nonetheless, KD Corporation signed a negotiated contract with Hyundai Motor Company without undergoing product testing and bidding, the procedure usually included in the selection of trading partners, and supplied products to Hyundai Motor Company from approximately February 2015 to September 2016. Ahn ○-Beom checked on the progress regarding the contract between Hyundai Motor Company and KD Corporation and reported this to the respondent. In return for arranging for KD Corporation to supply its goods to Hyundai Motor Company, Choi ○

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-Won received money and goods worth over 10 million Korean won from Lee ○-Wook.

The prosecution indicted Choi ○-Won and Ahn ○-Beom, holding that the act of arranging for Hyundai Motor Company to sign a product supply contract with KD Corporation constituted abuse of authority to obstruct the exercise of rights and coercion. The indictment states that the respondent colluded with Choi ○-Won and Ahn ○-Beom to abuse the authority of the President and the Senior Secretary to the President for Economic Affairs, and forced Kim ○-Hwan, vice chairman of Hyundai Motor Company, to enter into a supply contract under duress, although under no obligation.

E. Regarding Mir and K-Sports

(1) Orders to create a foundation related to culture and sports

Around February 2015, the respondent ordered Ahn ○-Beom to look into creating a foundation related to culture and sports. Ahn ○-Beom delivered the instructions of the respondent to a secretary on his staff, whereupon a brief report was drafted, outlining plans to create a non-profit foundation supported by the contributions of conglomerates, and for this foundation to undertake projects funded by the government.

At a luncheon event commemorating the 20th anniversary of the Korea Mecenat Association, held on February 24, 2015, the respondent asked chairs of conglomerates who were attending to invest aggressively in culture and sports. In July 2015, the respondent instructed Ahn ○-Beom to set up individual meetings with the chairs of these conglomerates. Ahn ○-Beom settled the dates for meetings with the chairs of seven conglomerates, and prepared and reported to the respondent papers that outlined the priorities of each company. On the 24th and 25th of July 2015, the respondent held individual meetings with chairs of seven conglomerates, which included Samsung, Hyundai Motor Company, SK, LG, CJ, Hanhwa and Hanjin. At these meetings, the respondent listened

to the challenges faced by each company and their investment situations, at the same time stressing the necessity to create a foundation related to culture and sports, and asking for the required support.

After the individual meetings with the conglomerate chairs, the respondent ordered Ahn ○-Beom to proceed with establishing the foundation, saying that contributions of approximately 3 billion Korean won from around 10 conglomerates would make it possible to create a cultural foundation and sports foundation worth 30 billion Korean won. Around August 2015, Ahn ○-Beom asked FKI vice chairman Lee ○-Cheol to make the FKI collect contributions from conglomerates and undertake the establishment of a foundation worth 30 billion Korean won. However, the FKI and the conglomerates that had received requests from the respondent did not immediately proceed with creating the foundation, since they had only been asked to cooperate with its establishment and had not received any further specific requests.

Before the FKI had fully launched its plans to create a foundation, Choi ○-Won was already aware of the plans and upon the recommendation of Cha ○-Taek, met with Kim ○-Su, Lee ○-Han, Lee ○-Sang and Jang ○-Gak around the end of September 2015 and chose them as the executive team of the cultural foundation. Cha ○-Taek testified that about two months before Mir was established, Choi ○-Won asked him to introduce some trustworthy people in the cultural sector, upon which he introduced Kim □-Hyun, Kim ○-Tak, Lee ○-Han, Lee □-Seon and Jeon ○-Seok, and that Choi ○-Won had mentioned how a cultural foundation was soon to be established. Cha ○-Taek also stated that about a month since then, Choi ○-Won asked him to recommend board members for the foundation, upon which he recommended Kim ○-Hwa, Kim ○-Won, Jang ○-Gak, Lee □-Seon et al. Choi ○-Won and Ahn ○-Beom are claiming that they did not know each other and no evidence has been found to prove that they had been in contact. That Choi ○-Won knew in advance, nevertheless, that a culture-related foundation was to be created at the order of the respondent, makes it highly possible that the respondent told her of such plans beforehand.

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(2) Establishment of Mir

Around October 19, 2015, the respondent ordered Ahn ○-Beom to hasten the establishment of the foundation, so that a Memorandum of Understanding between the cultural foundations of Korea and China could be concluded in late October when Chinese Premier Li Keqiang visited Korea. Ahn ○-Beom immediately instructed Lee ○-Cheol and Choi ○-Mok, Secretary to the President for Economy and Financial Affairs, to establish a cultural foundation worth 30 billion Korean won. Every day from the 21st through the 24th of October 2015 at Cheong Wa Dae, Choi ○-Mok discussed the procedures for creating the foundation in meetings held with the FKI staff and public officials from the relevant ministries.

Around October 21, 2015, the respondent ordered Ahn ○-Beom to name the foundation ‘Mir,’ informing him of the foundation’s list of executives including the chair, and gave him materials such as the resumes of the executive officers and the foundation logo. No secretary from the Office of the President or government official was found to have delivered such material to the respondent, and the respondent has not revealed from whom or how she obtained this material. Judging by the fact that, as shown above, Choi ○-Won had interviewed and picked the executive team of the foundation in advance, it can be assumed that such material was handed over from Choi ○-Won to the respondent.

In accordance with the respondent’s orders to create, without fail, the cultural foundation by the end of October, the secretarial staff of the Office of the President including Choi ○-Mok, public officials from the relevant ministries and FKI staff hastened to proceed. The contribution to be collected from each company was decided based on the FKI’s social responsibility accounting allotments, while the Ministry of Culture, Sports and Tourism agreed to cooperate with the actual process of establishing the foundation. Thereupon, around October 23, 2015, the FKI staff individually asked the relevant companies to make contributions.

The respondent then ordered that the contributions for the foundation be

raised from 30 billion Korean won to 50 billion Korean won, and Ahn ○-Beom, around October 24, 2015, delivered the respondent's instructions to Lee ○-Cheol and asked him to add KT, Kumho, Shinsegae and Amorepacific to the list of companies and to find out if there were any more conglomerates that could be added, such as Hyundai Heavy Industries and POSCO. Thereupon, on October 24, 2015, the FKI staff drafted a new distribution schedule that set the total amount of contributions to the foundation at 50 billion Korean won, asking companies that had already agreed to make contributions to raise their commitments, and asking six companies – KT, Kumho, Amorepacific, POSCO, LS, and Daelim – that were not originally on the list to swiftly decide if they would make contributions, as a cultural foundation was being created under Cheong Wa Dae orders.

The companies that were asked to make contributions were notified of their allocation and had no say in the process, and received no materials such as a detailed business plan for the foundation or even a description thereof or the budget required. In spite of this, the FKI staff requested that the companies make a decision by October 26, 2015, at the latest. The companies made their decisions in haste without a chance to sufficiently review beforehand the foundation's project feasibility or the amount of their contribution, due to the fact that the foundation was a project of interest to the President, conducted by Cheong Wa Dae under the leadership of the Senior Secretary to the President for Economic Affairs. Thereupon, on Monday, October 26, 2015, just two days after Saturday, October 24, 2015, when the FKI staff notified companies that their allocations had been raised or asked other companies for contributions, the companies finished drafting their deeds of contribution. Some of the companies asked Mir for a business plan after deciding to make a contribution, but these requests were refused.

After receiving the required documents from the companies that decided to make contributions, including deeds of asset contribution and certificates of corporate seal imprints, on October 26, 2015, the FKI fabricated the minutes for an inaugural general meeting that had not

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been held, making it seem as if it had taken place at the FKI conference center, and affixed the corporate seal imprints on Mir's articles of association, which had been sent by the respondent via Ahn ○-Beom. While the foundation was being hastily established, Ahn ○-Beom requested that the FKI adjust the ratio of basic property, the disposal of which is strictly restricted, and ordinary property, which can be freely disposed of, from 9:1 to 2:8. Thereupon, the FKI staff had to promptly draft new articles of association to change the ratio of basic property and ordinary property, and contacted the companies that had already placed their seals to make them sign the new articles of association and inaugural general meeting minutes. In the end, the FKI was unable to secure the seal of SK hynix, one of the companies that had participated as an initiator.

The FKI staff requested that the application for the permit to found Mir be submitted at the Seoul office of the Ministry of Culture, Sports and Tourism to complete the process of securing the permit by October 27, 2015, which was the deadline set by Cheong Wa Dae. The public official in charge at the Ministry of Culture, Sports and Tourism sent the assistant deputy director in charge to the Seoul office on October 26, 2015, to submit the application for the permit missing the SK hynix seal, and after completing the process the next day at around 09:36, notified the FKI that the establishment of Mir had been approved. The companies that had committed to making contributions to Mir sent payments amounting to a total of 48.6 billion Korean won from November through December of 2015.

Choi ○-Won and Ahn ○-Beom were indicted on charges of abuse of authority to obstruct the exercise of rights and coercion, for arranging for companies to make contributions to Mir. The prosecution's indictment states that the respondent colluded with Choi ○-Won and Ahn ○-Beom to abuse the authority of the President and the Senior Secretary to the President for Economic Affairs, and forced the FKI staff, company CEOs and executives to arrange for contributions to be made to Mir under duress, although under no obligation.

(3) Establishment of K-Sports

After Mir was established, around December 2015, Choi ○-Won asked Kim ○-Seung, a personage in the sports sector, to draft a business plan on the establishment of a sports-related foundation. Choi ○-Won then interviewed and selected secretary-general Jeong ○-Sik and director Kim ○-Seung as staff for a foundation yet to be established, and delivered this list to the respondent through Jeong ○-Seung.

Around the 11th and 20th of December 2015, the respondent informed Ahn ○-Beom of the staff list she had received from Choi ○-Won, and after giving orders to secure an office for the foundation in Gangnam, Seoul, gave him the articles of association and organization chart. Around December 19, 2015, Ahn ○-Beom met Kim ○-Seung and told him to create a foundation in collaboration with the FKI, and gave Lee ○-Young, an administrative officer in the office of the Senior Secretary to the President for Economic Affairs, the list of executives and articles of association of the foundation, ordering him to contact Kim ○-Seung and proceed with establishing the foundation. Ahn ○-Beom told Lee ○-Cheol that a sports foundation worth 30 billion Korean won had to be created, and asked him to work on establishing one in the same manner as Mir. As in the case of Mir, K-Sports was established under the leadership of Cheong Wa Dae, supported by contributions collected from conglomerates through the FKI, and the respondent and Choi ○-Won were the actual instigators of the foundation's establishment, as shown by their appointment of the foundation's executive management.

The FKI staff allocated contributions based on the sales figures of companies on the list of those contacted to establish Mir, and then asked them to make contributions to a sports foundation worth 30 billion Korean won, that had to be established at the request of Cheong Wa Dae. The companies that were asked to make contributions decided to do so without any knowledge of the detailed business plans of K-Sports, for it was a project of interest to the President, conducted by Cheong

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Wa Dae under the leadership of the Senior Secretary to the President for Economic Affairs. Around January 12, 2016, at the FKI head office building, the FKI staff gathered members of the companies that had agreed to make contributions to collect the required documents, such as deeds of asset contribution. The companies placed their corporate seal imprints on the fabricated minutes of an inaugural general meeting that had not actually been held, as well as the articles of association of K-Sports. In the case of some companies, the FKI visited in person to collect the documents and have the corporate seals affixed.

Around January 8, 2016, the senior administrative officer in the office of the Senior Secretary to the President for Education and Culture asked the director general in charge at the Ministry of Culture, Sports and Tourism to approve the establishment of K-Sports as soon as possible. On January 12, 2016, the FKI submitted the application for the permit to establish K-Sports, and the public officials in charge at the Ministry of Culture, Sports and Tourism required them to supplement the documents within the day and approved the establishment of the foundation the following day. From February through August of 2016, the companies sent contributions worth 28.8 billion Korean won to K-Sports.

Choi ○-Won and Ahn ○-Beom were indicted on charges of abuse of authority to obstruct the exercise of rights and coercion, for arranging for companies to make contributions to K-Sports. The prosecution's indictment states that the respondent colluded with Choi ○-Won and Ahn ○-Beom to abuse the authority of the President and the Senior Secretary to the President for Economic Affairs, and forced the FKI staff, company CEOs and executives to arrange for contributions to be made to K-Sports under duress, although under no obligation.

(4) Intervention in the management of the foundations

At the fifth pleading in this case, Choi ○-Won testified that the respondent asked her to monitor the management of Mir and K-Sports. Despite having made no contribution to Mir and K-Sports and holding no position at and having no interests vested in the two foundations,

Choi ○-Won received reports from the foundation staff and gave specific orders. She also made decisions on the appointment of executives and staff, project details and the implementation of funds. Decisions made by the board of directors of Mir and K-Sports were a mere formality, and the companies that had made contributions were likewise prevented from any involvement in the management of the foundations.

The executives and staff at Mir and K-Sports called Choi ○-Won the chairperson, and worked under her instructions, being aware that she was closely related to the respondent. The executives and staff of the foundations have been testifying that they had no choice but to conclude that the wishes of Choi ○-Won were the wishes of the respondent, given the relationship between the respondent and Choi ○-Won or the fact that Choi ○-Won's orders were repeated by Ahn ○-Beom.

At the 11th pleading in this case, Jeong ○-Chun, chief director of K-Sports, testified that although Ahn ○-Beom and FKI staff requested that he resign as Choi ○-Won's intervention in state affairs was becoming a serious issue, he refused to do so under Choi ○-Won's orders, since he sensed that Choi ○-Won spoke for the respondent, more so than Ahn ○-Beom.

In response to these testimonies, the respondent has been claiming that she strongly recommended that companies invest in culture and sports for the purpose of cultural enrichment and economic development, and supported the procedures of establishing the foundations through the secretarial office, but she had no involvement in the contributions of companies or the management of the foundations.

However, in the course of creating Mir and K-Sports, Ahn ○-Beom asked the FKI staff to keep the involvement of Cheong Wa Dae a secret. Further, at the inspection of state administration by the National Assembly held in September 2016, Lee ○-Cheol denied that Cheong Wa Dae was involved, saying the collection of contributions for the establishment of the foundations was voluntary, but at the eighth pleading in this case testified that he had made false statements at the National Assembly at

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the request of Ahn ○-Beom and under pressure from Cheong Wa Dae, and that Mir and K-sports were actually created under orders from Ahn ○-Beom. When the prosecution began investigating the illegalities of the establishment of Mir and K-Sports around October 2016, Ahn ○-Beom called Lee ○-Cheol and ordered him to testify that the foundations were created under the leadership of the FKI and that Cheong Wa Dae was not involved, after which he disposed of his mobile phone. Thereupon, Ahn ○-Beom was indicted on the charge of instigating the destruction of evidence.

If the respondent's claims are true, there is no reason to hide the fact that Cheong Wa Dae supported the establishment of Mir and K-Sports, or to subsequently destroy the related evidence and order false testimony. Taking into account the testimonies and statements of Choi ○-Won, Ahn ○-Beom and staff members of the foundations, the respondent's claim in this regard is implausible.

F. Regarding Playground

(1) Establishment and management of Playground

Choi ○-Won established Playground, an advertising agency, on October 7, 2015, and made plans to earn profits by signing a service contract with Mir, a government-funded foundation, and receiving payments in return for providing services. Although Choi ○-Won put up Kim ○-Tak as Playground's nominal CEO, she owned 70 percent of its shares under a borrowed name, and was in de facto control of the agency's management.

(2) Relationship between Playground and Mir

After Mir was established under orders from the respondent, Choi ○-Won took de facto control of the foundation through the Mir executives she had recommended, for instance by deciding the foundation's business plans. In January 2016, Choi ○-Won ordered Lee ○-Han, secretary-general of Mir, to conclude a service contract between Mir and Playground. Mir

included Playground in its tender for selecting a general partner, alongside a company named 'Bizwon' which was added as a mere formality, and ultimately selected Playground. Playground received 138.6 million Korean won in return for signing seven projects with Mir.

(3) Intervention in the personnel affairs of KT and its selection of an advertising agency

Upon Choi ○-Won's request to find a person to work in KT's advertising department, Cha ○-Taek recommended Lee ○-Soo. Around January 2015, the respondent ordered Ahn ○-Beom to arrange for Lee ○-Soo, a publicity expert, to be employed by KT. Ahn ○-Beom delivered the respondent's instructions to KT chairman Hwang ○-Gyu, and requested that he hire Lee ○-Soo. KT contacted Lee ○-Soo directly and proceeded to hire him without involving the usual open recruitment process. On February 16, 2015, Lee ○-Soo was hired and assigned to a newly created senior managing director position, the head of the branding support center.

Around October 2015, the respondent ordered Ahn ○-Beom to ascertain whether Lee ○-Soo could be sent to KT's advertising department, as it was experiencing some issues. Ahn ○-Beom asked Hwang ○-Gyu to transfer Lee ○-Soo, upon which Lee ○-Soo was transferred to the position of chief director in charge of advertising on October 6, 2015, even though it was not the regular personnel rotation season.

Meanwhile, around August 2015, the respondent ordered Ahn ○-Beom to arrange for Shin ○-Seong to work at KT with Lee ○-Soo. Shin ○-Seong is in a de facto marriage with Kim □-Soo, who is an acquaintance of Lee ○-Heon, Choi ○-Won's nephew. Ahn ○-Beom delivered the respondent's orders to Hwang ○-Gyu, upon which KT hired and assigned Shin ○-Seong to a newly created assistant director-level position, in charge of branding support, on December 7, 2015. Thereafter, Shin ○-Seong was transferred to a position in charge of

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advertising on January 25, 2016, and ended up working with Lee ○-Soo.

Ahn ○-Beom then asked Lee ○-Soo to help Playground be chosen as KT's advertising agency. To make this happen, KT removed from its criteria for selecting advertising agencies the condition that required advertising experience, and chose Playground as its advertising agency despite having discovered that some of the documents the agency had submitted were false. Playground contracted seven advertising deals with KT in 2016 (worth a total of 6,817,670,000 Korean won).

(4) Intervention in the advertising contract of Hyundai Motor Company

Around February 2016, the respondent gave Ahn ○-Beom an envelope containing an introduction of Playground, and instructed him to arrange for conglomerates to provide assistance to the agency. On February 15, 2016, the respondent held a private meeting with Chung ○-Koo and Kim ○-Hwan, chairman and vice chairman of Hyundai Motor Company, and Ahn ○-Beom delivered the envelope containing the information on Playground to Kim ○-Hwan as they parted.

In an unusual move, Hyundai Motor Company and Kia Motors Corporation initiated contact with Playground, a newly founded advertising agency, and signed five advertising deals with Playground in 2016, paying it a total of 918.07 million Korean won for production costs. Hyundai Motor Company and Kia Motors Corporation had normally awarded such contracts to other agencies including Innocean, Inc., an advertising affiliate of Hyundai Motor Company, but in this case signed the deals with Playground after asking for their consent.

G. Regarding The Blue K

(1) Establishment and management of The Blue K

Choi ○-Won made plans to earn profits by arranging for K-Sports to undertake government-funded projects, and then being commissioned for the management of those projects. For this purpose, on January 12,

2016, a day before K-Sports was established on January 13, 2016, Choi ○-Won founded The Blue K as a sports management company. Jo ○-Min was the nominal head of The Blue K, and Ko ○-Tae the director, but Jo ○-Min submitted a memorandum of transfer of shares to Choi ○-Won and gave her monthly reports on the statement of accounts. Choi ○-Won was in actual charge of the management of The Blue K, making decisions on the employment and salaries of the company's head and staff, as well as its expenditures, and issuing orders on its projects.

(2) Relationship between The Blue K and K-Sports

Choi ○-Won ordered manager Roh ○-Il and deputy manager Park ○-Young of K-Sports, both of whom she had chosen and hired, to carry out work related to The Blue K. From two to three days up to every day of the week, Roh ○-Il and Park ○-Young went to work at the office of The Blue K and performed the company's business, drafting service proposals, among other tasks. Choi ○-Won frequently held meetings at the office of The Blue K, which not only discussed The Blue K projects, but also work related to K-Sports, and projects jointly carried out by K-Sports and The Blue K. Choi ○-Won linked the management of the personnel and projects of K-Sports with those of The Blue K, and around March 10, 2016, The Blue-K signed a business agreement with K-Sports that would serve as the grounds for its management of K-Sports projects.

(3) Intervention in Grand Korea Leisure's foundation of a wheelchair fencing team

On January 23, 2016, the respondent delivered the name and contact information of the head of The Blue K to Ahn ○-Beom, giving orders to arrange for Grand Korea Leisure to found a sports team, and to introduce The Blue K to Grand Korea Leisure so that The Blue K could provide the team's management and consultation services. The next day, Ahn ○-Beom delivered the respondent's requests to Lee ○-Woo, CEO

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of Grand Korea Leisure, and contacted Jo ○-Min, head of The Blue K. Under orders from the respondent, Ahn ○-Beom also introduced Kim ○, the Second Vice Minister of Culture, Sports and Tourism, to Jeong ○-Sik and Jo ○-Min on January 26, 2016.

Around late January 2016, Jo ○-Min and Ko ○-Tae of The Blue K submitted to Grand Korea Leisure a service contract proposal for a project on founding a men's and women's badminton team and fencing team, requiring a budget of approximately 8 billion Korean won. However, Lee ○-Woo was of the opinion that the scale of the project was too large to accommodate. Kim ○ asked Lee ○-Woo to give the proposal as much positive consideration as possible, and presented Grand Korea Leisure and The Blue K with the alternative of founding a team consisting of disabled athletes instead and signing an athlete management and agency contract in place of a service contract. Thereupon, on February 26, 2016, Grand Korea Leisure and The Blue K agreed on Grand Korea Leisure founding a disabled fencing team, and The Blue K assuming the management of the team's athletes.

(4) Intervention in POSCO's foundation of a fencing team

In a private meeting with POSCO chairman Kwon ○-Joon on February 22, 2016, the respondent suggested that POSCO found a sports team. After the meeting, Ahn ○-Beom asked Kwon ○-Joon to help POSCO play a role in sports, and told him to meet Jo ○-Min of The Blue K. Kwon ○-Joon received Jo ○-Min's contact information from Jeong ○-Seong, and ordered Hwang ○-Yeon, head of the management support division at POSCO, to meet Jo ○-Min. Later on, the respondent told Ahn ○-Beom that she had 'told POSCO chairman Kwon ○-Joon that The Blue K can provide consulting services when POSCO founds its sports team,' and ordered him 'to check on the progress.'

On February 25, 2016, the Blue K staff delivered to POSCO a proposal containing plans for POSCO to found a women's badminton team and for The Blue K to take charge of its management. However,

Hwang ○-Yeon refused, citing the fact that the company was incurring operating deficits and that it already had a sports team. Jeong ○-Sik reported this to Ahn ○-Beom on February 26, 2016, upon which Ahn ○-Beom contacted Hwang ○-Yeon and asked him to consider founding a unified sports team. In March 2016, Choi ○-Won ordered Roh ○-Il to draft and send to POSCO a business plan under which POSCO would establish a unified sports team and The Blue K would take charge of its management. Around March 2016, the POSCO executive in charge explained to The Blue K that establishing a unified sports team was proving to be challenging, and instead agreed to found a fencing team costing 1.6 billion Korean won in 2017 under POSCO P&S Inc., a POSCO affiliate, and to transfer its management to The Blue K.

(5) Intervention in the interests of K-Sports Clubs

Choi ○-Won received from Kim ○ a document titled, ‘Report on the Operation of Multi-Sports Clubs and Measures for Development,’ written on December 1, 2015, by the Ministry of Culture, Sports and Tourism. Choi ○-Won passed this on to Park ○-Young, and made him draft a document named, ‘Proposal on Measures to Promote K-Sports Clubs for Developing the Sports Club Culture in Korea.’ Using the document from the Ministry of Culture, Sports and Tourism as reference, Park ○-Young drafted a proposal suggesting that the regionally operated ‘Project on Supporting Multi-Sports Clubs’ was flawed, and that it was necessary to build a new ‘K-Sports Club control tower’ to supervise the operation and management of sports clubs in different regions.

Around February 2016, the respondent ordered Kim ○-Ryul, Senior Secretary to the President for Education and Culture, to develop and implement measures to build a ‘control tower’ dedicated to the operation and management of sports clubs nationwide, so the sports club budget could be executed more efficiently, and to arrange for K-Sports to be involved in the control tower’s management. Kim ○-Ryul delivered the respondent’s orders to Kim ○, so the Ministry of Culture, Sports and

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Tourism could review the matter. After having the proposal reviewed internally by the Ministry of Culture, Sports and Tourism, Kim ○ implemented measures to install new sports clubs in key areas, so they could support the operation of regional sports clubs. The Ministry of Culture, Sports and Tourism held a public competitive bid for the management of ‘K-Sports Clubs in key areas,’ and arranged for K-Sports to participate in the process.

If K-Sports had been assigned to manage the K-Sports Clubs in key areas, and The Blue K provided business consultation to K-Sports, Choi ○-Won, who was in de facto control of K-Sports and The Blue K, would have acquired considerable profits when the national budget allocated to K-Sports Clubs in key areas was executed.

(6) Intervention in Lotte Group’s additional contribution to K-Sports

Through Kim ○, Choi ○-Won gained access to the information that the government was rolling out a project to build sports facilities in five key venues nationwide. Thereupon, around February 2016, Choi ○-Won ordered Park ○-Young to prepare a proposal outlining plans for K-Sports to build sports facilities in five key venues nationwide to foster sports talent. Around March 2016, Park ○-Young drafted the ‘Proposal for the Project on Fostering Sports Talent in Five Key Venues,’ which included plans for K-Sports and The Blue K to cooperate in building sports facilities, with the plot in Hanam City owned by the Korean Sport & Olympic Committee being the site of first choice.

In a private meeting with Shin ○-Bin, chairman of Lotte Group, on March 14, 2016, the respondent told him that the government was planning to build sports facilities in five key venues nationwide, including in Hanam, as part of a project to foster sports talent, and asked him for support as K-Sports would be undertaking the plan. Shin ○-Bin ordered vice chairman Lee ○-Won to address the respondent’s request for financial support, and Lee ○-Won instructed the executives in charge to meet with K-Sports staff. After the meeting, the respondent also told Ahn ○-Beom that Lotte Group had decided to provide 7.5

billion Korean won for the construction of sports facilities in Hanam City, and ordered him to check on the progress. Ahn ○-Beom monitored the progress on the deal to provide 7.5 billion Korean won, by receiving the relevant material from Jeong ○-Sik or contacting Lotte Group executives and staff whenever necessary, and reported the results to the respondent.

Around the middle of March 2016, Choi ○-Won ordered Jeong ○-Sik, Park ○-Young and Ko ○-Tae to ask Lotte Group for financial support in relation to the construction of sports facilities in Hanam City. On March 17, 2016, Jeong ○-Sik and Park ○-Young met with Lotte Group executives and presented them with the ‘Proposal for the Project on Fostering Sports Talent in Five Key Venues,’ asking them to provide financial support required for the construction of sports facilities. On March 22, 2016, Park ○-Young and Ko ○-Tae requested support amounting to 7.5 billion Korean won, including construction costs of 7 billion and additional expenses of 500 million. The Lotte Group executives suggested that this be reduced by roughly half, or 3.5 billion Korean won, but Lee ○-Won was of the opinion that the requests should be satisfied. Thereupon, from May 25 to 31, 2016, Lotte Group mobilized six of its affiliates to transfer 7 billion Korean won to K-Sports.

H. Charges of Abuse of Authority to Obstruct the Exercise of Rights and Coercion

Choi ○-Won and Ahn ○-Beom were indicted on charges of abuse of authority to obstruct the exercise of rights and coercion, with regard to:

(1) Playground’s selection as KT’s advertising agency and its receipt of advertisement production costs, and Playground’s advertising deals with Hyundai Motor Company; and (2) The Blue K’s contracts with the Grand Korea Leisure disabled fencing team and the POSCO fencing team, and Lotte Group’s additional contribution of 7 billion Korean won to K-Sports. The indictment of the prosecution states that the respondent

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colluded with Choi ○-Won and Ahn ○-Beom to abuse the authority of the President and the Senior Secretary to the President for Economic Affairs, and simultaneously coerced company executives and staff into carrying out acts under duress, although under no obligation.

I. Assessment

(1) Violation of the obligation to serve the public interest (violation of Article 7 Section 1, etc. of the Constitution)

① In a representative democracy, a public official is entrusted by the people, the sovereigns, with the power to exercise national authority, and thus must work for the benefit of public interest from a neutral position. Drawing from the principles of popular sovereignty and representative democracy, Article 7 Section 1 of the Constitution prescribes that public officials are ‘servants of the entire people,’ and clarifies their obligation to serve the public interest.

As the chief of the executive branch and the head of state, the President possesses the most powerful authority of all public officials, and therefore, more than anyone, must run state affairs for the ‘entire people.’ Article 69 of the Constitution reiterates the President’s duty to serve the public interest, by requiring the President to take an oath at the time of inauguration to ‘faithfully execute the duties of the President’ by ‘observing the Constitution’ and ‘promoting the freedom and welfare of the people.’ The President, being a servant of ‘the entire people,’ is obliged to remain independent from the special interests of any specific political party, of the stratum, religion, region or social organization he or she belongs to, and of factions that he or she is acquainted with, and to perform duties for all people in a fair and balanced manner (2004Hun-Na1, May 14, 2004).

The President’s obligation to serve the public interest is further specified in Article 59 of the State Public Officials Act, Article 2-2 Section 3 of the Public Service Ethics Act, and Item 4 (a) of Article 2

and Article 7 of the ‘Act on the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission’ (hereinafter referred to as the “Act on Preventing Corruption and the Civil Rights Commission”). Article 59 of the State Public Officials Act clarifies the duty of impartiality by prescribing, “Every public official shall work kindly and impartially as servants of all citizens,” while Article 2-2 Section 3 of the Public Service Ethics Act prescribes that “No public official shall pursue private interests or grant illegal preferential benefits to any individual, institution or organization using his or her public position.” Item 4 (a) of Article 2 of the Act on Preventing Corruption and the Civil Rights Commission defines an act of corruption as, “The act of any public official’s abusing his or her position or authority or violating statutes in connection with his or her duties to seek gains for himself or herself or any third party,” and Article 7 of the same Act clarifies public officials’ obligation of integrity, prescribing, “Every public official shall abide by statutes, perform his or her duties fairly and hospitably, and refrain from committing any act of corrupting himself or herself or losing his or her dignity.”

② The respondent appointed a number of people recommended by Choi ○-Won as public officials, and some of the public officials appointed in this manner helped Choi ○-Won seek interests. The respondent also ordered the establishment of Mir and K-Sports and the solicitation of funds for those foundations from private companies, and requested that companies make contributions by leveraging her position and authority as President. The respondent then appointed persons recommended by Choi ○-Won to executive management positions at Mir and K-Sports, to enable Choi ○-Won to take de facto control of the two foundations. Consequently, Choi ○-Won was able to use the above foundations as tools for generating interests through Playground and The Blue K, which were both actually under her management.

Meanwhile, the respondent used the position and authority of the President to intervene in the management of private enterprises, by

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demanding that they hire certain people and that they enter into contracts with specific companies. The respondent's claim is that she was merely performing duties in line with government policies, for instance by providing support to well-performing SMEs or recommending skilled talent. However, not only is it unusual for the President to arrange for the employment of a specific individual at a private company, but it also happens to be the case that everyone hired at the respondent's request was acquainted with Choi ○-Won, and helped Choi ○-Won gain interests through the companies at which they were employed. Furthermore, Playground and The Blue K, which the respondent claims to have supported on the understanding that they were well-performing SMEs, are companies that were managed by Choi ○-Won with the purpose of generating interests using Mir and K-Sports, and KD Corporation is also a company managed by an acquaintance of Choi ○-Won. Of particular note is that The Blue K had only three members of staff including the head, and had no track record. It is therefore hard to accept the respondent's claim that she supported the company on the understanding that The Blue K was a well-performing SME.

Aside from this, the respondent also ordered the formulation of policies related to the interests of Choi ○-Won, such as the reorganization of sports clubs, and made Lotte Group contribute substantial funds to K-Sports in connection with the construction of sports facilities in five key areas for sports talent fostering programs.

③ Through such conduct, the respondent abused her position and authority as President for the benefits of Choi ○-Won et al., which cannot be considered a fair performance of duties. The respondent has violated Article 7 Section 1 of the Constitution, Article 59 of the State Public Officials Act, Article 2-2 Section 3 of the Public Service Ethics Act, and Item 4 (a) of Article 2 and Article 7 of the Act on Preventing Corruption and the Civil Rights Commission.

④ The respondent claims that she was unaware that Choi ○-Won was pursuing personal interests, and that the reason Choi ○-Won engaged in such a variety of questionable conduct was because Choi ○-Won was

deceived or threatened by Ko ○-Tae et al., who had been working with her. However, there is clear evidence to prove that the respondent founded Mir and K-Sports together with Choi ○-Won, as shown above, and readily provided support so that companies managed by Choi ○-Won et al. could benefit. Even if the respondent was not aware that Playground, The Blue K, KD Corporation and so forth were companies related to Choi ○-Won, it is a fact that she abused her authority as President for the interests of specific companies. Therefore, the fact that the respondent violated the Constitution and the State Public Officials Act continues to hold. Further, the motives behind the aforementioned conduct of Choi ○-Won do not in any way impact the act of holding the respondent legally accountable. Thus, whether or not Choi ○-Won was deceived or threatened by Ko ○-Tae et al. has nothing to do with the review of this case.

(2) Infringement of the freedom and property rights of enterprises (violation of Article 15 and Article 23 Section 1, etc. of the Constitution)

① Article 15 of the Constitution guarantees enterprises' freedom of management, which enables companies to operate at will, and Article 23 Section 1 of the Constitution guarantees the right to property of all citizens (*see also* 2006Hun-Ba86, May 28, 2009; 2013Hun-Ba393, September 24, 2015). In addition, Article 37 Section 2 of the Constitution provides that the freedoms and rights of citizens may be restricted by law when necessary.

② The respondent, in person or through the Senior Secretary to the President for Economic Affairs, asked conglomerate executives to make contributions to Mir and K-Sports. The companies made their decisions in haste due to the fact that the foundations were projects of interest to the President, conducted under the leadership of the Senior Secretary to the President for Economic Affairs, without any knowledge of the details of why Mir and K-Sports were being founded or how they would be managed. The companies that made contributions continued to be

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excluded from the management of the foundations after they were established.

Taking into account the President's extensive authority and influence in the financial and economic sectors, and the unusual manner through which the foundations were established and circumstances under which they were managed, companies that had been asked by the respondent to make contributions would have been burdened and pressured to make the inevitable choice of accepting the request. It would have been, in reality, difficult for the companies to refuse the respondent's demands due to concerns that failing to comply may lead to disadvantages in running their business or resolving pending issues. The respondent's requests should be deemed as having been practically imperative rather than being mere suggestions or recommendations, if it was indeed difficult for companies to decide at will whether to accept them.

If the respondent had decided it was necessary to found Mir and K-Sports to pursue the national agenda of 'cultural enrichment,' the process should have been open to the public, determining by law the criteria and requirements that would justify intervention by governmental power. On the contrary, the respondent used her authority as President in secret to make companies provide contributions to the foundations. Through such conduct, the respondent infringed upon the property rights and freedom of management of those companies.

③ The respondent demanded that Lotte Group provide support to the construction project for the Hanam City sports facilities, which was related to projects in which the interests of Choi ○-Won were vested in, and instructed Ahn ○-Beom to check on the progress whenever necessary. The respondent demanded that Hyundai Motor Company sign a supply contract with a company run by Choi ○-Won's acquaintance, and that KT Inc. hire and internally reassign persons relevant to Choi ○-Won. In addition, the respondent also demanded that companies establish sports teams and enter into contracts with The Blue K, and in the process exercised influence through Ahn ○-Beom and Kim ○, both high-ranking public officials.

It is reasonable to say that the companies that received requests from the respondent would have been burdened and pressured to inevitably comply, and would have found it difficult to refuse. In an unconventional manner for a President, the respondent intervened in the appointment of executives at private companies, and became actively involved in the management of companies by specifying which counterparties to enter into contracts with. These companies made personnel decisions and signed contracts through methods out of line with their normal procedures, in order to satisfy the respondent's requests.

Such conduct of the respondent is considered to be imperative, rather than being mere suggestions or recommendations expecting voluntary cooperation from companies. Even if the respondent had decided that such conduct was necessary for promoting sports, fostering SMEs and recommending skilled talent, she should have adhered to legal grounds and procedures. The respondent, by interfering with the private autonomous domain of companies using the President's authority without any legal grounds whatsoever, has infringed upon the property rights and freedom of management of those companies by violating the principle of statutory reservation under the Constitution.

(3) Violation of the duty of confidentiality

Article 60 of the State Public Officials Act prescribes that public officials must keep the information they become aware of in the course of performing duties confidential. The duty of confidentiality is an obligation borne by public officials as servants of all citizens (*see also* 2010Hun-Ba354 etc., August 29, 2013). The President, in particular, becomes aware of important classified state secrets in the course of making high-level policy decisions, and therefore the significance and gravity of the President's duty of confidentiality outweighs that of any other public official.

Numerous documents were divulged to Choi ○-Won under the respondent's orders and tacit approval, and these contained information pertaining to the President's schedule, diplomacy, personnel affairs and

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policies. Such information, being related to the duties of the President, may undermine administrative purposes should it be disclosed to the public and deserves to be classified, and therefore qualifies as confidential information related to duties. Nonetheless, the respondent ordered or neglected the disclosure of the aforementioned documents to Choi ○-Won, thereby violating the duty of confidentiality provided for in Article 60 of the State Public Officials Act.

VII. Whether the Power to Appoint and Dismiss Public Officials Has Been Abused

A. Disciplinary Personnel Measures Against Public Officials of the Ministry of Culture, Sports and Tourism

(1) When her daughter Jeong ○-Ra finished in second place in the Korea Racing Authority Cup National Eventing Contest held at the Sangju International Equestrian Center on April 14, 2013, Choi ○-Won called the judgment into question. Around July 2013, Jeong ○-Seong told Mo ○-Min, the Senior Secretary to the President for Education and Culture, to order the director in charge at the Ministry of Culture, Sports and Tourism to meet with Park ○-Oh of the Korea Equestrian Federation and check for any issues within the federation. Thereupon, Mo ○-Min passed this on to Yoo ○-Ryong, Minister of Culture, Sports and Tourism, telling him to open an investigation into corruption inside the Korea Equestrian Federation. Yoo ○-Ryong ordered Roh ○-Kang, director general of the Sports Policy Bureau of the Ministry of Culture, Sports and Tourism, and Jin ○-Soo, director of the Sports Policy Division of the same ministry, to investigate the aforementioned federation. Following their investigation, Roh ○-Kang and Jin ○-Soo drafted a paper stating that Park ○-Oh and the people in the federation who were against him were all involved with problematic issues. This was reported through Yoo ○-Ryong to Mo ○-Min, who then reported

this to the respondent.

Yoo ○-Ryong gave a report on ‘Corruption in Sports Organizations and Measures for Improvement’ at the State Council held on July 23, 2013, upon which the Ministry of Culture, Sports and Tourism followed up by launching an inspection into the overall operation of sports organizations. Meanwhile, around August 2013, the respondent ordered Jeong ○-Seong to ascertain why no progress was being made in dispelling corruption in sports organizations, and Jeong ○-Seong passed this on to the Secretary to the President for Civil Service Discipline. Hong ○-Sik, Senior Secretary to the President for Civil Affairs, informed Mo ○-Min of the investigation results of the Secretary to the President for Civil Service Discipline, and mentioned that ‘Roh ○-Kang and Jin ○-Soo lack the determination to carry out reform in the sports sector and have issues with their dignity as public officials.’

Thereafter, through Mo ○-Min the respondent instructed Yoo ○-Ryong to report in person on the ‘specific countermeasures against corruption in the sports sector, including in the Korea Equestrian Federation.’ Yoo ○-Ryong did so on August 21, 2013, with Mo ○-Min in attendance. At this meeting, the respondent gave orders to reprimand Roh ○-Kang and Jin ○-Soo. Yoo ○-Ryong had planned to relocate Roh ○-Kang and Jin ○-Soo during the regular transfer season, but instead did so around September 2, 2013, upon hearing from Mo ○-Min that the respondent wished to know whether Roh ○-Kang and Jin ○-Soo had been reprimanded, and if so, in what manner.

Approximately two years later, in April 2016, the respondent became aware that Roh ○-Kang was working as the head of the Education and Cultural Cooperation Bureau at the National Museum of Korea, and ordered Kim ○-Ryul, Senior Secretary to the President for Education and Culture, to transfer Roh ○-Kang to an affiliated organization. Kim ○-Ryul delivered the respondent’s orders to Kim ○-Deok, Minister of Culture, Sports and Tourism, and on May 31, 2016, Roh ○-Kang voluntarily resigned.

(2) Around July 2014, the respondent dismissed Yoo ○-Ryong from

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the position of Minister of Culture, Sports and Tourism without having assigned a replacement. Around September 2014, immediately after Kim ○-Deok was appointed as the successor for the Minister of Culture, Sports and Tourism, Kim Ki-Choon, the Chief of Staff to the President, ordered Kim ○-Beom, First Vice Minister of Culture, Sports and Tourism, to collect letters of resignation from six Grade 1 public officials within the ministry. In October 2014, three of the six resignation letters were accepted.

B. Review

The petitioner claims that the respondent compromised the nature of the professional civil servant system and abused the power to appoint and dismiss public officials, by ordering disciplinary personnel measures against Roh ○-Kang and Jin ○-Soo, dismissing Yoo ○-Ryong, and pressuring Grade 1 public officials to tender their resignations for interfering with Choi ○-Won's pursuit of personal interests. However, the aforementioned facts alone are insufficient to prove that the reason the respondent ordered disciplinary personnel measures against Roh ○-Kang and Jin ○-Soo were for their interference in Choi ○-Won's pursuit of personal interests, and no other evidence to prove this can be found in this case. Further, it is unclear from the evidence submitted in this case why the respondent dismissed Yoo ○-Ryong or ordered the Chief of Staff to the President to collect letters of resignation from six Grade 1 public officials. Therefore, this ground for impeachment cannot be accepted.

VIII. Whether the Freedom of Press Has Been Infringed Upon

A. Dismissal of the Segye Ilbo President, Etc.

Segye Ilbo reported on November 24, 2014, that the Cheong Wa Dae office of the Senior Secretary to the President for Civil Affairs had

launched an investigation upon obtaining the information that Jeong ○-Hoe was intervening in the personnel affairs of high-level government officials. On the 28th, Segye Ilbo revealed the document, ‘Report on a VIP Acquaintance (Jeong ○-Hoe) Involved in Rumors on the Replacement of the Cheong Wa Dae Chief of Staff,’ or the so-called ‘Jeong ○-Hoe document,’ written by the Office of the President. This document was drafted by the office of the Secretary to the President for Civil Service Discipline on January 6, 2014. It contained the information that Jeong ○-Hoe, husband of Choi ○-Won, was monitoring the President’s administration of state affairs and the internal affairs of Cheong Wa Dae and suggesting opinions with a group called the ‘Ten Attendants,’ which included public officials from the Office of the President.

After the Segye Ilbo report, the respondent condemned the leaking of the document, stating at the meeting of senior secretaries on December 1, 2014, that divulging Cheong Wa Dae documents to the public was a breach of state order and that the prosecution must launch a thorough investigation to ascertain the truth. Thereafter, Han ○-Ja, leader of the Unification Church and the de facto person in charge of Segye Ilbo, notified the dismissal of Cho ○-Kyu from the position of Segye Ilbo president on January 31, 2015, after which Cho ○-Kyu was dismissed on February 27, 2015.

B. Review

In light of the respondent’s statements that condemned the leaking of Cheong Wa Dae documents, it can be said that the respondent expressed criticism against the Segye Ilbo report on the Jeong ○-Hoe document. However, this alone cannot be deemed an infringement of the freedom of press of Segye Ilbo.

The petitioner claims that a high-level Cheong Wa Dae official demanded that Han ○-Ja dismiss Cho ○-Kyu, but has not been able to determine which Cheong Wa Dae official gave the order. Cho ○-Kyu

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and Segye Ilbo reporter Cho ○-Il testified to the effect that the dismissal of Cho ○-Kyu resulted from pressure from Cheong Wa Dae, but stated that they did not know who specifically exercised such pressure. Also, inquiries into Segye Ilbo Inc. revealed that Cho ○-Kyu had filed a claim for compensation against Segye Ilbo before withdrawing it, and that Segye Ilbo had filed a claim for compensation against Cho ○-Kyu for defamation. Judging by such developments, there is a lack of evidence to prove that the respondent was involved in the dismissal of Cho ○-Kyu from the position of Segye Ilbo president. Therefore, this ground for impeachment cannot be accepted.

IX. Whether the Duty to Protect the Right to Life Has Been Violated

A. The Sinking of the Sewol Ferry

The passenger ship Sewol ferry departed for Jeju Island from the Incheon Port Coast Passenger Terminal on April 15, 2014, with a total of 476 people on board including 443 passengers, of which 325 were Danwon High School students on a school trip, and 33 crew members. While on sail around 08:48 on April 16, 2014, the hull began listing to the left at 1.8 nautical miles north of Byeongpung Island, part of the township of Jodo in Jindo County, South Jeolla Province. A Sewol ferry passenger called the 119 emergency line to report the accident at around 08:54, and this was delivered to the Mokpo Coast Guard situation room. At 08:55, Sewol mate Kang ○-Sik made a distress call to the Jeju Vessel Traffic Services Center. From about 08:52 to 09:50, the Sewol crew made multiple announcements instructing the passengers to wear their life jackets and remain inside the ship.

Patrol vessel No. 123, belonging to the Mokpo Coast Guard, arrived one mile ahead of the scene of the accident at around 09:30, but by 09:34 Sewol ferry had already keeled approximately 52 degrees and lost its ability to recover. Vessel No. 123 approached Sewol and rescued

Captain Lee ○-Seok and part of the crew, while between around 09:30 and 09:45, coast guard helicopters arrived at the scene and rescued passengers. However, passengers that had been waiting inside the ship as instructed by the announcements did not receive word to abandon the ship, and the crew on vessel No. 123 failed to guide the Sewol ferry passengers to safety or to prompt them to abandon the ship. Vessels and helicopters dispatched by the coast guard and fishing boats nearby rescued a total of 172 people until 10:21, but 304 passengers and crew were unable to escape from the ship and ended up dead or missing.

The weather on the day of the incident was clear with a calm sea, and the seawater temperature at the time of the accident was about 12.6 degrees Celsius. It is highly likely that more passengers could have been rescued and the damage largely scaled down if the rescue squad that had arrived at the scene, including vessel No. 123, had swiftly informed passengers to abandon the ship.

B. The Respondent's Reaction

On the day the Sewol ferry capsized, the respondent remained in the Presidential residence instead of going into her Cheong Wa Dae office. The respondent claims that at around 10:00, she received a written report about the sinking of the Sewol ferry from the National Security Office, and then called Kim △-Soo, Chief of the National Security Office, to give orders to 'ensure not a single casualty occurs.' At the National Assembly, Kim △-Soo testified that he had, at the time, advised the respondent to watch the television coverage on the accident. The respondent claims that she called Kim △-Soo and the Chief of the Korea Coast Guard at around 10:22 and 10:30, and ordered the launch of a rescue operation.

From around 11:01 on the same day, broadcasters began sending out misleading reports that all of the Danwon High School students aboard the Sewol ferry had been rescued. From 11:19, SBS began issuing corrections, and at around 11:50 most broadcasters had corrected their

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reports. At the time, the National Security Office had been in contact with the coast guard conducting the rescue operation at the scene, and was aware that the operation was not running smoothly, and thus knew that the broadcasts stating that all students had been rescued were untrue.

The respondent claims that she received numerous reports from the National Security Office and the Secretary to the President for Public Security from around 10:40 to 12:33, and that she received a telephone report from Kim △-Soo, Chief of the National Security Office, at around 11:23. If the respondent had indeed received reports from her secretaries and had spoken with them over the telephone, as she claims, then she would have been aware of the serious circumstances under which many of the students were trapped in the cabins, unable to escape.

However, the respondent claims that she conducted regular duties, such as reviewing a report from the office of the Senior Secretary to the President for Foreign Affairs and National Security about readjusting the schedule for a foreign president's visit to Korea at around 11:34, and reviewing a report from the office of the Senior Secretary to the President for Education and Culture on problems concerning autonomous private high schools at approximately 11:43. According to the telephone records submitted by the respondent, she was on a telephone call for 10 minutes from around 12:50 with Choi ○-Young, the Senior Secretary to the President for Employment and Welfare, during which they talked about the Basic Pension Act.

Meanwhile, the respondent is claiming that she received a report from the Secretary to the President for Public Security at 13:07 which mistakenly calculated the number of rescued people as 370, and that at around 13:13 the Chief of the National Security Office misreported over the telephone that 370 people had been rescued. The respondent explains that at around 14:11 she ordered the Chief of the National Security Office to confirm the exact situation at the rescue, realized that the casualty damage was severe only when she received a report at approximately 14:50 that the number of rescued people had been miscalculated, and thereupon gave orders to arrange a visit to the Central

Disaster and Safety Countermeasures Headquarters.

C. Whether the Duty to Protect the Right to Life Has Been Violated

It is the duty of the state to confirm and guarantee the fundamental and inviolable human rights of individuals (Article 10 of the Constitution). The right to life and physical safety is a fundamental right that serves as the basis of human dignity and worth. Should the lives and physical safety of the people be threatened or be exposed to risks, the state bears the comprehensive duty to take appropriate and efficient legislative and administrative measures necessary to protect peoples' lives and physical safety so as to prevent the danger of infringement thereof and to maintain this state of prevention, taking into account the cause and severity of the threat and the social or economic conditions and fiscal circumstances at hand (*see also* 2008Hun-Ma419, etc., December 26, 2008).

As the chief of the executive branch, the respondent bears the duty to exercise authority and perform duties to enable the state to faithfully fulfill its duty to protect the lives and physical safety of the people. However, it is difficult to say that the respondent is immediately responsible for the specific and particular duty to act, for example, by participating in the rescue operation in person, when a disaster threatens the lives of the people. The Sewol ferry incident left a large number of people dead, and the manner in which the respondent dealt with the situation was inadequate and inappropriate. However, that does not directly lead to the conclusion that the respondent violated the duty to protect the right to life. There is no other evidence to prove that the respondent violated the duty to protect the right to life in relation to the Sewol ferry tragedy.

D. Whether the Obligation to Faithfully Execute Duties Has Been Violated

Article 69 of the Constitution sets out the oath taken by the President at the time of his or her inauguration, which mentions the obligation to

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faithfully execute the duties of the President. By clarifying the content of the oath for the President's inauguration instead of merely prescribing the obligation to take one, Article 69 of the Constitution reiterates and further specifies the constitutional obligation bestowed on the President's duties under Sections 2 and 3 of Article 66 of the Constitution.

Although the President's 'obligation to faithfully execute duties' is a constitutional obligation, unlike the 'obligation to safeguard the Constitution,' by nature, its performance cannot be normatively enforced. Therefore, as a rule, it is unlikely to become subject to constitutional review. Whether the President has faithfully executed duties during his or her term can be judged by the public in the next election. However, under the current Constitution that adopts a single-term presidency, there is no way for the President to be legally or even politically accountable directly to the people. The only repercussion in response to whether the President faithfully executed his or her duties would be the political benefits or disadvantages that influence the political party the President belongs to.

Article 65 Section 1 of the Constitution limits the ground for impeachment to the 'violation of the Constitution or other statutes,' and the impeachment adjudication by the Constitutional Court is undertaken solely to determine the existence or absence of a ground for impeachment from a legal standpoint. Thus, the ground for impeachment alleged by the petitioner in this case concerning whether the respondent faithfully executed her duties on the day of the Sewol ferry tragedy cannot in and of itself constitute a ground for impeachment, and therefore is not a subject matter for impeachment adjudication (*see also* 2004Hun-Na1, May 14, 2004).

E. Conclusion

This ground for impeachment cannot be accepted.

X. Whether to Remove the Respondent from Office

A. The respondent delivered to Choi ○-Won documents on state affairs containing classified information related to official duties, and secretly reflected the opinions of Choi ○-Won, who is not a public official, in the management of state affairs. Such unlawful conduct of the respondent was not temporary or occasional, but continued on for over three years since the respondent took office as President. The respondent claims that Choi ○-Won was mostly only involved in revising expressions of talking points or speeches, but talking points are not a matter to be taken lightly since the public statements or speeches of the President serve as the guideline for the execution of government policies and may influence diplomatic relations. Moreover, contrary to the respondent's claims, Choi ○-Won received government-related information pertaining to a variety of sectors, such as the personnel affairs of public officials, the President's official schedule and sports policies, and intervened in state affairs.

The respondent also abused the authority delegated by the citizens for personal purposes. The ultimate purpose of such action was to assist the pursuit of personal gains by Choi ○-Won, and was carried out readily and repeatedly. In particular, these are extremely grave violations of law in that they used the position of the President or mobilized state agencies and organizations.

As for the establishment of Mir and K-Sports, although the respondent claims that the contributions from companies were voluntary, the companies had hardly any say in their decisions. The companies made their contributions, the amounts of which were decided by the FKI, without knowing how the money would be spent, and were unable to participate in the foundations' management. While Mir and K-Sports were established with urgency at the respondent's orders, they served no critical public purpose in the culture and sports sectors after their creation. Rather, the two foundations were under the de facto control of Choi ○-Won and were mostly used to seek her personal interests.

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The President, having been directly vested with democratic legitimacy by the people and delegated with the right to exercise sovereignty, must exercise such power legitimately in accordance with the Constitution and law; and must disclose the performance of official duties in a transparent manner to enable appraisal by the public, excluding those duties which must be classified by nature. However, the respondent allowed Choi ○-Won to intervene in state affairs while keeping this a complete secret. Suspicions were raised on several occasions that the respondent was heeding the advice of so-called unofficial circles instead of official organizations such as administrative branches or the Office of the President, but each time the respondent denied this, simply condemning them as mere suspicions instead.

The respondent also criticized the Segye Ilbo report on the Jeong ○-Hoe document in November 2014, saying that speculations about the intervention of an unofficial organization in state affairs were false, and that divulging Cheong Wa Dae documents was a breach of state order. As seen here, the respondent allowed Choi ○-Won to intervene in state affairs while keeping her existence a complete secret to the outside, which made it difficult for constitutional institutions, such as the National Assembly, to provide checks and balances under the doctrine of separation of powers, or for the private sector, including the press, to perform its monitoring role.

Despite the criticism of the National Assembly and the press, the respondent failed to rectify her faults and instead chose to conceal the truth and forced the relevant people to keep silent. This subsequently led to the grave situation where public officials including Ahn ○-Beom and Kim ○, who were working under orders from the respondent, were indicted on charges of corruption including collusion with Choi ○-Won in abusing authority to obstruct the exercise of rights. The respondent, by enabling Choi ○-Won to intervene in state affairs, assisting Choi ○-Won to seek personal interests by abusing the authority delegated by the people, and at the same time concealing this completely, has undermined the principle of representative democracy and the rule of

law, and has gravely violated the obligation of the President to serve the public interest.

B. The respondent apologized to the people in her first public address on October 25, 2016, when the intervention in state affairs by Choi ○-Won became an issue. The address lacked sincerity, for the respondent's words had been untrue concerning the period and details of Choi ○-Won's intervention. In the following second public address, the respondent announced she would cooperate to the fullest extent regarding the inquiry into the allegations, and that she would accept examination by the prosecution or investigation by the special prosecutor. However, this investigation did not take place since the respondent did not cooperate in investigations by the prosecution or the special prosecutor, and refused search and seizure at Cheong Wa Dae.

As seen above, the respondent made insincere apologies to the public and failed to keep her word, instead of endeavoring to regain the trust of the people with regard to her breaches of the Constitution and law. Judging by such words and actions, we cannot find any definite will on the part of the respondent to protect the Constitution with regard to the grounds for impeachment in this case.

C. In conclusion, the respondent's acts of violating the Constitution and law are a betrayal of the people's confidence, and should be deemed as grave violations of the law that are unpardonable from the perspective of protecting the Constitution. Since the negative impact and influence on the constitutional order brought about by the respondent's violations of the law are serious, we believe that the benefits of protecting the Constitution by removing the respondent from office, who has been directly vested with democratic legitimacy by the people, overwhelmingly outweigh the national loss that would be incurred by the removal of the President.

XI. Conclusion

The respondent is removed from office as President. This decision was unanimous, and was made with the concurring opinion of Justice Kim Yi-Su and Justice Lee Jin-Sung, as set forth in Part 12, and the concurring opinion of Justice Ahn Chang-Ho, as set forth in Part 13.

XII. Concurring Opinion of Justice Kim Yi-Su and Justice Lee Jin-Sung

We agree with the majority opinion that the part concerning the respondent's violation of the duty to protect the right to life cannot be accepted.

Although the respondent violated the President's constitutional obligation to faithfully execute duties and the duty of fidelity under the State Public Officials Act by failing to perform her legal obligations in ascertaining and dealing with the swiftly changing situation on the day of the tragedy, we believe this reason alone is not a sufficient ground to remove the respondent from office. Thereupon, we add the following concurring opinion.

A. Whether the Violation of the Obligation to Faithfully Execute Duties Constitutes a Ground for Impeachment

(1) Article 69 of the Constitution sets out the oath taken by the President at the time of his or her inauguration, which prescribes the 'obligation to faithfully execute the duties of the President.' Since Article 69 reiterates and further specifies the constitutional obligation bestowed on the President under Sections 2 and 3 of Article 66 of the Constitution, the President's 'obligation to faithfully execute duties' is a constitutional obligation (*see also* 2004Hun-Na1, May 14, 2004). The Constitutional Court ruled that the performance of the President's

‘obligation to faithfully execute duties’ cannot be normatively enforced, and thus as a rule cannot become subject to constitutional review. In other words, whether a President has faithfully executed duties, for instance whether he or she is politically incompetent or has made faulty policy decisions, cannot in and of itself constitute a ground for impeachment (*see also* 2004Hun-Na1, May 14, 2004). However, if we do not stop at using abstract judgment to determine whether duties have been performed faithfully, and the obligation to faithfully execute the duties of the President is imposed specifically under the Constitution or law, the violation of that obligation would be a violation of the Constitution or law, and become the subject matter of judicial review. Thus, this would constitute a ground for impeachment.

(2) Article 56 of the State Public Officials Act sets out the duty of fidelity that must be observed by public officials, by stipulating that ‘every public official shall faithfully perform his or her duties.’ Any public official that violates this obligation is subject to disciplinary action (Article 78 Section 1 of the same Act, and attached Table 1 of the ‘Enforcement Rules of the Decree on Disciplinary Action against Public Officials’). Article 56 of the State Public Officials Act applies equally to all public officials including the President, and there is no explicit regulation or grounds for interpreting that the President should be provided with differential treatment. Thus, any violation of the duty of fidelity prescribed in Article 56 of the State Public Officials Act, even by the President, can be subject to constitutional review, and the President should be held equally responsible by the Constitution and law. Otherwise, acts for which public officials would be subject to disciplinary action would be of no legal consequence for the President, the highest-ranking public official, and this would run contrary to the principle of fairness.

(3) As the head of state, the President is responsible for safeguarding the independence, territorial integrity and continuity of the state and the Constitution (Sections 1 and 2 of Article 66 of the Constitution), and the foremost duty of the state is to guarantee the lives and safety of the

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people. The Constitution sets forth the duty to “ensure security... for ourselves and our posterity forever” (Preamble), and that, “The State shall endeavor to prevent disasters and to protect citizens from harm therefrom” (Article 34 Section 6). The head of state, as the representative of the country, serves as the highest executive when it comes to the fulfillment of such state duties.

Therefore, upon the occurrence of a ‘national crisis,’ where key elements or values of the state that comprise national sovereignty or the state itself, such as the political, economic, social and cultural systems, or the lives and safety of many people, are in danger of or are actually being severely compromised, the President, as the head of state, bears the specific obligation to act to protect the state and the citizens by taking timely measures against such a crisis. Such national crises not only include conventional security crises such as military threats, but also include security crises in the form of natural disasters, social disasters or terrorist attacks, and the significance of the latter is growing more evident in modern states.

In such cases where the President has come to bear the specific duty to act, the obligation of the President to faithfully execute duties is a legal obligation, not merely an ethical or political one. Thus, neglecting that duty is subject to constitutional review. When the President bears the specific obligation to act, the obligation to faithfully execute duties prescribed in Article 69 of the Constitution and the duty of fidelity set forth in Article 56 of the State Public Officials Act serve as the criteria for determining whether the Constitution or law has been violated, as set forth in the ground for impeachment.

(4) In order to accept that the President has violated the obligation to faithfully execute duties, there must first be a national crisis in which key elements or values of the state that comprise national sovereignty or the state itself, such as the political, economic, social and cultural systems, or the lives and safety of many people, are in danger of or are actually being severely compromised (obligation to act occurs), and second, the President must have failed to faithfully execute his or her

duty to protect the existence of the state and the lives and safety of the people (duties are performed unfaithfully).

B. Whether the Respondent Violated the Obligation to Faithfully Execute Duties

(1) Facts not in dispute

(A) We will examine the development and circumstances of the Sewol ferry incident to the extent that our examination is not redundant with the majority opinion. On April 16, 2014, the hull of the Sewol ferry began inclining rapidly to the left at around 08:48, at 1.8 nautical miles north of Byeongpung Island, part of the township of Jodo in Jindo County, South Jeolla Province, and listed approximately 30 degrees to port after losing its ability to recover. By around 09:34, the Sewol ferry was listing 52.2 degrees and the margin line was submerged, after which it rapidly inclined to 77.9 degrees at 10:10:43, and capsized at 108.1 degrees at 10:17:06.

At around 10:10, 11 high school students in the cabin on the port side of the stern moved to the deck and were rescued. Until approximately 10:13, some passengers in the upper cabin escaped from the Sewol ferry through the door near the stern. At around 10:19, over ten passengers were the last ones to escape from Sewol ferry, from the rail on the starboard side. At approximately 10:21, the last survivor was rescued. Seven special force agents belonging to the West Regional Headquarters of the Korea Coast Guard arrived at the scene at around 11:35, after the Sewol ferry capsized, but were unable to enter the ship within the same day.

On the day of the accident, the tidal current changed at around 09:00, and the tidal current in nearby waters was 0.2 knots or 0.5 knots. At around 10:00, the current ran 0.4 knots or 1.9 knots, and up until 10:30 had not exceeded 2 knots. Passengers that had jumped into the sea stayed afloat while generally remaining in place, and were able to swim

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to the life rafts when they were unfolded. Kwon □-Joon, who had come down from the rescue helicopters to the sea to move the life rafts, stated that he was not particularly aware of the current's force, and that the hull of the Sewol ferry helped block the current. It happens to be that all the people who had managed to escape when the Sewol ferry capsized were rescued by the coast guard or fishing boats, and relocated to other vessels.

Vessel No. 123 could hold approximately 50 people, and it was easy for people adrift at sea to board the ship thanks to the ladder on its side. Jeonnam 201, belonging to South Jeolla Province, arrived near the Sewol ferry at around 10:06, and approximately ten vessels were on standby in the vicinity. Some of the fishing boats that had arrived earlier than Jeonnam 201 could hold around 50 people each, and could easily pull people up from the sea as these boats had low sides. In addition, Doola Ace and Dragon Ace 11, both capable of accommodating a large number of people, were on standby near the Sewol ferry.

(B) The National Security Office, upon encountering the breaking news on the Sewol ferry accident on YTN at around 09:19, called the coast guard on the landline at 09:20 and 09:22 and was informed that 'a ship carrying 474 people was flooded and listing.' At around 09:24, the National Security Office sent a text message to the work phones of key Cheong Wa Dae officials, which read, "Passenger ship carrying 474 people reported to be flooding, currently under confirmation," and at around 09:33 received a status report from the coast guard via fax stating that 'the Sewol ferry, weighing 6,647 tons and carrying 450 passengers and 24 crew members, reported flooding and danger of submersion, upon which we ordered the emergency dispatch of coast guard patrol ships and search and rescue aircraft, and have requested ships in the vicinity and navy vessels to cooperate.'

At 09:10, the coast guard set up the Central Rescue Headquarters, followed by the Counter-Disaster Headquarters set up by the Ministry of National Defense at 09:39; the Central Accident Response Headquarters by the Ministry of Oceans and Fisheries at 09:40; and the Central

Disaster and Safety Countermeasures Headquarters by the Ministry of Security and Public Administration at 09:45. The Ministry of Oceans and Fisheries issued a ‘serious’ crisis alert at around 09:40. The National Security Office confirmed with the coast guard over a landline at around 09:54 that the Sewol ferry at that moment was listing at 60 degrees and that 56 people had been rescued; and at about 10:30, asked the coast guard if the ‘ship was completely flooded and had sunk.’ At about 10:52, the National Security Office was informed by the coast guard that the Sewol ferry had capsized and only its bow was visible, and that most passengers had not made it out of the cabins. From 11:10, footage transmitted from the ENG camera on coast guard vessel No. 513 was shown in real time at the Cheong Wa Dae Crisis Management Center Situation Room (hereinafter referred to as the “Cheong Wa Dae Situation Room”).

On the day of the accident, the respondent remained in the Presidential residence instead of going into her Cheong Wa Dae office. At around 17:15, she visited the Central Disaster and Safety Countermeasures Headquarters to receive reports and give orders related to the rescue operation.

(2) Occurrence of the duty to act

The Sewol ferry incident was a large-scale disaster and tragedy in which a ship carrying 476 people sunk, leading to the deaths of 304 people. As aforementioned, the Sewol ferry started listing approximately 30 degrees to the port side at 08:48 on April 16, 2014, further inclining rapidly and capsizing at around 10:17. During this time slot, the lives of the people aboard quickly became exposed to danger. It was continuously pointed out that, given the size and structure of the ferry, it was possible for passengers to survive for a certain period after the hull was completely submerged. Judging by the circumstances at the time, it is clear that the situation was a national crisis in which the lives and

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safety of a large number of people were being or could be endangered by a severe and pressing situation. Thus, the respondent came to bear the specific duty to act to protect the lives and physical safety of the people by swiftly ascertaining the situation and taking timely measures.

(3) Unfaithful execution of duties

(A) Respondent's claim

The respondent claims that her whereabouts on the day of the accident were as follows. The respondent had no official schedule on April 16, 2014, and being in poor condition, she remained in the Presidential residence instead of going into her Cheong Wa Dae office, and handled her duties by receiving reports via email, fax or in person, and giving orders over the telephone.

At around 10:00, the respondent became aware of the accident when she received the first written report on the Sewol ferry accident from the National Security Office. The report included information on the date, time and location of the accident; the name and tonnage of the ship involved; the number of people on board (474); an account of the accident (Sewol ferry reports distress signal, "sinking," at around 08:58); the rescue situation (56 rescued at the time of writing); and the rescue team that had been organized. At around 10:15, she called the Chief of the National Security Office, and upon comprehending the situation, gave orders 'to ensure that (all efforts go into the rescue operation so that) not a single casualty occurs, and all cabins within the ship are thoroughly searched so that nobody is left behind.' At around 10:22, she called the Chief of the National Security Office again to reiterate that 'the ship be thoroughly searched and everyone rescued.' At about 10:30, she called the Chief of the Korea Coast Guard and gave orders to 'deploy special forces if necessary, and to spare no effort in the rescue.' Thereafter, until 15:30, the respondent received and reviewed five reports from the National Security Office (two in writing, three over the telephone), seven

written reports from the Secretary to the President for Public Security, and one written report from the office of the Secretary to the President for Public Administration on the sinking of the Sewol ferry and the rescue situation, and gave the necessary orders. Secretary Ahn ○-Geun visited the respondent at her Presidential residence in the morning, and after lunch Secretary Jeong ○-Seong reported on the Sewol ferry incident in person. They waited for further updates on the rescue, deciding that the excessive involvement of the President in the onsite situation may interfere with the rescue operation.

Due to mistaken reports by the press and relevant agencies that ‘all students had been rescued,’ the respondent considered the situation to have been concluded (respondent’s statement). Around 13:07 and 13:13, the respondent received reports from the office of the Secretary to the President for Public Security and the Chief of the National Security Office that 190 more people had been rescued, raising the total number of people rescued to 370. At approximately 14:11, the respondent called the Chief of the National Security Office and ordered him to acquire an accurate account of the rescue situation, and upon final confirmation from the Chief of the National Security Office at around 14:50 that the previous reports were mistaken, she realized the severity of the loss at approximately 15:00 and gave orders to arrange a visit to the Central Disaster and Safety Countermeasures Headquarters. Around 15:35, her hairdresser visited and styled the respondent’s hair for approximately 20 minutes. At around 16:30, the Security Service reported that the visit to the Central Disaster and Safety Countermeasures Headquarters had been arranged, and in the car on the way at around 17:11 the respondent read the written report from the office of the Secretary to the President for Public Security. Upon arriving at the Central Disaster and Safety Countermeasures Headquarters at around 17:15, the respondent took every possible measure that she could as President, giving orders to conduct a thorough rescue operation mobilizing all resources and capabilities. Thus, the respondent has not violated the obligation to faithfully execute duties.

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(B) Review

1) Comprehending the crisis

a) As aforementioned, the National Security Office first became aware of the incident at around 09:19 through a broadcast, and after confirming the facts with the coast guard, sent a text message to the work phones of key Cheong Wa Dae officials at approximately 09:24, which read, "Passenger ship carrying 474 people reported to be flooding, currently under confirmation." Therefore, if the respondent had gone into her office at the standard business hour, at 09:00, and assumed her regular duties, she would have naturally received reports about the above information that had been sent to key Cheong Wa Dae officials, and subsequently have become aware of the incident at about 09:24. The respondent, in the early phase of the accident, which is the most critical to the rescue operation, became aware of the incident more than 30 minutes after it was reported to Cheong Wa Dae officials, due to having unfaithfully executed her duties by remaining in the Presidential residence instead of going into her office at the proper hour.

b) Considering the following circumstances, the respondent's claim that she only became aware of the severity of the situation at 15:00 on the day of the accident cannot be accepted.

① The National Security Office received a status report at around 09:33 from the coast guard that 'the Sewol ferry, weighing 6,647 tons and carrying 450 passengers and 24 crew members, reported flooding and danger of submersion, upon which we ordered the emergency dispatch of coast guard patrol ships and search and rescue aircraft, and have requested ships in the vicinity and navy vessels to cooperate.' At 09:10, the coast guard set up the Central Rescue Headquarters, followed by the Counter-Disaster Headquarters set up by the Ministry of National Defense at 09:39; the Central Accident Response Headquarters by the Ministry of Oceans and Fisheries at 09:40; and the Central Disaster and Safety Countermeasures Headquarters by the Ministry of Security and

Public Administration at 09:45. The Ministry of Oceans and Fisheries issued a ‘serious’ crisis alert at around 09:40, which, according to the “Maritime Accidents (Ships)” crisis management field manual (June 2013) applicable at the time, is the highest alert level issued where large-scale ship accidents require action and measures at the national level, upon agreement between the Office of the President (Crisis Management Center) and the Ministry of Security and Public Administration. Thus, the National Security Office became aware of the gravity and seriousness of the situation before 09:40 at the latest, and it is reasonable to say that if the respondent had gone into her office at 09:00 and assumed her regular work day, likewise, she would have become aware of the severity of the situation around 09:40 on the day of the accident.

② The paper submitted by the respondent, prepared by the National Security Office and titled, ‘Passenger ship (Sewol) flooding near Jindo, rescue operation underway to save 474 people on board (draft) (April 16, 2014, 10:00),’ specifies that ‘56 people have been rescued at present,’ but does not clarify the state of the Sewol ferry itself, including the extent of its inclination. Upon understanding the situation through the report made at around 10:00, the respondent should have immediately contacted the Chief of the National Security Office to check on the state of the Sewol ferry, and if she had would have promptly realized that the Sewol ferry was listing at approximately 60 degrees. According to the paper, a ship carrying 474 people was sinking, and only 56 people had been saved more than an hour after the accident first occurred, which means that over 400 people had not been rescued. Thus, it is reasonable to say that the respondent should have realized straight away that this was a serious and urgent situation.

③ Kim △-Soo, then Chief of the National Security Office, testified at the investigation of state administration by the National Assembly that, in a telephone call with the respondent at around 10:15, he told her that ‘watching YTN might help assess the situation.’ From around 11:10, footage from the ENG camera on coast guard vessel No. 513 was being

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transmitted in real time to the Cheong Wa Dae Situation Room, so if the respondent had been present at this location she would have been properly aware of the seriousness of the Sewol ferry situation. Thus, even after 10:00 the respondent had a sufficient number of opportunities to understand the gravity of the situation if she had made a minimal amount of effort.

④ The respondent claims that thereafter, she read reports on the Sewol ferry incident sent from the office of the Secretary to the President for Public Security at around 11:28, 12:05 and 12:33, and that at around 12:54 she received and read a report from the office of the Secretary to the President for Public Administration on how the Central Disaster and Safety Countermeasures Headquarters was dealing with the Sewol ferry incident. Since the Sewol ferry had already capsized and was submerged before 11 a.m., the aforementioned reports would have reflected such facts if they had indeed existed and were not written falsely. Therefore, if the respondent had actually read all the aforementioned documents, she could not have realized the seriousness of the situation as late as 15:00.

⑤ The respondent claims that it was difficult to comprehend the situation accurately and swiftly due to the mistaken reports of the relevant agencies and media.

However, there is no material to prove that the respondent received mistaken reports from the National Security Office or the Office of the President on the day of the accident. As mentioned above, Cheong Wa Dae was aware at around 10:30 of the fact that the Sewol ferry was already listing to the extent that its bottom was showing, and that at around 10:52 the Sewol ferry had capsized with only its bow visible and most passengers had not made it out of the cabins. Therefore, even if KBS had sent out an optimistic broadcast at 10:36, it is unlikely that the National Security Office reported this exactly so to the respondent. Cheong Wa Dae had called the coast guard at around 11:07 and had been made aware that they had not officially confirmed media reports stating that ‘all students have been rescued.’ Thus, such mistaken reports

do not affect the judgment that the respondent would have become aware of the seriousness of the situation at around 10:00.

⑥ The respondent claims that she considered the situation to be concluded upon receiving reports on the day of the accident from the office of the Secretary to the President for Public Security at 13:07 and from the Chief of the National Security Office at 13:13 that ‘190 more people have been rescued, raising the total number of people rescued to 370.’ Then, she claims, upon hearing from the Chief of the National Security Office at around 14:50 that the previous reports had been mistaken, she realized at around 15:00 that the situation was serious and gave orders to arrange for a visit to the Central Disaster and Safety Countermeasures Headquarters. However, the National Security Office had been checking the number of rescued people for two hours after the Sewol ferry had sunk, and should have double-checked the report that the number of rescued people had suddenly increased twofold. Even if the respondent had received the same report, it was easily comprehensible that 104 passengers had yet to be rescued as the Sewol ferry had been reported to be carrying 474 people on board. Thus, we cannot accept the respondent’s claim that she considered the situation to have been concluded because 370 people had been rescued, and the time when the respondent became aware or should have become aware of the severity of the situation cannot have been as late as 15:00.

Generally speaking, the leader of a state invests much more attention and interest in dangerous situations than safe ones, for good reason. According to the respondent’s claims, she paid no attention to reports that warned of the danger of the situation, and instead focused only on optimistic reports and considered the situation to have been concluded. Such behavior in itself is a sign of the respondent’s unfaithfulness in the face of a crisis.

c) Sub-conclusion

The respondent became aware, or could have become aware with a minimal amount of effort, of the gravity and seriousness of the Sewol

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ferry incident at around 09:40, or around 10:00 at the latest. We cannot accept the respondent's claim that she became aware of the severity of the situation as late as 15:00.

2) The respondent's reaction

a) What the respondent should have done

There is reason to believe that at 10:00 at the latest, the respondent became aware or should have become aware of the severity of the situation. The ensuing response should have been to immediately head to the Cheong Wa Dae Situation Room, where all of the nation's disaster-related data is collected and a direct communication network with key relevant agencies is established, to receive real-time situation updates, identify necessary measures, and accordingly mobilize national capacity to the fullest extent, ultimately directing, commanding and supervising the disaster response measures of the relevant agencies swiftly and appropriately. More than ten vessels able to accommodate all of the passengers were on standby on the waters nearby the Sewol ferry at around 10:00 on the day of the accident, which means everyone could have been rescued even if they had all abandoned the ship and had been adrift at sea. Helicopters and aircrafts had also been assisting with the rescue operation.

b) The act of remaining in the Presidential residence instead of going into the office

Since the day of the accident was a weekday, the respondent should have gone into the office and performed her duties during working hours unless there was a just ground not to do so. However, the respondent remained in her Presidential residence from the morning of the day of the accident until her visit to the Central Disaster and Safety Countermeasures Headquarters at 17:15, instead of going into her office.

The residence is a private space designed for the repose and personal life of the President. Thus, working from the Presidential residence and working from an office equipped with all human and physical resources required for the performance of duties bears fundamental differences, in terms of work efficiency and the convenience of receiving reports and issuing orders. Presidential aides will clearly encounter setbacks when giving reports at moments of urgency if the respondent remains in her residence instead of going into the office during working hours, since they first have to locate the President.

In national crises where large-scale disasters occur and develop into urgent situations, the respondent, as the chief executive of the administration, should be situated in the Cheong Wa Dae Situation Room to enable instant communication and to execute duties in a prompt and accurate manner. Therefore, immediately after becoming aware of the severity of the situation at around 10:00, the respondent should have promptly gone to work and ascertained and commanded the situation from the Cheong Wa Dae Situation Room. Regardless, the respondent remained in the Presidential residence for approximately seven hours from when she first realized the gravity of the situation, for no particular reason, and issued vague orders over the telephone, to be further examined below.

c) Orders the respondent claims to have issued

① The respondent claims that from approximately 10:00 to 12:05 on the day of the accident, she received and reviewed a total of twelve written reports and three telephone reports on the Sewol ferry incident before visiting the Central Disaster and Safety Countermeasures Headquarters at 17:15, including four from the National Security Office (three in writing, one over the telephone) and four (in writing) from the Secretary to the President for Public Security, and that she issued orders over the telephone on five occasions. However, the following proves that most of these orders or reviews did not take place.

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The respondent claims that she called the Chief of the National Security Office at approximately 10:15 and gave orders to ‘ensure that not a single casualty occurs, and all cabins within the ship are thoroughly searched so that nobody is left behind,’ that she called the Chief of the National Security Office again at around 10:22 to reiterate that ‘the ship be thoroughly searched and everyone rescued,’ and called the Chief of the Korea Coast Guard at approximately 10:30 to give orders to ‘deploy special forces if necessary, and to spare no effort in the rescue.’

The respondent claimed that there were telephone records of a ten-minute telephone report given by the then Senior Secretary to the President for Employment and Welfare at around 12:50, on the ongoing debates in the National Assembly regarding the Basic Pension Act. Naturally, there would be telephone records of the calls between the respondent and the Chief of the National Security Office and the Chief of the Korea Coast Guard if they had, indeed, taken place, but the respondent failed to submit such records and did not claim their existence, which makes it hard to believe that such telephone calls were made in the first place.

The transcript of the telephone call between Cheong Wa Dae and the coast guard made at approximately 10:25 includes instructions to ‘pass on to the Chief of the Korea Coast Guard that the respondent’s orders are to make sure not a single casualty occurs, and to thoroughly check the cabins so that nobody is left behind.’ The only objective evidence to prove the existence of a phone call between the Chief of the National Security Office and the respondent is this recording, and it can be assumed that the respondent’s orders were issued around this time. The transcript of this recording does not include any conversation on orders for the Chief of the Korea Coast Guard to deploy special forces, or any confirmation of how those orders have been carried out. Further, Kim ○ -Kyun, the then Chief of the Korea Coast Guard, testified in the state investigation by the National Assembly that he had already ordered the deployment of special forces at approximately 09:53 on the day of the

accident. The respondent would not have repeated the orders of the Chief of the Korea Coast Guard if they had indeed spoken on the telephone, since he would have already told her about his orders. Moreover, at 10:17:06 the Sewol ferry had already capsized to 108.1 degrees and was sinking rapidly, which means the only way to save the passengers would have been through a diving operation. Thus, we cannot accept the respondent's claim that she gave orders to the Chief of the Korea Coast Guard.

② The following is an examination of the order itself. The first order that the respondent claims to have given was to 'ensure that not a single casualty occurs, and that all cabins within the ship are thoroughly searched so that nobody is left behind.' This, from the stance at the receiving end of the order, is a very banal and vague instruction, and does not include any directive guidance whatsoever that can help properly deal with pressing danger. This order indicates no awareness about what particular problems were occurring at the scene, and no thought into what solutions should be adopted.

Since the Sewol ferry had capsized to 108.1 degrees at approximately 10:17:06 on the day of the accident, at 10:15 when the aforementioned order was allegedly issued, the hull was already capsized and doors to all the cabins were fully submerged. A disaster calls for an accurate understanding of a situation that can change by the minute, and clear orders that correspond to those changes. However, the respondent invested no interest or effort into ascertaining the situation and handling it appropriately, which is why her orders lacked any concrete insight.

d) The respondent remained in the Presidential residence for approximately seven hours from when she should have first realized the gravity of the situation, for no particular reason, and merely gave ill-suited and misguided orders via the telephone. The details of the orders and the respondent's whereabouts show that the respondent did not readily or earnestly take any action or make any effort to protect the lives and safety of a great number of people that were in danger.

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e) The command and leadership of the President in national crises such as large-scale disasters not only has a measurable impact, but also has a symbolic effect. In terms of having a measurable impact, the President, as the head of state, chief executive, and commander-in-chief of the armed forces, can centralize and deploy the nation's entire capacity in the form of police forces, administrative power and armed forces; and set priorities for human and material resource allocation by commanding and supervising crises. Consequently, rescue and recovery can proceed swiftly and efficiently. As for the symbolic effect, showing inwardly and outwardly that the highest executive of state affairs has placed the resolution of a disaster at the top of the agenda can in itself offer powerful motivation to the rescue workers, and allow victims and their families to hope for a safe rescue. Even when the results are unsatisfactory, these people would be aware that the government worked to its utmost capacity to resolve the crisis, which could at least be a small consolation and lend them the strength to recover from the disaster.

f) A true leader of a nation should swiftly ascertain the situation when a national crisis strikes; minimize damage by taking appropriate measures under changing circumstances; share the suffering of the victims and their families; and give the citizens hope that such dark times will not last. Of course, it cannot be said that the President violated the duty of fidelity for failing to live up to the model of a true leader. Nonetheless, the people require the leadership of the top commander of state affairs the most, not in conventional and ordinary situations when the government system runs smoothly, but when a national crisis such as war or a large-scale disaster occurs and the situation moves rapidly in an unpredictable direction, and when the government system that should control and manage such a crisis fails to run properly. Such a crisis occurred on April 16, 2014, the day of the Sewol ferry tragedy. All the citizens that were watching the situation unfold, not to mention the victims and their families, were desperately hoping that the respondent,

as the President, would at least display the smallest amount of leadership to protect the people.

However, the respondent remained in the Presidential residence and did not go into the office until that evening, for no particular reason. As a result, despite the fact that an unprecedented large-scale disaster had occurred and a ‘serious’ crisis alert, the highest of its kind, had been issued, the respondent realized the gravity of the situation extremely belatedly, and maintained an insincere attitude without displaying any leadership as President to understand the situation and support the rescue operation. The respondent failed to appear before the public for eight hours when the lives and safety of over 400 of the nation’s people were faced with a grave and pressing threat.

(4) Sub-conclusion

As shown above, despite a national crisis that was an immediate threat to the lives and safety of the people and was bringing about or was foreseen to bring about loss on a massive scale, the respondent dealt with the situation in a highly unfaithful manner considering the gravity and urgency of the circumstances. The respondent lacked the will or effort to resolve a disaster that had prompted the issuance of a crisis alert of the highest level, even after realizing the severity of the situation. Therefore, the respondent failed to faithfully perform her duties despite the occurrence of a specific obligation to act to protect the lives and safety of the people, and thus violated the obligation to faithfully execute the duties of the President as specifically provided by Article 69 of the Constitution and Article 56 of the State Public Officials Act.

C. Conclusion

The question of whether to remove the President from office when he or she has violated the law should be determined by whether this violation is of such gravity in terms of protecting the Constitution, that

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it is required to preserve the Constitution and restore the impaired constitutional order through a decision in favor of removal; or whether the President, through a violation of law, has betrayed the trust of the people to such an extent that said public trust vested in the President should be forfeited before the presidential term ends (*see also* 2004Hun-Na1, May 14, 2004).

If a violation of the President's duty of fidelity can serve as a general ground for removal, then the slightest violation of such duty can serve the same purpose. Considering the vital importance of the democratic legitimacy delegated to the President by the people and the constitutional order, the grounds for removing the President from office should be limited to a grave violation of the duty of fidelity, such as the violation of a specific statute that prescribes the duty to act in a particular way in a specific situation, or to the conscious negligence or abandonment of duties. In this case, the respondent violated the duty of fidelity under the State Public Officials Act, but there is no evidence to prove that the respondent violated a specific statute that prescribes the duty to act in this particular situation. Also, as aforementioned, the respondent did not consciously neglect or abandon her duties, although she did significantly violate the duty of fidelity.

Therefore, although the respondent violated the obligation to faithfully execute the President's duties prescribed under the Constitution and the duty of fidelity under the State Public Officials Act, this alone cannot serve as a ground for removal from office for it is not, in and of itself, a cause for losing public trust to the extent that the democratic legitimacy vested in the President by the people should be forfeited before the presidential term ends.

In the days to come, presidents elected by the support of the majority of the public will continue to perform their duties. We cannot leave as a legacy the wrong perception that it is permissible for the highest leader of a state to execute duties unfaithfully in the face of a crisis. We cannot witness yet another tragedy in which the future of the nation and the hearts of the people are broken because the lives of so many are

lost, and safety threatened, by cause of the unfaithfulness of the President. For this reason, we call attention to the respondent's violation of the obligation to faithfully execute duties.

XIII. Concurring Opinion of Justice Ahn Chang-Ho

I agree with the majority opinion that the respondent's violation of the Constitution and statutes are 'grave violations of the law that are unpardonable from the perspective of protecting the Constitution,' and that the respondent must therefore be removed from office. I believe that the power structure under the current Constitution, which is being criticized as a so-called 'imperial presidency,' was the requisite that made such violations of the Constitution and statutes possible. Thus, I add the following concurring opinion with the conviction that shedding light on this is necessary to set the constitutional message of these impeachment proceedings, and to set the direction for future amendments to the Constitution.

A. Constitutional History of Korea and the Imperial Presidency

The current Constitution (Article 10) prescribes, "All citizens shall be assured of human dignity and worth and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals." Human dignity and worth is the core concept that determines the fundamental nature of the Constitution, and defines the relationship between individuals and communities. A democratic Constitution that aims to realize human dignity and worth is not embodied in an ideal model, but takes on different forms depending on the political, economic, social and cultural environments of the nation and the ideologies that define the ages.

The Constitution of the Republic of Korea, as we know it today, is a result of nine amendments since it was first enacted. Aside from the

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amendment made straight after the April 19 Revolution in 1960 to adopt the parliamentary system and punish those involved in the rigged elections on March 15 the same year, the constitutional amendments were mostly related to the election method, term, position and power of the President. The presidential system that has been adopted by the Constitution of the Republic of Korea is considered an imperial presidency that, despite having concentrated political power in the President, lacks an adequate restraint on that power.

The current Constitution is the result of an amendment agreed upon between the ruling and opposition parties following the Democracy Movement in June 1987, and reflects the public's desire to realize a political community that guarantees human dignity and the people's fundamental rights to the fullest extent. The Constitution adopts a direct presidential election system, to strengthen the democratic legitimacy vested in the President, and prevents the possibility of long-term dictatorship by limiting the presidency to a single five-year term and by repealing the Presidential power to dissolve the National Assembly. The President's authority was restricted and provisions on fundamental rights strengthened by reinstating the National Assembly's right to conduct inspections of state administration and by founding the Constitutional Court.

Nevertheless, through this impeachment adjudication we have learned that the harmful vestiges of the imperial presidency, such as government collusion with businesses, remain intact under the current Constitution. For what reason is the current Constitution, which sought to eradicate the authoritarian power structure, still impaired by such vestiges?

B. Flaws in the Power Structure under the Current Constitution

The democratic legitimacy of the President's 'formation of power' underwent groundbreaking change thanks to the amendment of the Constitution in 1987, which restored direct presidential elections, but we have not ventured far from the authoritarian ways of the past when it comes to the democratic legitimacy of the President's 'exercise of

power.’ While powers including the right to introduce legislative bills, to compile and submit budgets, and to extensive administrative legislation are concentrated in the President, there are no effective checks, or those that do exist do not work properly. This power structure under the current Constitution, combined with the respondent’s leadership issues, enabled political corruption such as ‘intervention in state affairs by a group of unofficial aides, abuse of authority by the President, and government collusion with business conglomerates.’

(1) Intervention in state affairs by unofficial aides

Under Article 67 Section 1 of the Constitution, the President is vested with democratic legitimacy through election by universal, equal, direct and secret ballot by the people. Not only must the President secure democratic legitimacy in the formation of power through an election, but he or she must also continuously secure democratic legitimacy in the execution of power, through transparent procedures and communication.

The intervention in state affairs by a group of unofficial aides, or the so-called ‘unofficial advisers,’ is related to the imperial presidency that focuses excessive power in the President. The President under the current Constitution of the Republic of Korea is considered to possess a higher concentration of power than the presidency of the United States, which actually offered cause for the coining of the term ‘imperial presidency’ due to the Watergate scandal. Unlike the United States, in Korea the administration has the power to introduce legislative bills and compile and submit budgets, while on the other hand only a limited scope of public officials requires approval by the National Assembly or is subject to personnel hearings. Also, contrary to the United States, which is a federation, local governments in Korea are subordinate to the central government and their local governing systems lack autonomy and responsibility.

The Korea we live in today boasts an economy over ten times larger than it was at the time of the ninth constitutional amendment in 1987,

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and the structure of social conflict has intensified into multiple dimensions. Accordingly, the President, being the head of state and the chief of the executive branch, has come to bear a great many more duties, not only quantitatively but also in terms of quality, as they have become more specialized, diverse and complex. Thereupon, the President came to hold more power, and groups of unofficial aides that were not vested with democratic legitimacy could expand their scope of influence on the back of the President's powerful authority. The intervention in state affairs by unofficial aides brings vulnerabilities to the enhancement of transparency and fairness in policy decisions, in securing the predictability and controllability of the public, and in guaranteeing the responsibility entailed by the exercise of authority. In particular, the 'continuous' intervention in state affairs by a group of unofficial aides can ruin the principle of the representative democratic system by severing the 'link of democratic legitimacy' between the people and state agencies, and prohibiting 'transparency in political processes' and 'chances for public participation in political processes.'

This impeachment adjudication has verified that Choi ○-Won, a so-called 'unofficial confidante' that is not vested with any democratic legitimacy, 'continuously' intervened in state affairs by getting involved in the personnel affairs of high-ranking public officials, recommending ministers, vice ministers and Cheong Wa Dae advisers to the respondent, and by exercising influence in national policy decisions. The power structure under the current Constitution, which concentrates excessive power in the President, has revealed serious flaws in securing the democratic legitimacy of the exercise of power and procedural transparency, by encouraging Choi ○-Won's intervention in state affairs.

(2) Abuse of authority by the President

A simple order or word coming from an imperial President exerts absolute influence on the composition of personnel in a state agency or on national policy decisions. Members of the State Council, including

the Prime Minister, and Cheong Wa Dae advisers merely follow orders and find it challenging to liberally state views that contradict the President's, albeit to varied degrees depending on his or her leadership. Moreover, the excessive concentration of power in the President under the current Constitution may further exacerbate the problems caused by the President's arbitrary exercise of power when combined with the top-down decision-making culture and connection-based nepotism that is still a part of the Korean society. Therefore, the presidential system set forth by the current Constitution may become the prerequisite to enable the President's arbitrary exercise of power.

Korea adopts a winner-takes-all majority representation system in which one more vote in the election can lead to the attainment of imperial political power, and a lack of one vote can lead to alienation from such authority. Consequently, the core values and resources of the Korean society form around political power, and political circles are divided through sharp opposition and strife in a struggle to obtain that power. Disparagement between political forces instigates ideological conflict and regionalism, and may cause social disputes. As a result, the composition of personnel in state agencies or national policy decisions are sometimes decided arbitrarily in line with the President's private or partisan interests, instead of in a fair and objective manner through transparent procedures.

All decisions made by state agencies, including by the President, must comply with procedures set forth by law and should, in practice, be bound by law. Abuse of authority by the President can damage the principle of government by law, infringe upon the fundamental rights of individuals, and undermine the nature of the professional civil servant system. In particular, the abuse of authority by the President to pursue personal interests may damage the common good and common values supported by the national community.

This impeachment adjudication has verified that the respondent ordered or tacitly approved of the divulgence of classified documents of state institutions to Choi ○-Won for a considerable period, and that she

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intervened in the management of private companies, disregarding the public nature of state authority. As seen here, by concentrating excessive power in the President, the power structure under the current Constitution reveals flaws in guaranteeing fairness and legitimacy in the exercise of power, by prompting the President's arbitrary exercise of power and abuse of authority.

(3) Government collusion with business conglomerates

The excessive centralization of power in the President under the current Constitution is closely related to 'government collusion with business conglomerates,' which is recognized as a chronic problem in the Korean society. There is no denying that in the past, business conglomerates, or *chaebol* in Korean, were drivers of industrialization that successfully achieved a high level of economic growth under the protection of political powers. However, *chaebol*-centered economic growth spurred government collusion with businesses, which in turn became the cause of criminal conduct and corruption. Collusion between political powers and *chaebol* gave the latter privileged status, and at the same time constricted the motivation and creativity of other economic agents.

The Constitution prescribes that, "The economic order of the Republic of Korea shall be based on a respect for the freedom and creative initiative of enterprises and individuals in economic affairs (Article 119 Section 1)," and that, "The state may regulate and coordinate economic affairs in order to maintain the balanced growth and stability of the national economy, to ensure proper distribution of income, to prevent the domination of the market and the abuse of economic power, and to democratize the economy through harmony among the economic agents (Article 119 Section 2)." This is a constitutional proclamation aiming to realize economic democratization by emerging from past vestiges of *chaebol*-centered economic policies and government collusion with businesses, while still guaranteeing the freedom and creativity of enterprises and individuals in economic affairs.

Regardless, collusion between political powers and *chaebol* continues, even after the constitutional amendment of 1987. This impeachment adjudication proved likewise, as it verified that the respondent secretly leveraged her authority as President to coerce *chaebol* into making contributions to foundations, established largely under the respondent's influence. This is a clear illustration of how the excessive concentration in power on the President can induce government collusion with businesses, subsequently infringing upon the property rights and economic freedom of individuals and enterprises, which are the backbone of the market economy, and interfering with the realization of economic justice and social fairness.

(4) Sub-conclusion

The continued 'intervention of unofficial aides in state affairs, abuse of authority by the President, and government collusion with business conglomerates' under the power structure adopted by the current Constitution are the vestiges of political corruption spurred by the imperial presidency. Such political corruption is interfering with the realization of the key constitutional values of democratic legitimacy, procedural transparency, social fairness and economic justice.

C. Reforming the Power Structure under the Current Constitution

(1) An alternative to the imperial presidency could be the constitutional order of a modern decentralized nation. In such a nation, the principle of decentralization, which emphasizes local autonomy and responsibility, and the principle of direct democracy, which complements the limitations of representative democracy, play stronger roles, drawing from the principle of separation of powers, which guarantees the fundamental rights of the people by dispersing power and enabling checks and balances between authorities.

Under the power structure adopted by the current Constitution, the

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President is granted the positions of ‘Head of State (Article 66 Section 1)’ and the ‘protector of the State and the Constitution (Article 66 Section 2)’ and is vested with a concentration of power. In other words, the President is expected to display strong leadership in performing state affairs. However, such political power tends to move toward centralization and away from the people, the sovereigns, while centralization gears toward absolutism, and absolute power is bound to corrupt the holder. Furthermore, leaving the vast scope of policy tasks of the specialized, complex modern state up to the personal political competence of President may in fact give rise to inefficiencies.

The Republic of Korea is struggling with serious impediments to development just ahead of the threshold to becoming a developed country. To advance, the nation must resolve the issue of economic bipolarization and overcome conflict between ideologies, regions and generations so as to achieve social integration and national development. Moreover, in the midst of powers such as the U.S., China, Japan and Russia, we must protect national security from North Korea’s nuclear and missile threats and pursue peaceful unification. Democracy does not suppress social conflict, but integrates it within a political framework in search of a social consensus. For Korea to solve such timely challenges effectively, the power structure must enable the fair exercise of authority by prioritizing compromise and deliberation, and by seeking the democratic mediation of diverse social interests through transparent procedures and communication. For the transparent and fair exercise of power can settle social conflict and enhance social trust and public safety, and ultimately realize social integration and national development (*see also* Isaiah 32:16, 32:17). Thus, we must reform the power structure from an imperial presidency, which has spurred political corruption including government collusion with businesses as well as wasteful, slanderous political strife, into a power-sharing decentralized system that enables governance and the transparent and fair exercise of authority.

(2) Taking into account the Korean Constitution’s history of focusing power on a President selected by the people, the level of public trust in

individual state agencies, the security issue on the divided Korean peninsula, and the people's legal sentiment toward the form of government, a realistic alternative to the presidential system provided under the current Constitution could be for the people to choose from a semi-presidential system, a parliamentary system or a system in which the prime minister shares authority and responsibility with the President.

Alongside a change in the form of government, the excessive centralization of power in the President can be dispersed by extensively transferring such centralized power to local governments, which would facilitate neighborhood democracy. The local autonomy system is based on the principle of popular sovereignty, and is a realization of self-governance by residents in their capacity as local sovereign-holders (96Hun-Ba62, April 30, 1998). Radical decentralization can lead to grassroots governance by encouraging the voluntary participation of residents and boosting their democratic civic awareness, and help achieve national advancement by promoting regional development based on the economic, social and cultural characteristics of the region. Such deeper decentralization can ease the regional discontent arising from the centralized allocation of resources, and in turn play a part in social integration. Furthermore, it can help pave the way for peaceful unification, and contribute to national integration in the post-unification era.

The proportional representation system adopted to elect National Assembly members is founded on the idea of a party-based democracy, and reinforces the proportionality of votes, which are the seeds of the principle of popular sovereignty. It is thus considered to have faithfully reflected the multiple political ideologies coexisting across society in line with the views of the electorate (*see also* 2007Hun-Ma40, June 25, 2009). Therefore, the proportional representation system should be expanded in order to seek the fair resolution of divergent interests across society. This must be accompanied by efforts on the part of political parties to establish their identities, and also towards ensuring transparency and fairness when selecting candidates for proportional representative National Assembly members (*see also* concurring opinion

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in 2012Hun-Ma347, May 26, 2016).

For the people to understand the core aspects of national policies and exert effective control over state agencies, the principle of transparency in the exercise of power must be constitutionally prescribed and specified by law. We should also give keen consideration to controlling the power distributed to the National Assembly and local governments as a result of decentralizing the President's excessive authority, which can be done by reinforcing elements of direct democracy such as popular recall, popular initiative and popular referendum.

The heads of administrative branches as well as the Director of the National Intelligence Service, the Prosecutor General of the Supreme Prosecutors' Office, the Commissioner General of the National Policy Agency, and the Commissioner of the National Tax Service, all of whom exercise significant state power, must be appointed in a transparent and fair manner. One option that should be strongly considered is to require approval by the National Assembly for the appointment of these positions. The unnecessarily large group of Cheong Wa Dae aides should be streamlined, and the President's right to grant amnesty should be restricted to prevent the rule of law, specifically the separation of powers and equality before the law, from being undermined. We should also consider adopting a bicameral system for the National Assembly by installing a Senate represented by districts, for the purpose of promoting local autonomy, overcoming regionalism, achieving peaceful unification and integrating the people of the unified nation. It should be noted that discussing the adoption of this bicameral system at a later stage, when unification is underway, may actually hinder peaceful reconciliation.

(3) The purpose of reforming the power structure should be to enable decentralization, governance and the transparent and fair exercise of power, and to harness this as a way to respect human dignity and worth and to guarantee the fundamental rights of the people to the fullest extent. Such reform should involve a public participation process designed to faithfully reflect the opinions of the people, who hold sovereignty. This process must shape public opinion democratically,

through rational dialogue and deliberation, gathering the consensus of the majority, instead of turning into a power struggle between political factions or a stage for collusion.

D. Opinion on the Claims Regarding the Impeachment Adjudication

There are claims that the petition for impeachment adjudication against the respondent should be dismissed, arguing that past governments were more deeply involved in cases such as intervention in state affairs by unofficial organizations, the privatization of state power, and government collusion with *chaebol* companies.

(1) The Constitution currently in force prescribes that the Constitutional Court, not the National Assembly, has jurisdiction over impeachment proceedings (Article 111 Section 1 Item 2), which can be interpreted as an emphasis on the rule of law. The purpose of the impeachment system lies in establishing the constitutional order by removing from office public officials that have violated the law. The Constitutional Court pronounces the decision to remove the President from office when the President has violated the Constitution or law to such a grave extent that it is no longer permissible from the standpoint of protecting the Constitution for the President to remain in office, or when the President has lost the right to administrate state affairs for having betrayed the trust of the people (*see also* 2004Hun-Na1, May 14, 2004). Whether there has been a ‘violation of law of a gravity sufficient to justify removing the President from office’ is not a readily conclusive, definitive matter, and is decided based on the overall consideration of not only the details and content of the ‘President’s violations of the law’ in a specific case and the meaning and content of the constitutional order being violated thereby, but also the times in which the impeachment adjudication is taking place; the future constitutional value and order that we seek to establish; the history of democracy and the political, economic, social, cultural environment; and the people’s legal sentiment regarding the protection of the Constitution.

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The Constitution prescribes that all citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status (Article 11 Section 1). However, equality under the Constitution does not guarantee equality in committing illegal conduct (*see also* 2014Hun-Ba372, July 28, 2016).

Therefore, in this case where the respondent's violations of the law have been proven by evidence, and where, taking into account the aforementioned facts, such violations have been accepted as 'violations of the law sufficiently grave to justify removing the President from office,' the claim that this case should be dismissed, comparing it to violations of law by former administrations, is no longer valid.

(2) Despite the fact that the 'duty to observe and safeguard the Constitution' is a matter of course derived from the principle of the rule of law, the Constitution reiterates this in Article 66 Section 2 and Article 69 in view of the crucial position of the President as the head of state and chief of the executive branch. Under the spirit of the Constitution as such, the President is a 'symbolic existence personifying the rule of law and observance of law' toward the entire public. Accordingly, the President should not only make every possible effort to protect and realize the Constitution, but also abide by the law and perform no act contrary to any valid law. Furthermore, the President should do all things in order to implement the objective will of the legislator (*see also* 2004Hun-Na1, May 14, 2004). A sage once said, "How can a leader ask the people to be righteous while asking forgiveness for his sins?" This emphasizes the duty of leaders, including the President, to abide by the law. Thus, any violation of law by the President should be dealt with strictly, for it has a stronger negative impact on the constitutional order than violations of law by the general public.

The 'Improper Solicitation and Graft Act' was enacted in March 2015 and entered into force in September 2016. The Act applies to private school members and journalists as well as public officials, and not only prohibits improper solicitations, but also restricts the receipt of money,

goods, etc. that are not connected to duties or given in exchange for any favors. The purpose of this Act is to eradicate the network of corruption embedded in bureaucratic society, so as to guarantee the fair performance of duties by public officials, and to secure the trust that people place in public agencies. In light of such public desire for a fair and ethical society, we have no choice but to deal with violations of law by the President in strict fairness.

The Republic of Korea we should build for ourselves and the future generation must respect human dignity and worth and guarantee the fundamental rights of the people to the fullest extent, so all people can pursue happiness in a free, equal, safe and abundant environment. The dismissal of this impeachment adjudication would indicate that the Court will be unable to remove the President from office even if similar violations of the Constitution or law again take place. Consequently, our society would have to tolerate violations of law committed on the back of powerful presidential authority, that involve the intervention of unofficial organizations in the personnel affairs of high-ranking public officials and national policy decisions for personal gains, or the exercise of influence by the President to coerce conglomerates into making contributions to foundations under his or her control. The political corruption that would ensue from such tolerance, such as government collusion with businesses, has the risk of spreading further and taking root. Not only would this have a negative impact on today's constitutional order, but it would also conflict with the ideals pursued by the Constitution.

(3) Thus, for the sake of safeguarding the constitutional order, and putting an end to political corruption such as the intervention of unofficial aides in state affairs, abuse of authority by the President, and government collusion with business conglomerates, this petition for impeachment adjudication should be upheld.

E. Conclusion

(1) The vacuum in state affairs that has occurred throughout these

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entire proceedings, due to the interruption in the President's performance of duties, is grave, and the national loss incurred by divided public opinion severe. In order to overcome this crisis and bring the nation back together, we should look beyond impeachment adjudication on the President as an individual, and endeavor to eradicate political corruption including the intervention of unofficial aides in state affairs, abuse of authority by the President, and government collusion with businesses conglomerates; and to reform the power structure that encouraged political corruption.

Of course, the power structure under the Constitution in force, which allows for an imperial presidency, cannot be used as a pretext to justify the respondent's criminal conduct. Nonetheless, as seen above, we cannot deny that the excessive concentration of power in the President was a factor that incited the respondent's violations. Moreover, the times we live in, as reflected in these impeachment proceedings, command that we move in the direction of decentralization, governance and a transparent and fair exercise of power. Reforming the imperial presidency into a power-sharing, decentralized system that reflects the demands of the times will help uproot the evils of the vertical authoritarianism evident in the Korean society, and overthrow undemocratic elements embedded across politics, the economy and society. Furthermore, this will present everyone with equal opportunities and allow them to exercise their abilities to the fullest across all domains of society, and help enhance fairness across the national community and seek the balanced improvement of people's livelihoods.

In *The Republic*, which Plato wrote in his fifties, he warns that, "For when office and rule become the prizes of contention, such a civil and internecine strife destroys the office-seekers themselves and the city as well." This holds a great many implications for our discussions on reforming the power structure.

(2) "But let justice roll down like waters, and righteousness like an ever-flowing stream (Amos 5:24)." These words from the Bible tell us to abandon what is unlawful and unjust, and to practice what is just and

righteous.

Although there are concerns over ideological conflicts occurring between the people with regard to this impeachment adjudication, it is actually a question of realizing constitutional values and safeguarding the constitutional order, not of conservative or progressive ideologies. Furthermore, this impeachment adjudication is not simply reviewing the illegality of the past actions of the President and as to whether to pronounce her removal from office, but is setting the normative standard for the constitutional values and order that the Republic of Korea should aspire to in the days to come.

As mentioned in the Court's opinion, the respondent's criminal conduct constitutes grave violations of the Constitution and law committed by the President, notwithstanding her position as a 'symbolic existence personifying the rule of law and observance of law' toward the entire public. Dismissing this impeachment adjudication would give rise to concerns over political corruption, including government collusion with business, further spreading and taking root. Not only does this negatively influence the current constitutional order, but it also goes against the ideological values pursued by the Constitution of the Republic of Korea, and runs contrary to the 'public desire for a fair and ethical society' reflected in the enactment of the Improper Solicitation and Graft Act.

Considering these facts, as a Justice of the Constitutional Court summoned to review this impeachment trial, there was no choice but to decide in favor of removing the respondent from office. This decision was made to safeguard the constitutional order founded on the basic order of liberal democracy, and to set justice right and put an end to political corruption, such as the intervention of unofficial aides in state affairs, abuse of authority by the President and government collusion with business conglomerates, for the people of Korea and our future generations.

(3) The decision for removal in this adjudication may lead to a reform in the power structure, in answer to the demands of the times. This will

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provide a chance for the liberal democracy and market economy of Korea to advance one step further. The basic order of liberal democracy, founded on autonomy and harmony, will become all the more solid, and the order of the market economy, on the back of freedom and creativity, will contribute to the balanced development of people's quality of life. This will ultimately foster the freedom, equality, safety and happiness of the Korean people and future generations.

Justices Lee Jung-Mi (Presiding Justice), Kim Yi-Su, Lee Jin-Sung, Kim Chang-Jong, Ahn Chang-Ho, Kang Il-Won, Seo Ki-Seog and Cho Yong-Ho

[Appendix]

List of Legal Representatives

(Omitted)

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II. Summaries of Opinions

1. Case on the Impeachment of the President (Park Geun-hye)

[2016Hun-Na1, March 10, 2017]

In this case, the Constitutional Court decided to uphold the impeachment removing President Park Geun-hye from office, on the grounds that she had violated the Constitution and law in the performance of duties, and that such violations were grave.

Background of the Case

(1) The press reported in July 2016 that Cheong Wa Dae, the Office of the President, had intervened in the establishment of the Mir Foundation and K-Sports Foundation (hereinafter referred to as “Mir” and “K-Sports,” respectively), previously known to have been established under the leadership of the Federation of Korean Industries, to raise over 50 billion Korean won from conglomerates.

While this developed into a political issue, the press reported on October 24, 2016, that key Cheong Wa Dae documents had been leaked to Choi ○-Won, whose former name was Choi ○-Sil, and that she had been secretly involved in running state affairs. Thereupon, the respondent delivered a public address on October 25, 2016, to the effect that, “I admit to have heeded Choi ○-Won’s opinion on the wording of some speeches and publicity documents. However, this stopped after the Cheong Wa Dae secretarial staff was fully established.” Notwithstanding the respondent’s national address, there were continued reports on Choi ○-Won’s intervention in state affairs, and on November 3, 2016, Choi ○-Won was detained on charges including abuse of authority to obstruct the exercise of rights. The next day, on November 4, the respondent delivered a second public address stating, “Anyone who is found in the investigation to be at fault must take responsibility, and I am determined to do the same.”

On November 6, 2016, Ahn ○-Beom, the former Senior Secretary to

the President for Policy Coordination, was detained on charges of attempted coercion and abuse of authority to obstruct the exercise of rights. Jeong ○-Seong, the former Personal Secretary to the President, was detained for allegedly disclosing secrets related to the performance of official duties. Choi ○-Won, Ahn ○-Beom, and Jeong ○-Seong were indicted on November 20, 2016, and the several allegations charged against them included the respondent as an accomplice. On November 24, the Democratic Party of Korea, the People's Party and the Justice Party decided to jointly prepare a motion to impeach the President. Thereupon, the respondent delivered a third public address on November 29, 2016, saying, "I will leave it up to the National Assembly to decide whether I should resign from or remain in office, and whether my remaining term as President should be shortened."

(2) Notwithstanding that the respondent had publicly announced her intention to resign from the presidency in accordance with the National Assembly's decision, the National Assembly formed a special committee, and conducted an investigation of state administration into suspicions that a civilian had intervened in state affairs. On December 1, 2016, it also appointed a special prosecutor. On December 8, the National Assembly presented to the plenary session a "motion for the impeachment of President Park Geun-hye," proposed on December 3, 2016, by 171 National Assembly members. The motion for impeachment passed on December 9, 2016, with 234 members in the 300-seat National Assembly voting in favor. Members of the impeachment committee requested impeachment adjudication against the respondent by submitting the attested original copy of the impeachment resolution to the Constitutional Court.

Subject Matters of Review

The subject matters of review in this case are whether the President violated the Constitution or law in performing her duties and whether the President should be removed from office by ruling of the Constitutional Court.

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Summary of the Decision

1. Whether the grounds for impeachment have been specified

It is sufficient for the grounds for impeachment to be stated in specific circumstances to the extent that they can be clearly distinguished from other facts. It is true that to a certain degree, the grounds for impeachment are not distinctly classified by category with respect to violations of the Constitution. However, the facts listed as the aforementioned grounds for impeachment, when considered together with violations of law, are detailed enough to be clearly distinguishable from the other grounds for impeachment.

2. Whether the voting procedure of the National Assembly was illegal

(a) The self-regulating authority of the deliberative process of the National Assembly should be respected under the doctrine of separation of powers, as long as it is not marked by any clear violation of the Constitution or law. Furthermore, Article 130 Section 1 of the National Assembly Act prescribes that whether to investigate the grounds of a proposed impeachment bill is at the discretion of the National Assembly. Therefore, the fact that the National Assembly did not perform a separate investigation into the grounds for impeachment, or that it voted on the motion for impeachment without waiting for the results of its investigation of state administration or the investigation results of the special prosecutor, does not mean that the vote was in violation of the Constitution or law.

(b) The National Assembly Act does not explicitly prescribe that a debate is absolutely required before a motion for impeachment is put to vote. Moreover, no National Assembly member wished to debate the vote for impeachment in this case, which was why the vote proceeded after an explanation of the proposal for the motion for impeachment, without any debate. The Speaker did not intentionally prevent or hinder

any National Assembly member from engaging in a debate against his or her wishes.

(c) Whether each ground for impeachment in the motion should be separately proposed or whether the grounds should be proposed as a single motion is at the discretion of the National Assembly members proposing the motion for impeachment. If there have been a number of violations of the Constitution and law, the combination of which are deemed enough to substantiate removal from office, then the numerous grounds for impeachment can be integrated and proposed under a single motion for impeachment.

(d) The impeachment procedure concerns the relationship between two constitutional institutions, the National Assembly and the President, and the impeachment resolution of the National Assembly does not infringe upon the basic rights of the President as a private individual. Therefore, the due process principle, formed as a legal principle that should be observed in the exercise of governmental power by a state institution on its citizens, cannot be directly applicable to an impeachment procedure that is designed to protect the Constitution against a state institution.

3. Whether adjudication on impeachment can be undertaken by eight Justices

As a rule, a constitutional trial is assigned to the Full Bench consisting of nine Justices. In reality, however, certain circumstances may arise which inevitably prevent Justices from participating in trials. Thereupon, the Constitution and Constitutional Court Act clearly provide that a case can be reviewed and determined with the attendance of seven or more Justices notwithstanding a vacancy or vacancies, to prevent the role of the Constitutional Court to protect the Constitution from being interrupted. Thus, that the vacancy of one Justice has led the Bench to consist of eight Justices presents no problem under the Constitution or law in reviewing and deciding on an impeachment trial.

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4. Requirements for impeachment

Article 65 of the Constitution provides that the ground for impeachment shall be a “violation of the Constitution or other laws in the performance of official duties.” The “official duties” as provided for here means the duties inherent in particular governmental offices as provided for by law and other duties related thereto as commonly understood, and thus, is a concept that includes not only acts based on laws, but also all of those performed by the President in his or her office with respect to the implementation of state affairs. The “Constitution” includes the unwritten constitution formed and established by the precedents of the Constitutional Court as well as the express provisions of the Constitution. “Other laws” include not only statutes in their formal context, but also, among others, international treaties that have the same force as statutes and international law that has been generally accepted.

Article 53 Section 1 of the Constitutional Court Act provides that the Constitutional Court shall pronounce a decision that the respondent be removed from public office “when there is a valid ground for the petition for impeachment adjudication.” For the impeachment of a President to take place, the benefits of upholding the Constitution by removing the President from office on account of the severity of the negative impact on or harm to constitutional order caused by the President’s violation of law, should overwhelmingly outweigh the national loss incurred by the removal of the President from office. Therefore, “the existence of a valid ground for the petition for impeachment adjudication” means the existence of a grave violation of the Constitution or law sufficient to justify the removal of the President from office.

5. Whether the obligation to serve public interest has been violated

Article 7 Section 1 of the Constitution, based on the principles of people’s sovereignty and representative democracy, clarifies the obligation of public officials to serve the public interest by providing

that public officials shall be “servants of the entire people,” while Article 69 of the Constitution reiterates the duty of the President to serve the public interest. The President, being a servant of “the entire people,” is obliged to be independent from the special interests of a specific political party, of the stratum, religion, region or social organization he or she belongs to, and of factions that he or she is acquainted with, and to perform duties for all people in a fair and balanced manner. The President’s obligation to serve the public interest is further specified in Article 59 of the State Public Officials Act, Article 2-2 Section 3 of the Public Service Ethics Act, and Item 4 (a) of Article 2 and Article 7 of the ‘Act on the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission’ (hereinafter referred to as the “Act on Preventing Corruption and the Civil Rights Commission”).

The respondent appointed a number of people recommended by Choi ○-Won as public officials, and some of the public officials appointed in this manner helped Choi ○-Won seek personal interests. The respondent ordered the establishment of Mir and K-Sports and the solicitation of funds for those foundations from private companies. She also used her position and authority as President to request that companies make contributions. The respondent then appointed persons recommended by Choi ○-Won to executive management positions at Mir and K-Sports, to enable Choi ○-Won to take de facto control of the two foundations. Consequently, Choi ○-Won was able to use the above foundations as tools for generating personal benefits through Playground Communications Inc. and The Blue K Inc. (hereinafter referred to as “The Blue K”), which were both actually under her management. The respondent demanded that companies hire certain persons and requested that they enter into contracts with certain companies, using her position and authority as President to intervene in the management of private companies. In addition, the respondent ordered the formulation of policies related to the interests of Choi ○-Won, such as the reorganization of sports clubs, and compelled Lotte Group to contribute substantial funds to K-Sports in

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connection with the construction of sports facilities in five key areas for sports talent fostering programs.

Through such conduct, the respondent abused her position and authority as President for the benefits of Choi ○-Won et al., which cannot be considered a fair performance of duties. The respondent has violated Article 7 Section 1 of the Constitution, Article 59 of the State Public Officials Act, Article 2-2 Section 3 of the Public Service Ethics Act, and Item 4 (a) of Article 2 and Article 7 of the Act on Preventing Corruption and the Civil Rights Commission.

6. Whether the freedom and property rights of companies have been infringed upon

In person or through the Senior Secretary to the President for Economic Affairs, the respondent requested that conglomerate executives make contributions to Mir and K-Sports. Taking into account the President's extensive authority and influence in the financial and economic sectors, and the unusual manner through which the foundations were established and circumstances under which they were managed, the respondent's demands were in reality imperative, rather than being mere suggestions or recommendations expecting voluntary cooperation. The respondent, by compelling companies to give contributions to foundations using her authority as President, without determining by law the criteria and requirements that can justify the intervention of governmental power, has infringed upon the property rights and autonomy of management of those companies.

The respondent demanded that Lotte Group provide support to the project for constructing sports facilities in Hanam City, which was related to projects in which the interests of Choi ○-Won were vested in, and ordered Ahn ○-Beom to check on the progress whenever necessary. The respondent demanded that Hyundai Motor Company sign a supply contract with a company run by Choi ○-Won's acquaintance, and that KT Inc. hire and internally reassign persons related to Choi ○-Won.

Aside from this, the respondent also demanded that companies establish sports teams and enter into contracts with The Blue K, and in the process, exercised influence through high-ranking public officials, Ahn ○-Beom and Kim ○. Such conduct of the respondent is judged to be imperative, rather than being mere suggestions or recommendations expecting voluntary cooperation from companies. The respondent, by interfering with the private autonomous domain of companies using the President's authority without any legal grounds whatsoever, has infringed upon the property rights and autonomy of management of those companies.

7. Whether the duty of confidentiality has been violated

Numerous documents were divulged to Choi ○-Won under the orders and tacit approval of the respondent, and these contained information pertaining to the President's schedule, diplomacy, personnel affairs, and policies. Such information, being related to the duties of the President, may undermine administrative objectives should it be disclosed to the public and must be kept classified, and therefore qualifies as classified information related to duties. The respondent, by ordering or neglecting the disclosure of the aforementioned documents to Choi ○-Won, has violated the duty of confidentiality provided for in Article 60 of the State Public Officials Act.

8. Whether the power to appoint and dismiss public officials has been abused

There is a lack of evidence to prove that the respondent ordered disciplinary personnel measures regarding Roh ○-Kang and Jin ○-Soo, who were both public officials belonging to the Ministry of Culture, Sports and Tourism, for their interference in Choi ○-Won's pursuit of personal gains. The evidence submitted in this case is also insufficient to clarify the reason why the respondent dismissed Yoo ○-Ryong, or

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ordered that the Chief of Staff to the President collect resignation letters from six Grade 1 public officials. Therefore, this cannot be accepted as a ground for impeachment.

9. Whether the freedom of press has been infringed upon

In light of the respondent's statements that condemned the leaking of Cheong Wa Dae documents, the respondent can be considered to have expressed criticism against the Segye Ilbo report on the Jeong ○-Hoe document. However, this alone cannot be deemed an infringement of the freedom of press of Segye Ilbo, and there is a lack of evidence to prove that the respondent was involved in the dismissal of the president of Segye Ilbo, Cho ○-Kyu.

10. Whether the duty to protect the right to life has been violated

As the head of the administration, the respondent bears the obligation to exercise authority and perform duties to enable the state to faithfully fulfill its duty to protect the lives and physical safety of the people. However, it is difficult to say that the respondent is immediately responsible for the specific and particular duty to act, for example, by participating in the rescue operation in person, when a disaster threatens the lives of the people. The inadequate and inappropriate way the respondent dealt with the Sewol ferry tragedy cannot be deemed to directly constitute a violation by the respondent of the duty to protect the right to life.

11. Whether the unfaithful execution of duties is justiciable in the impeachment adjudication procedure

Although the "obligation to faithfully execute the duties" of the President is a constitutional obligation, unlike the "obligation to safeguard

the Constitution,” by nature, its performance cannot be normatively enforced. Therefore, as a matter of principle, this obligation is non-justiciable. Whether the respondent faithfully performed her official duties on the day the Sewol ferry tragedy occurred cannot, in and by itself, constitute a ground for impeachment, and therefore is non-justiciable in impeachment proceedings.

12. Whether to remove the respondent from office

The respondent delivered to Choi ○-Won documents on state affairs containing classified information related to official duties, and secretly reflected the opinions of Choi ○-Won, who is not a public official, in the management of state affairs. Such unlawful conduct by the respondent continued for over three years since the respondent took office as President. The respondent abused the authority delegated by the people for personal purposes, readily and repeatedly assisting the pursuit of personal benefits by Choi ○-Won. In the process, the respondent used her position as President, or mobilized state agencies and organizations, both an extremely grave violation of law. The President is obliged to disclose the performance of duties transparently, to enable appraisal by the public. However, the respondent allowed Choi ○-Won to intervene in state affairs while keeping this a complete secret, and denied all relevant suspicions that were raised, simply condemning the suspicions instead. Thus, it was practically impossible for constitutional institutions such as the National Assembly to provide checks and balances under the doctrine of separation of powers, or for the private sector, including the press, to perform its monitoring role. Such conduct of the respondent undermines the principle of representative democracy and the spirit of the rule of law, and constitutes a grave violation of the President’s obligation to serve the public interest.

Instead of making efforts to regain the trust of the people with regard to her violations of the Constitution and law, the respondent made insincere apologies to the public and failed to keep her word that she

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would cooperate to the utmost extent with the investigation. Judging by such words and actions, we cannot find any definite intent on the part of the respondent to protect the Constitution.

In conclusion, the respondent's acts of violating the Constitution and law are a betrayal of the people's confidence, and should be deemed grave violations of the law unpardonable from the perspective of protecting the Constitution. Since the negative impact and influence on the constitutional order brought about by the respondent's violations of the law are serious, we believe that the benefits of protecting the Constitution by removing the respondent from office overwhelmingly outweigh the national loss that would be incurred by the removal of the President.

Summary of Concurring Opinion of Justice Kim Yi-Su and Justice Lee Jin-Sung

1. Whether the violation of the obligation to faithfully execute duties is a ground for impeachment

If we do not stop at determining whether duties have been performed faithfully merely through abstract judgment, and the obligation to faithfully execute the duties of the President is imposed specifically under the Constitution or law, the violation of that obligation would be a violation of the Constitution or law, and becomes justiciable. Thus, this would constitute a ground for impeachment. Upon the occurrence of a 'national crisis,' where key elements or values of the state that comprise national sovereignty or the state itself, such as the political, economic, social and cultural systems, or the lives and safety of many people are in danger of or are actually being severely compromised, the President, as the head of the state, bears the specific obligation to act to protect the state and the public by taking timely measures in the face of such national crisis.

2. Whether the respondent violated the obligation to faithfully execute duties

The Sewol ferry, with a total of 476 passengers on board, capsized after listing rapidly. It was continuously pointed out that, given the size and structure of the ferry, it was possible for passengers to survive for a certain period after the hull was completely submerged. Without doubt, this was a national crisis that was bringing about or could bring about severe and urgent danger to the lives and safety of a large number of people. Thus, the respondent subsequently came to bear the specific obligation to act to protect the lives and safety of the people by swiftly ascertaining the situation and taking timely measures.

On the day the Sewol ferry tragedy occurred, the respondent remained in the Presidential residence instead of going into her office at the normal hour. Consequently, in the early phase of the accident, which is the most critical to the rescue operation, the respondent became aware of the incident more than thirty minutes after it was reported to Cheong Wa Dae officials. There is reason to believe that at 10:00 a.m. at the latest, the respondent became aware or should have become aware of the severity of the situation. The ensuing response should have been to immediately head to the Cheong Wa Dae situation room, where all of the nation's disaster-related data is gathered and a direct communication network with key relevant agencies is established, to receive real-time updates on the situation, identify what measures needed to be taken, and accordingly mobilize national capacity to the fullest extent, ultimately directing, commanding and supervising the disaster response measures of the relevant agencies in a swift and appropriate manner. Regardless, the respondent remained in the Presidential residence for approximately seven hours from when she first realized the gravity of the situation for no particular reason, and merely gave ill-suited and misguided orders via the telephone. The command and leadership of the President in national crises such as large-scale disasters not only has an actual impact, but also has a symbolic effect. Indeed, the people require the leadership of

1. Case on the Impeachment of the President (Park Geun-hye)

the commander-in-chief of state affairs the most when a national crisis like the Sewol ferry tragedy occurs and the government framework that should control and manage such a crisis fails to run properly. However, the respondent remained in the Presidential residence and did not go into the office until that evening for no particular reason, and consequently became aware of the severity of this large-scale disaster belatedly. She also maintained a consistently insincere attitude, failing to display any leadership in supporting the rescue operation.

Therefore, the respondent failed to faithfully perform her duties despite the occurrence of a specific obligation to act to protect the lives and safety of the people, and thus violated the obligation to faithfully execute the duties of the President as specifically provided for in Article 69 of the Constitution and Article 56 of the State Public Officials Act.

3. Whether this reason alone can constitute a ground for removal from office

Given the great significance of the democratic legitimacy and constitutional order bestowed on the President by the people, to hold the President's violation of the duty of fidelity as a ground for removal from office, the gravity of that violation must be equal to a violation of a specific statute that prescribes an obligation to act in such a situation, or to an intentional negligence or abandonment of duties. In this case, although the respondent violated the duty of fidelity under the State Public Officials Act, there is no material to prove that she violated a specific statute that prescribes the obligation to act in such a situation, and it is difficult to say that she intentionally neglected or abandoned her duties. Thus, this reason alone is not enough to claim that the respondent betrayed the confidence of the people to the extent that the respondent should be deprived, during her term in office, of the democratic legitimacy bestowed by the people, and therefore does not constitute a ground for removal from office.

Summary of Concurring Opinion of Justice Ahn Chang-Ho

1. Flaws in the power structure under the Constitution

The presidential system adopted by the Constitution of the Republic of Korea is considered an imperial presidency that, despite having concentrated political power on the President, lacks an adequate restraint against that power. The democratic legitimacy of the President's 'formation of power' underwent groundbreaking changes thanks to the amendment of the Constitution in 1987, which restored direct presidential elections, but we have not ventured far from the authoritarian ways of the past when it comes to the democratic legitimacy of the President's 'exercise of power.' This power structure under the current Constitution, combined with the respondent's leadership issues, enabled political corruption such as 'intervention in state affairs by a group of unofficial aides, abuse of authority by the President, and government collusion with business conglomerates.' Such political corruption is interfering with the realization of the key constitutional values of democratic legitimacy, procedural transparency, social fairness and economic justice.

2. Reforming the power structure

The power structure should be reformed from the imperial presidency, which has spurred political corruption including government collusion with business as well as wasteful, slanderous political strife, to a power-sharing decentralized system that enables governance and the transparent and fair exercise of authority. A realistic alternative to the presidential system provided under the current Constitution could be for the people to choose from a semi-presidential system, a parliamentary system or a system in which the prime minister shares responsibility. The excessive centralization of power on the President can be dispersed through the radical transfer of such centralized power to local governments, which would facilitate neighborhood democracy. In order

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to seek the fair resolution of divergent interests across society, the proportional representation system should be expanded, accompanied by efforts on the part of political parties to establish their identities, and also toward ensuring transparency and fairness when selecting candidates for proportional representative National Assembly members. We should also give keen consideration to controlling the power distributed to the National Assembly and local governments through the decentralization of the excessive power concentrated on the President, by reinforcing elements of direct democracy such as popular recall, popular initiative and popular referendum. Measures must be devised to guarantee transparency and fairness in the appointment of key positions that exercise state power, including the heads of administrative branches. The unnecessarily large group of Cheong Wa Dae aides should be streamlined, and the President's right to grant amnesty should be restricted to prevent undermining the principle of government by law. The adoption of a bicameral system for the National Assembly, by installing a Senate represented by districts, should also be considered, for the purpose of promoting local autonomy, overcoming regionalism, achieving peaceful unification and integrating the people of the unified nation. Such reform should be subject to a public participation process designed to faithfully reflect the opinions of the people, who hold sovereignty.

3. Opinion on the claims regarding the impeachment adjudication

Whether there has been a 'violation of law of a gravity sufficient to justify the removal of the President from office' is decided based on an overall consideration of, not only the details and content of the 'acts by the President in violation of law' and the meaning and content of the constitutional order being violated thereby, but also the times in which the impeachment adjudication is taking place, the future constitutional value and order that we seek to establish, the history of democracy and the political, economic, social, cultural environment, and the people's

legal sentiment regarding the protection of the Constitution. Equality under the Constitution does not guarantee equality in the performance of illegal acts. Thus, the claim that this case should be dismissed, comparing it to violations of law by former administrations, no longer holds. The President is a ‘symbolic existence personifying the rule of law and the observance of law’ toward the entire public, and therefore any violation of law by the President has a stronger negative impact on the constitutional order than violations of law by the general public. In light of the public desire for a fair and ethical society as shown in the enactment of the ‘Improper Solicitation and Graft Act,’ violations of law by the President should be dealt with in strict fairness. The dismissal of this impeachment adjudication would indicate that the Court will be unable to remove the President from office even if similar violations of the Constitution and law take place again.

Thus, for the sake of safeguarding the constitutional order, and putting an end to political corruption such as the intervention of unofficial aides in state affairs, abuse of authority by the President, and government collusion with business conglomerates, this petition for impeachment adjudication should be upheld.

2. Case on the Restriction of Voting Rights of Sentenced Persons

2. Case on the Restriction of Voting Rights of Sentenced Persons

[2016Hun-Ma292 · 568 (consolidated), May 25, 2017]

In this case, the Constitutional Court held that the part related to restricting the voting rights of persons who have been sentenced to imprisonment with prison labor for at least one year in Article 18 Section 1 Item 2 of the Public Official Election Act does not infringe the complainants' voting rights, and thus does not violate the Constitution.

Background of the Case

1. On January 28, 2014, the Constitutional Court held in 2012Hun-Ma409, etc. that the part in Article 18 Section 1 Item 2 of the former Public Official Election Act (amended by Act No. 7681 on August 4, 2005, and before amendment by Act No. 13497 on August 13, 2015), related to the complete restriction of voting rights of all prisoners, does not comply with the Constitution, and ordered that the abovementioned provision continue to be applied until amended by December 31, 2015.

2. The relevant part of Article 18 Section 1 Item 2 of the Public Official Election Act (amended by Act No. 13497 on August 13, 2015) was amended to prescribe that any person sentenced to imprisonment with prison labor for at least one year, but whose sentence execution has not been terminated, shall be disfranchised. This provision entered into force on January 1, 2016.

3. The complainants were sentenced to imprisonment with prison labor for at least one year, and were serving their sentences or had been granted parole. Thus, they were deemed “ a person who is sentenced to imprisonment with prison labor for at least one year, but whose sentence execution has not been terminated,” and were subsequently unable to exercise their right to vote in the election of members of the 20th National Assembly, which took place on April 13, 2016. Thereupon, the

complainants filed a constitutional complaint, claiming that Article 18 Section 1 Item 2 of the Public Official Election Act infringed their right to vote.

Subject Matter of Review

The subject matter of review in this case is whether the part concerning “A person who is sentenced to imprisonment with prison labor for at least one year, but whose sentence execution has not been terminated” in the main text of Article 18 Section 1 Item 2 of the Public Official Election Act (amended by Act No. 13497 on August 13, 2015) (hereinafter referred to as the “Instant Provision”) infringes the complainants’ fundamental rights, subsequently violating the Constitution. The Instant Provision reads as follows:

Provision at Issue

Public Official Election Act (amended by Act No. 13497 on August 13, 2015)

Article 18 (Disfranchised Persons)

(1) Any of the following persons shall be disfranchised as of the election day:

2. A person who is sentenced to imprisonment with or without prison labor for at least one year, but whose sentence execution has not been terminated or whose sentence execution has not been decided to be exempted: Provided, That a person who is under the suspension of the execution of said sentence shall be excluded therefrom.

Summary of the Decision

The purpose of the Instant Provision is to impose a social and criminal restriction on sentenced persons who have failed their basic

2. Case on the Restriction of Voting Rights of Sentenced Persons

duties as members of a community, and to enhance a law-abiding spirit in them as well as in the general public. Given the sentencing customs of the court, persons sentenced to at least one year of imprisonment with prison labor have been acknowledged in the course of proceedings as persons who have inflicted considerable harm on the community. Therefore, it is necessary to subject such persons to social and criminal restrictions and to reinforce their observance of the law. The restriction on voting rights imposed by the Instant Provision is valid until the sentence execution is terminated, which means that the gravity of criminal liability is proportionate to the period for which voting rights are restricted. The Instant Provision cannot be deemed to impose an unnecessary restriction for restricting the right to vote regardless of the type of crime, whether it was committed by negligence or with deliberate intent; regardless of the legal interest that has been breached; and regardless of whether parole, a discretionary administrative disposition issued during the execution of the sentence, has been ordered. The public interest of imposing a criminal and social restriction and reinforcing a law-abiding spirit, by restricting the voting rights of persons sentenced to at least one year of imprisonment with prison labor, cannot be deemed less significant than the personal disadvantage faced by the sentenced person who cannot exercise voting rights during the period of execution of sentences. Therefore, the Instant Provision does not infringe the complainants' voting rights for violating the rule against excessive restriction.

Summary of Dissenting Opinion of One Justice

Restricting the fundamental rights of a sentenced person, besides criminal punishment, can be justified only when it fits the purpose of rehabilitating sentenced persons. Since restricting the voting rights of sentenced persons does not comply with this purpose, the legislative purpose of imposing social and criminal punishment on sentenced persons is not legitimate. The majority opinion also points to the

legislative purpose of enhancing a law-abiding spirit in sentenced persons and in the general public, but does not explain in what way restricting voting rights contributes to this purpose. Depriving sentenced persons of their voting rights may lead to a sense of impotence as members of the society, anti-social behavior, and an abhorrence of politics. Thus, it cannot be considered an appropriate means for improving their law-abiding spirit. Considering the above, the Instant Provision still infringes the voting rights of persons who have been sentenced to at least one year of imprisonment with prison labor, and thus violates the Constitution.

3. **Case on the Constitutionality of the Provision that Excludes Daily Employed Workers Who Have Been Employed for Less Than Three Consecutive Months from Being Notified in Advance of Their Dismissal**

3. Case on the Constitutionality of the Provision that Excludes Daily Employed Workers Who Have Been Employed for Less Than Three Consecutive Months from Being Notified in Advance of Their Dismissal

[2016Hun-Ma640, May 25, 2017]

In this case, the Constitutional Court held that Item 1 of Article 35 of the Labor Standards Act, which prescribes that daily employed workers employed for less than three consecutive months need not be notified of their dismissal in advance, does not infringe the complainant's right to work.

Background of the Case

On June 9, 2016, the complainant signed a day labor contract with ○○ Inc. to work as a kitchen assistant from June 9, 2016, to July 8, 2016, receiving a daily wage of 70,000 won. After fulfilling this service, the complainant agreed with the abovementioned company to work from July 8 through 12, 2016, but was dismissed on July 9, 2016, and no longer went to work after this date.

The complainant was unable to receive the payment in lieu of notice as prescribed by Article 26 of the Labor Standards Act, being subject to the exception provided by Item 1 of Article 35 of the same Act, which waives the obligation of employers to notify “a daily employed worker who has been employed for less than three consecutive months” of his/her dismissal in advance. Thereupon, the complainant filed a constitutional complaint on August 1, 2016, claiming that Item 1 of Article 35 of the Labor Standards Act is unconstitutional for infringing upon the complainant's fundamental rights.

Subject Matter of Review

The subject matter of review in this case is whether Item 1 of Article

35 of the Labor Standards Act (wholly amended by Act No. 8372 on April 11, 2007) infringes the fundamental rights of the complainant. The Instant Provision reads as follows:

Provision at Issue

Labor Standards Act (wholly amended by Act No. 8372 on April 11, 2007)

Article 35 (Exception of Advance Notice of Dismissal)

The provisions of Article 26 shall not apply to a worker falling under any one of the following items:

1. A daily employed worker who has been employed for less than three consecutive months.

Summary of the Decision

The right to work not only includes the right to an occupation, but also the right to fair working conditions. This right intends to prevent the breach of human dignity, and includes the right to demand that a healthy working environment, just remuneration, and reasonable terms and conditions of work be guaranteed. The provision on advance notice of dismissal compels an employer to notify a worker of his or her dismissal in advance, which constitutes an important element of the terms and conditions of work and is part of the right to work. The terms and conditions of work are determined by the benefits and consideration provided by the state, such as the realignment of legislation to improve working conditions. Therefore, the details of the provision on advance notice of dismissal, including the scope of workers affected by the provision, and the length of advance notice the worker must be given, should be left to legislative discretion.

When temporary or based on a short-term contract, the provision of labor services does not incur any expectation or confidence that such labor will be continuously provided. Therefore, the nature of advance

3. Case on the Constitutionality of the Provision that Excludes Daily Employed Workers Who Have Been Employed for Less Than Three Consecutive Months from Being Notified in Advance of Their Dismissal

notice of a dismissal presumes that the worker provides labor while continuing to be employed by the employer beyond a certain period. However, as a rule, the employment relationship of daily employed workers is terminated when the daily contract period ends, without involving a dismissal procedure. Thus, by nature, there is a sufficient reason to accept that such workers are an exception to the provision of advance notice of dismissal. However, workers that provide labor for at least three months cannot be deemed in a temporary employment relationship, and are treated equally to regular workers in terms of the application of the Income Tax Act or the Industrial Accident Compensation Insurance Act. Therefore, we cannot say that requiring a minimum of three months for treating daily employed workers and regular workers equally, regardless of the type of labor contract, is a significant deviation from the scope of legislative discretion. Furthermore, the current provision on advance notice of dismissal prescribes that the employer shall give the worker at least 30 days' advance notice of dismissal, or pay that worker at least 30 days' ordinary wages, should he or she fail to give such notice. Requiring this would be highly unfavorable to employers if applied to the dismissal of workers who have not worked for at least three consecutive months since signing their day labor contract. This also shows that the Instant Provision has not significantly deviated from the scope of legislative discretion.

Thus, the Instant Provision does not infringe the right to work.

4. Case on the Amount of Revenue Stamps for Statements of Claim for Retrial

[2016Hun-Ba447, August 31, 2017]

In this case, the Constitutional Court held that the part of Article 8 Section 1 of the Act on the Stamps Attached for Civil Litigation, Etc., which applies the amount prescribed in the former part of Article 3 and Article 2 Section 1 of the same Act, and which prescribes that the value of revenue stamps to be attached to a statement of claim for retrials on an appellate court's final decision shall be the same as the value of revenue stamps to be attached to a statement of appeal, without setting any particular upper limit, does not infringe the right to trial or violate the principle of equality, and therefore does not violate the Constitution.

Background of the Case

The petitioner requested a retrial on the final and conclusive decision of a civil appeal. While the above retrial was pending in court, the petitioner filed a motion to request a constitutional review of Article 8 Section 1 of the Act on the Stamps Attached for Civil Litigation, Etc., and following its dismissal, filed a constitutional complaint on December 12, 2016.

Subject Matter of Review

The subject matter of review in this case is whether Article 8 Section 1 of the Act on the Stamps Attached For Civil Litigation, Etc. (amended by Act No. 9645 on May 8, 2009), which applies the value as per the former part of Article 3 and Article 2 Section 1, violates the Constitution. The Instant Provision and relevant provisions read as follows:

Provision at Issue

Act on the Stamps Attached for Civil Litigation, Etc. (amended by Act

4. Case on the Amount of Revenue Stamps for Statements of Claim for Retrial

No. 9645 on May 8, 2009)

Article 8 (Statements of Claims for Retrial, etc.)

(1) Revenue stamps with a face value referred to in Article 2, 3 or Article 4 Section 1 shall be attached to a statement of claim according to instance.

Related Provisions

Act on the Stamps Attached for Civil Litigation, Etc. (amended by Act No. 9645 on May 8, 2009)

Article 2 (Statements of Claims)

(1) Revenue stamps with a face value prescribed in the following items based on the value of the subject matter of litigation shall be attached to a statement of claim (excluding a statement of counterclaim and a statement of claim filed to the Supreme Court):

1. Where the value of the subject matter of litigation is below ten million won, an amount computed by multiplying such value by 50/10,000;

2. Where the value of the subject matter of litigation exceeds ten million won but is below 100 million won, an amount computed by adding 5,000 won to the amount computed by multiplying such value by 45/10,000;

3. Where the value of the subject matter of litigation exceeds 100 million won but is below one billion won, an amount computed by adding 55,000 won to the amount computed by multiplying such value by 40/10,000;

4. Where the value of the subject matter of litigation exceeds one billion won, an amount computed by adding 555,000 won to the amount computed by multiplying such value by 35/10,000.

Article 3 (Statements of Claims to Appellate Court and Statements of Claims to Supreme Court)

Revenue stamps with a face value one point five times the value referred to in Article 2 shall be attached to a statement of claim to the

appellate court, and stamps with a face value two times the value referred to in Article 2 shall be attached to a statement of claim to the Supreme Court.

Summary of the Decision

1. Whether the Right to Trial Was Infringed

Requiring a person requesting a retrial on the appellate court's final and conclusive decision to attach a revenue stamp worth 1.5 times the value of the amount that should be attached to a statement of claim presented to the court of first instance, which is calculated proportional to the value of the subject matter of litigation, is an appropriate means for guaranteeing the principle of paid trials, the quality and efficiency of judicial work, and the legal stability of final and conclusive decisions. Uniformly lowering the amount of revenue stamps by applying a cap would undermine the principle of paid trials, endanger the quality or efficiency of judicial work due to an increase in the number of trials not entirely necessary, and may impair the legal stability of final decisions. The Instant Provision sets a low ratio for deciding the amount of revenue stamps for the first instance, which serves as the basis for computing the amount of revenue stamps; has lowered the weighting for the appeal process compared to before it was amended; and does not impose a particular weighted value for retrials. Further, considering that courts are able to provide remedies to people lacking the financial means to pay for revenue stamps through the legal aid system, the Instant Provision does not violate the principle of least restrictive means. Thus, the Instant Provision does not infringe the right to trial.

2. Whether the Principle of Equality Was Violated

A person that requests a retrial on a final and conclusive decision made at a court of second instance has been granted one more trial by

4. Case on the Amount of Revenue Stamps for Statements of Claim for Retrial

the court than a person requesting a retrial on a final and conclusive decision made at a court of first instance, and the judicial resources in an appeals process are more scarce than in the first instance. Thus, there is reasonable cause for requiring persons requesting a retrial on an appellate court's final decision to attach revenue stamps worth 1.5 times more than those required for persons requesting a retrial on a trial court's final decision. The Instant Provision does not violate the principle of equality.

Dissenting Opinion of Three Justices

The value of the subject matter of litigation and the time and cost invested therein are not in direct proportion to the other. There will inevitably be a certain limit to the cost and time a state can invest in a single case, regardless of the value of the subject matter of litigation. Therefore, it is reasonable to place a fixed limit on revenue stamps. Under the system currently in force, it is difficult for a financially vulnerable person to file a lawsuit with high-value subject matter, as well as to appeal after losing as a defendant in such lawsuit. Further, the legal aid system does not effectively resolve the restrictions on the right to request a trial, faced by financially vulnerable people. According to the Court's case statistics, lawsuits with high-value subject matter account for an extremely small share. Therefore, putting a reasonable cap on the amount of revenue stamps would only result in an insignificant decline in the income they generate. Further, by gradually adjusting the cap in line with the system's performance, it will be possible to minimize the restriction on the right to trial of financially vulnerable people, without imposing a negative effect on the legislative purpose. A reasonable, appropriate cap on the upper limit of revenue stamps will be sufficient to prevent frivolous lawsuits or requests for appeals or retrials. Thus, the part of the Instant Provision that determines the amount of revenue stamps that should be attached to a statement of claim in the first instance, infringes the right to trial.

Summary of Concurring Opinion to the Majority Opinion of One Justice

Whether the restriction of the petitioner's specific fundamental rights brought about by the Instant Provision is excessive should be decided from the perspective of the balance of interests, rather than the principle of least restrictive means. In many of the Constitutional Court's precedents, there has been a tendency to blend arguments that should be dealt with from the perspective of balance of interests when dealing with the principle of least restrictive means. However, the principle of least restrictive means can be more faithfully and effectively applied by strictly distinguishing between the principles of least restrictive means and balance of interests, and by focusing on the judgment of the balance of interests, so as to avoid confusion in the course of judgment while preventing the omission of the elements to be considered in the rule against excessive restriction.

In this case, legislative alternatives that uniformly lower the amount of revenue stamps, such as the cap system, incur additional financial burdens, and make it harder to achieve legislative purposes such as the principle of paid trials. Thus, such measures are not as efficient as the Instant Provision in achieving its legislative purpose. Therefore, the Instant Provision satisfies the principle of least restrictive means even if the revenue stamp cap system imposes a lesser restriction on the petitioner's right to trial. The sentencing factors presented in the majority opinion reach the conclusion that, while the Instant Provision imposes a minor restriction on the right to trial, it is difficult to say that the loss incurred by forgoing the current revenue stamp system will be insignificant. Therefore, considering the legislator's extensive scope of discretion regarding the revenue stamp system, the restriction on the right to trial imposed by the Instant Provision does not exceed the endurance limit. The Instant Provision thus satisfies the balance of interests.

5. Case on the Full Restriction of the Three Basic Labor Rights of Registered Security Guards

5. Case on the Full Restriction of the Three Basic Labor Rights of Registered Security Guards

[2015Hun-Ma653, September 28, 2017]

In this case, the Constitutional Court held that the part applicable to ‘labor campaigns’ of Article 66 Section 1 of the State Public Officials Act in Article 5 Section 4 of the Registered Security Guard Act, which prohibits labor campaigns by applying *mutatis mutandis* Article 66 Section 1 of the State Public Officials Act, infringes the three basic labor rights of the complainants and thus does not conform to the Constitution, and ordered that the above provision continue to be applied until amended by December 31, 2018.

Background of the Case

The complainants work as registered security guards for Korea ○○○○○, Ltd. On June 19, 2015, the complainants filed a constitutional complaint, claiming that by applying *mutatis mutandis* Article 66 Section 1 of the State Public Officials Act with regard to the service of registered security guards, and thereby prohibiting labor campaigns, Article 5 Section 4 of the Registered Security Guard Act violates the complainants’ fundamental rights.

Subject Matter of Review

The subject matter of review in this case is whether the part applicable to ‘labor campaigns’ of Article 66 Section 1 of the State Public Officials Act in Article 5 Section 4 of the Registered Security Guard Act (amended by Act No. 10013 on February 4, 2010) (hereinafter referred to as the “Instant Provision”) infringes the fundamental rights of the complainants.

Provision at Issue

Registered Security Guard Act (amended by Act No. 10013 on February 4, 2010)

Article 5 (Appointment, etc. of Registered Security Guards)

(4) Article 57, Article 58 Section 1, Article 60 and Article 66 Section 1 of the State Public Officials Act and Article 18 of the Police Officers Act shall apply *mutatis mutandis* to the service of the registered security guard.

Related Provision

State Public Officials Act (amended by Act No. 8996 on March 28, 2008)

Article 66 (Prohibition of Collective Activities)

(1) No public official shall engage in any collective activities for any labor campaign, or activities other than public services: Provided, That those who are actually engaged in labor shall be excluded.

Summary of the Decision

1. Whether the Three Basic Labor Rights Were Infringed

As a rule, a registered security guard must be guaranteed the three basic labor rights prescribed under Article 33 Section 1 of the Constitution, being a regular worker and not a public official. A registered security guard merely performs the duties of a police officer within the scope necessary for the purpose of security within a restricted area, and is more vulnerable when it comes to guarantee of status, compared to public officials. Moreover, because registered security guards who work in places other than State agencies or local governments are guaranteed a legal status lower than those employed at

5. Case on the Full Restriction of the Three Basic Labor Rights of Registered Security Guards

such workplaces, not to mention public officials, it is highly necessary to grant these guards the three basic labor rights.

Even if registered security guards are granted the right to association that does not accompany direct action and collective bargaining, we cannot conclude that this will interfere with maintaining safety in the relevant facilities. The Constitution stops at restricting only the right to collective action in the case of workers employed by key defense industries, while the Security Services Industry Act merely prohibits special security guards, who carry weapons and perform security services for key state institutions, from going on strike.

Since registered security guards work in specific guarded areas and exercise a limited scope of authority required for maintaining the security of said areas, the public nature or social impact of the work of a registered security guard cannot be compared to those of a soldier or a police officer. Nonetheless, the Instant Provision uniformly imposes a restriction on the three basic labor rights of all registered security guards, to the same degree as soldiers or police officers.

Accordingly, the full restriction of the three basic labor rights of registered security guards by the Instant Provision is a violation of the rule against excessive restriction, and thus infringes the three basic labor rights of the complainants.

2. Order for Continued Application Following a Decision of Nonconformity

The unconstitutionality of the Instant Provision lies in the fact that it fully restricts the three basic labor rights of all registered security guards. It is at the discretion of the legislator to remove this unconstitutional element by taking into account the specific duties, nature of the workplace, labor conditions and guarantee of status of registered security guards. There are concerns that a declaration of the simple unconstitutionality of the Instant Provision and the immediate loss of its effect will create disorder, by allowing registered security guards that should be subject to a restriction of the three basic labor rights to

exercise them in their entirety. Therefore, the Court delivers a decision of nonconformity to the Constitution regarding the Instant Provision, but orders that the provision continue to be applied until amended by December 31, 2018.

6. Case on the Prohibition of and Punishment for the Temporary Placement of Workers in Jobs Directly Related to Production in the Manufacturing Industry

6. Case on the Prohibition of and Punishment for the Temporary Placement of Workers in Jobs Directly Related to Production in the Manufacturing Industry

[2016Hun-Ba346, December 28, 2017]

In this case, the Constitutional Court held that the provisions concerning “except for jobs directly related to production in the manufacturing industry” in Article 5 Section 1; “a person who was provided with temporary agency services directly related to production in the manufacturing industry in violation of Section 1” in Article 5 Section 5; and “a person in violation of Article 5 Section 5 who was provided with temporary agency services directly related to production in the manufacturing industry in violation of Article 5 Section 1” in Article 43 Section 1-2 of the Act on the Protection, etc. of Temporary Agency Workers, which exclude jobs directly related to production in the manufacturing industry from those permitted for temporary work agency business, prohibit anyone from being provided with temporary agency services in relation to such jobs and punish violation thereof, do not infringe upon the freedom of the user company to perform its occupational functions.

Background of the Case

(1) Petitioner ○○○○ Inc. (hereinafter referred to as the “petitioning company”) is a corporation that operates a mobile phone case manufacturing business; and petitioner ○○○ was the CEO of this company.

(2) The petitioners were summarily indicted on the charge of violating the Act on the Protection, etc. of Temporary Agency Workers, as ‘petitioner ○○○ was provided with temporary agency services directly related to production in the manufacturing industry by receiving the placement of 27 temporary workers and ordering them to engage in tasks

including assembling mobile phone cases on the company's assembly team, despite the fact that no person can be provided with temporary agency services for work directly related to production in the manufacturing industry from a person who engages in temporary work agency business; hence the petitioning company, with petitioner ○○○ as CEO, violated the law as cited above.' The petitioners were each notified of a summary order for a fine of five million won and requested a formal trial.

(3) While the aforementioned trial was pending, the petitioners filed a motion to request the constitutional review of Sections 1, 2 and 5 of Article 5 and Article 6 Section 4 Item 2 of the Act on the Protection, etc. of Temporary Agency Workers (hereinafter referred to as the "Temporary Worker Act"). When this request was denied, the petitioners filed a constitutional complaint on September 28, 2016, regarding the aforementioned provisions.

Subject Matter of Review

The subject matter of review in this case is whether the provision concerning "except for jobs directly related to production in the manufacturing industry" in Article 5 Section 1 of the Act on the Protection, etc. of Temporary Agency Workers (amended by Act No. 8076 on December 21, 2006) (underlined below); the provision concerning "a person who was provided with temporary agency services directly related to production in the manufacturing industry in violation of Section 1" in Article 5 Section 5 of the same Act; and the provision concerning "a person in violation of Article 5 Section 5 who was provided with temporary agency services directly related to production in the manufacturing industry in violation of Article 5 Section 1" in Article 43 Section 1-2 of the Act on the Protection, etc. of Temporary Agency Workers (amended by Act No. 12632 on May 20, 2014) (hereinafter the above provisions are collectively referred to as the "Instant Provisions") violate the Constitution. The Instant Provisions read as follows:

6. Case on the Prohibition of and Punishment for the Temporary Placement of Workers in Jobs Directly Related to Production in the Manufacturing Industry

Provisions at Issue

Act on the Protection, etc. of Temporary Agency Workers (amended by Act No. 8076 on December 21, 2006)

Article 5 (Jobs, etc. Permitted for Temporary Placement of Workers)

(1) Jobs permitted for temporary work agency business shall be those considered appropriate for that purpose in consideration of professional knowledge, skills, experience or nature of the work, and prescribed by Presidential Decree, except for those directly related to production in the manufacturing industry.

(5) No person shall engage in temporary work agency business nor be provided with temporary agency services from a person who engages in temporary work agency business in violation of Sections 1 through 4.

Act on the Protection, etc. of Temporary Agency Workers (amended by Act No. 12632 on May 20, 2014)

Article 43 (Penalty Provisions)

Each of the following persons shall be punished by imprisonment for not more than three years or by a fine not exceeding 30 million won:

1-2. A person who is provided with temporary agency services, in violation of Article 5 Section 5, Article 6 Sections 1, 2 and 4, or Article 7 Section 3.

Summary of the Decision

The purposes of the Instant Provisions are to aim for the proper operation of jobs directly related to production, which are the core pillars of the manufacturing industry, to promote the direct employment of workers and to guarantee the payment of fair wages for workers. Thus, the Instant Provisions are found to have a legitimate purpose and to constitute appropriate means.

Although the Instant Provisions prohibit temporary placement of workers in jobs directly related to production in the manufacturing industry, and punish the violation thereof, as of now the social and

economic side effects incurred by the expansion of the temporary placement of workers cannot be sufficiently countered; given the nature of the manufacturing industry, it is crucial to prevent the temporary placement of unskilled workers or frequent employee turnover; exceptions are made to allow temporary placement of workers in jobs directly related to production in the manufacturing industry in certain cases, as per Article 5 Section 2 of the Temporary Worker Act; and it is difficult to say that the legislative purpose can be effectively realized merely through administrative penalty measures. Thus, the Instant Provisions do not violate the rule of minimum restriction.

Furthermore, the public interest including facilitating the proper operation of jobs directly related to production in the manufacturing industry, promoting the direct employment of workers, and guaranteeing fair wages are no less significant than the restriction on the freedom of the user company to perform occupational functions caused by the prohibition on being provided with temporary agency services directly related to production in the manufacturing industry. Thus, the balance of interests is satisfied.

Therefore, the Instant Provisions do not infringe upon the freedom to perform occupational functions of companies that seek temporary agency services directly related to production in the manufacturing industry.

Appendix

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Enacted	Jul. 17, 1948
Amended	Jul. 7, 1952
	Nov. 29, 1954
	Jun. 15, 1960
	Nov. 29, 1960
	Dec. 26, 1962
	Oct. 21, 1969
	Dec. 27, 1972
	Oct. 27, 1980
	Oct. 29, 1987

PREAMBLE

We, the people of Korea, proud of a resplendent history and traditions dating from time immemorial, upholding the cause of the Provisional Republic of Korea Government born of the March First Independence Movement of 1919 and the democratic ideals of the April Nineteenth Uprising of 1960 against injustice, having assumed the mission of democratic reform and peaceful unification of our homeland and having determined to consolidate national unity with justice, humanitarianism and brotherly love, and

To destroy all social vices and injustice, and

To afford equal opportunities to every person and provide for the fullest development of individual capabilities in all fields, including political, economic, social and cultural life by further strengthening the basic free and democratic order conducive to private initiative and public harmony, and

To help each person discharge those duties and responsibilities concomitant to freedoms and rights, and

To elevate the quality of life for all citizens and contribute to lasting

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world peace and the common prosperity of mankind and thereby to ensure security, liberty and happiness for ourselves and our posterity forever, Do hereby amend, through national referendum following a resolution by the National Assembly, the Constitution, ordained and established on the Twelfth Day of July anno Domini Nineteen hundred and forty-eight, and amended eight times subsequently.

Oct. 29, 1987

CHAPTER I GENERAL PROVISIONS

Article 1

- (1) The Republic of Korea shall be a democratic republic.
- (2) The sovereignty of the Republic of Korea shall reside in the people, and all state authority shall emanate from the people.

Article 2

- (1) Nationality in the Republic of Korea shall be prescribed by Act.
- (2) It shall be the duty of the State to protect citizens residing abroad as prescribed by Act.

Article 3

The territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands.

Article 4

The Republic of Korea shall seek unification and shall formulate and carry out a policy of peaceful unification based on the principles of freedom and democracy.

Article 5

- (1) The Republic of Korea shall endeavor to maintain international peace and shall renounce all aggressive wars.
- (2) The Armed Forces shall be charged with the sacred mission of national security and the defense of the land and their political neutrality shall be maintained.

Article 6

- (1) Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.
- (2) The status of aliens shall be guaranteed as prescribed by international law and treaties.

Article 7

- (1) All public officials shall be servants of the entire people and shall be responsible for the people.
- (2) The status and political impartiality of public officials shall be guaranteed as prescribed by Act.

Article 8

- (1) The establishment of political parties shall be free, and the plural party system shall be guaranteed.
- (2) Political parties shall be democratic in their objectives, organization and activities, and shall have the necessary organizational arrangements for the people to participate in the formation of the political will.
- (3) Political parties shall enjoy the protection of the State and may be provided with operational funds by the State under the conditions as prescribed by Act.
- (4) If the purposes or activities of a political party are contrary to the fundamental democratic order, the Government may bring an action against it in the Constitutional Court for its dissolution, and the political party shall be dissolved in accordance with the decision of the Constitutional Court.

Article 9

The State shall strive to sustain and develop the cultural heritage and to enhance national culture.

CHAPTER II RIGHTS AND DUTIES OF CITIZENS

Article 10

All citizens shall be assured of human dignity and worth and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals.

Article 11

- (1) All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.
- (2) No privileged caste shall be recognized or ever established in any form.
- (3) The awarding of decorations or distinctions of honor in any form shall be effective only for recipients, and no privileges shall ensue there- from.

Article 12

- (1) All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized or interrogated except as provided by Act. No person shall be punished, placed under preventive restrictions or subject to involuntary labor except as provided by Act and through lawful procedures.
- (2) No citizens shall be tortured or be compelled to testify against himself in criminal cases.
- (3) Warrants issued by a judge through due procedures upon the request of a prosecutor shall be presented in case of arrest, detention, seizure or search: *Provided*, That in a case where a criminal suspect is an apprehended *flagrante delicto*, or where there is danger that a person suspected of committing a crime punishable by imprisonment of three years or more may escape or destroy evidence, investigative authorities may request an *ex post facto* warrant.

- (4) Any person who is arrested or detained shall have the right to prompt assistance of counsel. When a criminal defendant is unable to secure counsel by his own efforts, the State shall assign counsel for the defendant as prescribed by Act.
- (5) No person shall be arrested or detained without being informed of the reason therefor and of his right to assistance of counsel. The family, etc., as designated by Act, of a person arrested or detained shall be notified without delay of the reason for and the time and place of the arrest or detention.
- (6) Any person who is arrested or detained, shall have the right to request the court to review the legality of the arrest or detention.
- (7) In a case where a confession is deemed to have been made against a defendant's will due to torture, violence, intimidation, unduly prolonged arrest, deceit or etc., or in a case where a confession is the only evidence against a defendant in a formal trial, such a confession shall not be admitted as evidence of guilt, nor shall a defendant be punished by reason of such a confession.

Article 13

- (1) No citizen shall be prosecuted for an act which does not constitute a crime under the Act in force at the time it was committed, nor shall he be placed in double jeopardy.
- (2) No restrictions shall be imposed upon the political rights of any citizen, nor shall any person be deprived of property rights by means of retroactive legislation.
- (3) No citizen shall suffer unfavorable treatment on account of an act not of his own doing but committed by a relative.

Article 14

All citizens shall enjoy freedom of residence and the right to move at will.

Article 15

All citizens shall enjoy freedom of occupation.

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Article 16

All citizens shall be free from intrusion into their place of residence.
In case of search or seizure in a residence, a warrant issued by a judge upon request of a prosecutor shall be presented.

Article 17

The privacy of no citizen shall be infringed.

Article 18

The privacy of correspondence of no citizen shall be infringed.

Article 19

All citizens shall enjoy freedom of conscience.

Article 20

- (1) All citizens shall enjoy freedom of religion.
- (2) No state religion shall be recognized, and religion and state shall be separated.

Article 21

- (1) All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association.
- (2) Licensing or censorship of speech and the press, and licensing of assembly and association shall not be permitted.
- (3) The standards of news service and broadcast facilities and matters necessary to ensure the functions of newspapers shall be determined by Act.
- (4) Neither speech nor the press shall violate the honor or rights of other persons nor undermine public morals or social ethics. Should speech or the press violate the honor or rights of other persons, claims may be made for the damage resulting therefrom.

Article 22

- (1) All citizens shall enjoy freedom of learning and the arts.
- (2) The rights of authors, inventors, scientists, engineers and artists shall be protected by Act.

Article 23

- (1) The right of property of all citizens shall be guaranteed. The contents and limitations thereof shall be determined by Act.
- (2) The exercise of property rights shall conform to the public welfare.
- (3) Expropriation, use or restriction of private property from public necessity and compensation therefor shall be governed by Act: *Provided*, That in such a case, just compensation shall be paid.

Article 24

All citizens shall have the right to vote under the conditions as prescribed by Act.

Article 25

All citizens shall have the right to hold public office under the conditions as prescribed by Act.

Article 26

- (1) All citizens shall have the right to petition in writing to any governmental agency under the conditions as prescribed by Act.
- (2) The State shall be obligated to examine all such petitions.

Article 27

- (1) All citizens shall have the right to trial in conformity with the Act by judges qualified under the Constitution and the Act.
- (2) Citizens who are not on active military service or employees of the military forces shall not be tried by a court martial within the territory of the Republic of Korea, except in case of crimes as prescribed by Act involving important classified military information, sentinels, sentry posts, the supply of harmful food and beverages, prisoners of war and military articles and facilities and in the case of the proclamation of extraordinary martial law.
- (3) All citizens shall have the right to a speedy trial. The accused shall have the right to a public trial without delay in the absence of justifiable reasons to the contrary.

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- (4) The accused shall be presumed innocent until a judgment of guilt has been pronounced.
- (5) A victim of a crime shall be entitled to make a statement during the proceedings of the trial of the case involved as under the conditions prescribed by Act.

Article 28

In a case where a criminal suspect or an accused person who has been placed under detention is not indicted as provided by Act or is acquitted by a court, he shall be entitled to claim just compensation from the State under the conditions as prescribed by Act.

Article 29

- (1) In case a person has sustained damages by an unlawful act committed by a public official in the course of official duties, he may claim just compensation from the State or public organization under the conditions as prescribed by Act. In this case, the public official concerned shall not be immune from liabilities.
- (2) In case a person on active military service or an employee of the military forces, a police official or others as prescribed by Act sustains damages in connection with the performance of official duties such as combat action, drill and so forth, he shall not be entitled to a claim against the State or public organization on the grounds of unlawful acts committed by public officials in the course of official duties, but shall be entitled only to compensations as prescribed by Act.

Article 30

Citizens who have suffered bodily injury or death due to criminal acts of others may receive aid from the State under the conditions as prescribed by Act.

Article 31

- (1) All citizens shall have an equal right to an education corresponding to their abilities.

- (2) All citizens who have children to support shall be responsible at least for their elementary education and other education as provided by Act.
- (3) Compulsory education shall be free of charge.
- (4) Independence, professionalism and political impartiality of education and the autonomy of institutions of higher learning shall be guaranteed under the conditions as prescribed by Act.
- (5) The State shall promote lifelong education.
- (6) Fundamental matters pertaining to the educational system, including in-school and lifelong education, administration, finance, and the status of teachers shall be determined by Act.

Article 32

- (1) All citizens shall have the right to work. The State shall endeavor to promote the employment of workers and to guarantee optimum wages through social and economic means and shall enforce a minimum wage system under the conditions as prescribed by Act.
- (2) All citizens shall have the duty to work. The State shall prescribe by Act the extent and conditions of the duty to work in conformity with democratic principles.
- (3) Standards of working conditions shall be determined by Act in such a way as to guarantee human dignity.
- (4) Special protection shall be accorded to working women, and they shall not be subjected to unjust discrimination in terms of employment, wages and working conditions.
- (5) Special protection shall be accorded to working children.
- (6) The opportunity to work shall be accorded preferentially, under the conditions as prescribed by Act, to those who have given distinguished service to the State, wounded veterans and policemen, and members of the bereaved families of military servicemen and policemen killed in action.

Article 33

- (1) To enhance working conditions, workers shall have the right to

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independent association, collective bargaining and collective action.

- (2) Only those public officials who are designated by Act, shall have the right to association, collective bargaining and collective action.
- (3) The right to collective action of workers employed by important defense industries may be either restricted or denied under the conditions as prescribed by Act.

Article 34

- (1) All citizens shall be entitled to a life worthy of human beings.
- (2) The State shall have the duty to endeavor to promote social security and welfare.
- (3) The State shall endeavor to promote the welfare and rights of women.
- (4) The State shall have the duty to implement policies for enhancing the welfare of senior citizens and the young.
- (5) Citizens who are incapable of earning a livelihood due to a physical disability, disease, old age or other reasons shall be protected by the State under the conditions as prescribed by Act.
- (6) The State shall endeavor to prevent disasters and to protect citizens from harm therefrom.

Article 35

- (1) All citizens shall have the right to a healthy and pleasant environment. The State and all citizens shall endeavor to protect the environment.
- (2) The substance of the environmental right shall be determined by Act.
- (3) The State shall endeavor to ensure comfortable housing for all citizens through housing development policies and the like.

Article 36

- (1) Marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes, and the State shall do everything in its power to achieve that goal.

- (2) The State shall endeavor to protect motherhood.
- (3) The health of all citizens shall be protected by the State.

Article 37

- (1) Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution.
- (2) The freedoms and rights of citizens may be restricted by Act only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated.

Article 38

All citizens shall have the duty to pay taxes under the conditions as prescribed by Act.

Article 39

- (1) All citizens shall have the duty of national defense under the conditions as prescribed by Act.
- (2) No citizen shall be treated unfavorably on account of the fulfillment of his obligation of military service.

CHAPTER III THE NATIONAL ASSEMBLY

Article 40

The legislative power shall be vested in the National Assembly.

Article 41

- (1) The National Assembly shall be composed of members elected by universal, equal, direct and secret ballot by the citizens.
- (2) The number of members of the National Assembly shall be determined by Act, but the number shall not be less than 200.
- (3) The constituencies of members of the National Assembly, proportional representation and other matters pertaining to

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National Assembly elections shall be determined by Act.

Article 42

The term of office of members of the National Assembly shall be four years.

Article 43

Members of the National Assembly shall not concurrently hold any other office prescribed by Act.

Article 44

- (1) During the sessions of the National Assembly, no member of the National Assembly shall be arrested or detained without the consent of the National Assembly except in case of *flagrante delicto*.
- (2) In case of apprehension or detention of a member of the National Assembly prior to the opening of a session, such member shall be released during the session upon the request of the National Assembly, except in case of *flagrante delicto*.

Article 45

No member of the National Assembly shall be held responsible outside the National Assembly for opinions officially expressed or votes cast in the Assembly.

Article 46

- (1) Members of the National Assembly shall have the duty to maintain high standards of integrity.
- (2) Members of the National Assembly shall give preference to national interests and shall perform their duties in accordance with conscience.
- (3) Members of the National Assembly shall not acquire, through abuse of their positions, rights and interests in property or positions, or assist other persons to acquire the same, by means of contracts with or dispositions by the State, public organizations or industries.

Article 47

- (1) A regular session of the National Assembly shall be convened once every year under the conditions as prescribed by Act, and extraordinary sessions of the National Assembly shall be convened upon the request of the President or one fourth or more of the total members.
- (2) The period of regular sessions shall not exceed a hundred days, and that of extraordinary sessions, thirty days.
- (3) If the President requests the convening of an extraordinary session, the period of the session and the reasons for the request shall be clearly specified.

Article 48

The National Assembly shall elect one Speaker and two Vice-Speakers.

Article 49

Except as otherwise provided for in the Constitution or in Act, the attendance of a majority of the total members, and the concurrent vote of a majority of the members present, shall be necessary for decisions of the National Assembly. In case of a tie vote, the matter shall be regarded as rejected.

Article 50

- (1) Sessions of the National Assembly shall be open to the public: *Provided*, That when it is decided so by a majority of the members present, or when the Speaker deems it necessary to do so for the sake of national security, they may be closed to the public.
- (2) The public disclosure of the proceedings of sessions which were not open to the public shall be determined by Act.

Article 51

Bills and other matters submitted to the National Assembly for deliberation shall not be abandoned on the ground that they were not

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acted upon during the session in which they were introduced, except in a case where the term of the members of the National Assembly has expired.

Article 52

Bills may be introduced by members of the National Assembly or by the Executive.

Article 53

- (1) Each bill passed by the National Assembly shall be sent to the Executive, and the President shall promulgate it within fifteen days.
- (2) In case of objection to the bill, the President may, within the period referred to in paragraph (1), return it to the National Assembly with written explanation of his objection, and request it be reconsidered. The President may do the same during adjournment of the National Assembly.
- (3) The President shall not request the National Assembly to reconsider the bill in part, or with proposed amendments.
- (4) In case there is a request for reconsideration of a bill, the National Assembly shall reconsider it, and if the National Assembly repasses the bill in the original form with the attendance of more than one half of the total members, and with a concurrent vote of two thirds or more of the members present, it shall become Act.
- (5) If the President does not promulgate the bill, or does not request the National Assembly to reconsider it within the period referred to in paragraph (1), it shall become Act.
- (6) The President shall promulgate without delay the Act as finalized under paragraphs (4) and (5). If the President does not promulgate an Act within five days after it has become Act under paragraph (5), or after it has been returned to the Executive under paragraph (4), the Speaker shall promulgate it.
- (7) Except as provided otherwise, an Act shall take effect twenty days after the date of promulgation.

Article 54

- (1) The National Assembly shall deliberate and decide upon the national budget bill.
- (2) The Executive shall formulate the budget bill for each fiscal year and submit it to the National Assembly within ninety days before the beginning of a fiscal year. The National Assembly shall decide upon it within thirty days before the beginning of the fiscal year.
- (3) If the budget bill is not passed by the beginning of the fiscal year, the Executive may, in conformity with the budget of the previous fiscal year, disburse funds for the following purposes until the budget bill is passed by the National Assembly:
 1. The maintenance and operation of agencies and facilities established by the Constitution or Act;
 2. Execution of the obligatory expenditures as prescribed by Act; and
 3. Continuation of projects previously approved in the budget.

Article 55

- (1) In a case where it is necessary to make continuing disbursements for a period longer than one fiscal year, the Executive shall obtain the approval of the National Assembly for a specified period of time.
- (2) A reserve fund shall be approved by the National Assembly in total. The disbursement of the reserve fund shall be approved during the next session of the National Assembly.

Article 56

When it is necessary to amend the budget, the Executive may formulate a supplementary revised budget bill and submit it to the National Assembly.

Article 57

The National Assembly shall, without the consent of the Executive, neither increase the sum of any item of expenditure nor create any new items of expenditure in the budget submitted by the Executive.

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Article 58

When the Executive plans to issue national bonds or to conclude contracts which may incur financial obligations on the State outside the budget, it shall have the prior concurrence of the National Assembly.

Article 59

Types and rates of taxes shall be determined by Act.

Article 60

- (1) The National Assembly shall have the right to consent to the conclusion and ratification of treaties pertaining to mutual assistance or mutual security; treaties concerning important international organizations; treaties of friendship, trade and navigation; treaties pertaining to any restriction in sovereignty; peace treaties; treaties which will burden the State or people with an important financial obligation; or treaties related to legislative matters.
- (2) The National Assembly shall also have the right to consent to the declaration of war, the dispatch of armed forces to foreign states, or the stationing of alien forces in the territory of the Republic of Korea.

Article 61

- (1) The National Assembly may inspect affairs of state or investigate specific matters of state affairs, and may demand the production of documents directly related thereto, the appearance of a witness in person and the furnishing of testimony or statements of opinion.
- (2) The procedures and other necessary matters concerning the inspection and investigation of state administration shall be determined by Act.

Article 62

- (1) The Prime Minister, members of the State Council or government

delegates may attend meetings of the National Assembly or its committees and report on the state administration or deliver opinions and answer questions.

- (2) When requested by the National Assembly or its committees, the Prime Minister, members of the State Council or government delegates shall attend any meeting of the National Assembly and answer questions. If the Prime Minister or State Council members are requested to attend, the Prime Minister or State Council members may have State Council members or government delegates attend any meeting of the National Assembly and answer questions.

Article 63

- (1) The National Assembly may pass a recommendation for the removal of the Prime Minister or a State Council member from office.
- (2) A recommendation for removal as referred to in paragraph (1) may be introduced by one third or more of the total members of the National Assembly, and shall be passed with the concurrent vote of a majority of the total members of the National Assembly.

Article 64

- (1) The National Assembly may establish the rules of its proceedings and internal regulations: *Provided*, That they are not in conflict with Act.
- (2) The National Assembly may review the qualifications of its members and may take disciplinary actions against its members.
- (3) The concurrent vote of two thirds or more of the total members of the National Assembly shall be required for the expulsion of any member.
- (4) No action shall be brought to court with regard to decisions taken under paragraphs (2) and (3).

Article 65

- (1) In case the President, the Prime Minister, members of the State

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Council, heads of Executive Ministries, Justices of the Constitutional Court, judges, members of the National Election Commission, the Chairman and members of the Board of Audit and Inspection, and other public officials designated by Act have violated the Constitution or other Acts in the performance of official duties, the National Assembly may pass motions for their impeachment.

- (2) A motion for impeachment prescribed in paragraph (1) may be proposed by one third or more of the total members of the National Assembly, and shall require a concurrent vote of a majority of the total members of the National Assembly for passage: *Provided*, That a motion for the impeachment of the President shall be proposed by a majority of the total members of the National Assembly and approved by two thirds or more of the total members of the National Assembly.
- (3) Any person against whom a motion for impeachment has been passed shall be suspended from exercising his power until the impeachment has been adjudicated.
- (4) A decision on impeachment shall not extend further than removal from public office: *Provided*, That it shall not exempt the person impeached from civil or criminal liability.

CHAPTER IV THE EXECUTIVE

SECTION 1 The President

Article 66

- (1) The President shall be the Head of State and represent the State vis-a-vis foreign states.
- (2) The President shall have the responsibility and duty to safeguard the independence, territorial integrity and continuity of the State and the Constitution.

- (3) The President shall have the duty to pursue sincerely the peaceful unification of the homeland.
- (4) Executive power shall be vested in the Executive Branch headed by the President.

Article 67

- (1) The President shall be elected by universal, equal, direct and secret ballot by the people.
- (2) In case two or more persons receive the same largest number of votes in the election as referred to in paragraph (1), the person who receives the largest number of votes in an open session of the National Assembly attended by a majority of the total members of the National Assembly shall be elected.
- (3) If and when there is only one presidential candidate, he shall not be elected President unless he receives at least one third of the total eligible votes.
- (4) Citizens who are eligible for election to the National Assembly, and who have reached the age of forty years or more on the date of the presidential election, shall be eligible to be elected to the presidency.
- (5) Matters pertaining to presidential elections shall be determined by Act.

Article 68

- (1) The successor to the incumbent President shall be elected seventy to forty days before his term expires.
- (2) In case a vacancy occurs in the office of the President or the President-elect dies, or is disqualified by a court ruling or for any other reason, a successor shall be elected within sixty days.

Article 69

The President, at the time of his inauguration, shall take the following oath: "I do solemnly swear before the people that I will faithfully execute the duties of the President by observing the Constitution, defending the State, pursuing the peaceful unification of the homeland,

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promoting the freedom and welfare of the people and endeavoring to develop national culture."

Article 70

The term of office of the President shall be five years, and the President shall not be reelected.

Article 71

If the office of the presidency is vacant or the President is unable to perform his duties for any reason, the Prime Minister or the members of the State Council in the order of priority as determined by Act shall act for him.

Article 72

The President may submit important policies relating to diplomacy, national defense, unification and other matters relating to the national destiny to a national referendum if he deems it necessary.

Article 73

The President shall conclude and ratify treaties; accredit, receive or dispatch diplomatic envoys; and declare war and conclude peace.

Article 74

- (1) The President shall be Commander - in - Chief of the Armed Forces under the conditions as prescribed by the Constitution and Act.
- (2) The organization and formation of the Armed Forces shall be determined by Act.

Article 75

The President may issue presidential decrees concerning matters delegated to him by Act with the scope specifically defined and also matters necessary to enforce Acts.

Article 76

- (1) In time of internal turmoil, external menace, natural calamity or a grave financial or economic crisis, the President may take in

respect to them the minimum necessary financial and economic actions or issue orders having the effect of Act, only when it is required to take urgent measures for the maintenance of national security or public peace and order, and there is no time to await the convocation of the National Assembly.

- (2) In case of major hostilities affecting national security, the President may issue orders having the effect of Act, only when it is required to preserve the integrity of the nation, and it is impossible to convene the National Assembly.
- (3) In case actions are taken or orders are issued under paragraphs (1) and (2), the President shall promptly notify it to the National Assembly and obtain its approval.
- (4) In case no approval is obtained, the actions or orders shall lose effect forthwith. In such case, the Acts which were amended or abolished by the orders in question shall automatically regain their original effect at the moment the orders fail to obtain approval.
- (5) The President shall, without delay, put on public notice developments under paragraphs (3) and (4).

Article 77

- (1) When it is required to cope with a military necessity or to maintain the public safety and order by mobilization of the military forces in time of war, armed conflict or similar national emergency, the President may proclaim martial law under the conditions as prescribed by Act.
- (2) Martial law shall be of two types: extraordinary martial law and precautionary martial law.
- (3) Under extraordinary martial law, special measures may be taken with respect to the necessity for warrants, freedom of speech, the press, assembly and association, or the powers of the Executive and the Judiciary under the conditions as prescribed by Act.
- (4) When the President has proclaimed martial law, he shall notify it to the National Assembly without delay.
- (5) When the National Assembly requests the lifting of martial law

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with the concurrent vote of a majority of the total members of the National Assembly, the President shall comply.

Article 78

The President shall appoint and dismiss public officials under the conditions as prescribed by the Constitution and Act.

Article 79

- (1) The President may grant amnesty, commutation and restoration of rights under the conditions as prescribed by Act.
- (2) The President shall receive the consent of the National Assembly in granting a general amnesty.
- (3) Matters pertaining to amnesty, commutation and restoration of rights shall be determined by Act.

Article 80

The President shall award decorations and other honors under the conditions as prescribed by Act.

Article 81

The President may attend and address the National Assembly or express his views by written message.

Article 82

The acts of the President under law shall be executed in writing, and such documents shall be countersigned by the Prime Minister and the members of the State Council concerned. The same shall apply to military affairs.

Article 83

The President shall not concurrently hold the office of Prime Minister, a member of the State Council, the head of any Executive Ministry, nor other public or private posts as prescribed by Act.

Article 84

The President shall not be charged with a criminal offense during his tenure of office except for insurrection or treason.

Article 85

Matters pertaining to the status and courteous treatment of former Presidents shall be determined by Act.

SECTION 2 The Executive Branch

Sub-Section 1 The Prime Minister and Members of the State Council

Article 86

- (1) The Prime Minister shall be appointed by the President with the consent of the National Assembly.
- (2) The Prime Minister shall assist the President and shall direct the Executive Ministries under order of the President.
- (3) No member of the military shall be appointed Prime Minister unless he is retired from active duty.

Article 87

- (1) The members of the State Council shall be appointed by the President on the recommendation of the Prime Minister.
- (2) The members of the State Council shall assist the President in the conduct of State affairs and, as constituents of the State Council, shall deliberate on State affairs.
- (3) The Prime Minister may recommend to the President the removal of a member of the State Council from office.
- (4) No member of the military shall be appointed a member of the State Council unless he is retired from active duty.

Sub-Section 2 The State Council

Article 88

- (1) The State Council shall deliberate on important policies that fall within the power of the Executive.
- (2) The State Council shall be composed of the President, the Prime Minister, and other members whose number shall be no more than

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thirty and no less than fifteen.

- (3) The President shall be the chairman of the State Council, and the Prime Minister shall be the Vice-Chairman.

Article 89

The following matters shall be referred to the State Council for deliberation:

1. Basic plans for state affairs, and general policies of the Executive;
2. Declaration of war, conclusion of peace and other important matters pertaining to foreign policy;
3. Draft amendments to the Constitution, proposals for national referendums, pro-posed treaties, legislative bills, and proposed presidential decrees;
4. Budgets, settlement of accounts, basic plans for disposal of state properties, contracts incurring financial obligation on the State, and other important financial matters;
5. Emergency orders and emergency financial and economic actions or orders by the President, and declaration and termination of martial law;
6. Important military affairs;
7. Requests for convening an extraordinary session of the National Assembly;
8. Awarding of honors;
9. Granting of amnesty, commutation and restoration of rights;
10. Demarcation of jurisdiction between Executive Ministries;
11. Basic plans concerning delegation or allocation of powers within the Executive;
12. Evaluation and analysis of the administration of State affairs;
13. Formulation and coordination of important policies of each Executive Ministry;
14. Action for the dissolution of a political party;
15. Examination of petitions pertaining to executive policies

submitted or referred to the Executive;

16. Appointment of the Prosecutor General, the Chairman of the Joint Chiefs of Staff, the Chief of Staff of each armed service, the presidents of national universities, ambassadors, and such other public officials and managers of important State-run enterprises as designated by Act; and
17. Other matters presented by the President, the Prime Minister or a member of the State Council.

Article 90

- (1) An Advisory Council of Elder Statesmen, composed of elder statesmen, may be established to advise the President on important affairs of State.
- (2) The immediate former President shall become the Chairman of the Advisory Council of Elder Statesmen: *Provided*, That if there is no immediate former President, the President shall appoint the Chairman.
- (3) The organization, function and other necessary matters pertaining to the Advisory Council of Elder Statesmen shall be determined by Act.

Article 91

- (1) A National Security Council shall be established to advise the President on the formulation of foreign, military and domestic policies related to national security prior to their deliberation by the State Council.
- (2) The meetings of the National Security Council shall be presided over by the President.
- (3) The organization, function and other necessary matters pertaining to the National Security Council shall be determined by Act.

Article 92

- (1) An Advisory Council on Democratic and Peaceful Unification may be established to advise the President on the formulation of peaceful unification policy.

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- (2) The organization, function and other necessary matters pertaining to the Advisory Council on Democratic and Peaceful Unification shall be determined by Act.

Article 93

- (1) A National Economic Advisory Council may be established to advise the President on the formulation of important policies for developing the national economy.
- (2) The organization, function and other necessary matters pertaining to the National Economic Advisory Council shall be determined by Act.

Sub-Section 3 The Executive Ministries

Article 94

Heads of Executive Ministries shall be appointed by the President from among members of the State Council on the recommendation of the Prime Minister.

Article 95

The Prime Minister or the head of each Executive Ministry may, under the powers delegated by Act or Presidential Decree, or *ex officio*, issue ordinances of the Prime Minister or the Executive Ministry concerning matters that are within their jurisdiction.

Article 96

The establishment, organization and function of each Executive Ministry shall be determined by Act.

Sub-Section 4 The Board of Audit and Inspection

Article 97

The Board of Audit and Inspection shall be established under the direct jurisdiction of the President to inspect and examine the settlement of the revenues and expenditures of the State, the accounts of the State and other organizations specified by Act and the job

performances of the executive agencies and public officials.

Article 98

- (1) The Board of Audit and Inspection shall be composed of no less than five and no more than eleven members, including the Chairman.
- (2) The Chairman of the Board shall be appointed by the President with the consent of the National Assembly. The term of office of the Chairman shall be four years, and he may be reappointed only once.
- (3) The members of the Board shall be appointed by the President on the recommendation of the Chairman. The term of office of the members shall be four years, and they may be reappointed only once.

Article 99

The Board of Audit and Inspection shall inspect the closing of accounts of revenues and expenditures each year, and report the results to the President and the National Assembly in the following year.

Article 100

The organization and function of the Board of Audit and Inspection, the qualifications of its members, the range of the public officials subject to inspection and other necessary matters shall be determined by Act.

CHAPTER V THE COURTS

Article 101

- (1) Judicial power shall be vested in courts composed of judges.
- (2) The courts shall be composed of the Supreme Court, which is the highest court of the State, and other courts at specified levels.
- (3) Qualifications for judges shall be determined by Act.

Article 102

- (1) Departments may be established in the Supreme Court.
- (2) There shall be Supreme Court Justices at the Supreme Court:
Provided, That judges other than Supreme Court Justices may be assigned to the Supreme Court under the conditions as prescribed by Act.
- (3) The organization of the Supreme Court and lower courts shall be determined by Act.

Article 103

Judges shall rule independently according to their conscience and in conformity with the Constitution and Act.

Article 104

- (1) The Chief Justice of the Supreme Court shall be appointed by the President with the consent of the National Assembly.
- (2) The Supreme Court Justices shall be appointed by the President on the recommendation of the Chief Justice and with the consent of the National Assembly.
- (3) Judges other than the Chief Justice and the Supreme Court Justices shall be appointed by the Chief Justice with the consent of the Conference of Supreme Court Justices.

Article 105

- (1) The term of office of the Chief Justice shall be six years and he shall not be reappointed.
- (2) The term of office of the Justices of the Supreme Court shall be six years and they may be reappointed as prescribed by Act.
- (3) The term of office of judges other than the Chief Justice and Justices of the Supreme Court shall be ten years, and they may be reappointed under the conditions as prescribed by Act.
- (4) The retirement age of judges shall be determined by Act.

Article 106

- (1) No judge shall be removed from office except by impeachment or

a sentence of imprisonment without prison labor or heavier punishment, nor shall he be suspended from office, have his salary reduced or suffer any other unfavorable treatment except by disciplinary action.

- (2) In the event a judge is unable to discharge his official duties because of serious mental or physical impairment, he may be retired from office under the conditions as prescribed by Act.

Article 107

- (1) When the constitutionality of a law is at issue in a trial, the court shall request a decision of the Constitutional Court, and shall judge according to the decision thereof.
- (2) The Supreme Court shall have the power to make a final review of the constitutionality or legality of administrative decrees, regulations or actions, when their constitutionality or legality is at issue in a trial.
- (3) Administrative appeals may be conducted as a procedure prior to a judicial trial. The procedure of administrative appeals shall be determined by Act and shall be in conformity with the principles of judicial procedures.

Article 108

The Supreme Court may establish, within the scope of Act, regulations pertaining to judicial proceedings and internal discipline and regulations on administrative matters of the court.

Article 109

Trials and decisions of the courts shall be open to the public: *Provided*, That when there is a danger that such trials may undermine the national security or disturb public safety and order, or be harmful to public morals, trials may be closed to the public by court decision.

Article 110

- (1) Courts-martial may be established as special courts to exercise jurisdiction over military trials.

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- (2) The Supreme Court shall have the final appellate jurisdiction over courts-martial.
- (3) The organization and authority of courtsmartial, and the qualifications of their judges shall be determined by Act.
- (4) Military trials under an extraordinary martial law may not be appealed in case of crimes of soldiers and employees of the military; military espionage; and crimes as defined by Act in regard to sentinels, sentry posts, supply of harmful foods and beverages, and prisoners of war, except in the case of a death sentence.

CHAPTER VI THE CONSTITUTIONAL COURT

Article 111

- (1) The Constitutional Court shall have jurisdiction over the following matters:
 1. The constitutionality of a law upon the request of the courts;
 2. Impeachment;
 3. Dissolution of a political party;
 4. Competence disputes between State agencies, between State agencies and local governments, and between local governments; and
 5. Constitutional complaint as prescribed by Act.
- (2) The Constitutional Court shall be composed of nine Justices qualified to be court judges, and they shall be appointed by the President.
- (3) Among the Justices referred to in paragraph (2), three shall be appointed from persons selected by the National Assembly, and three appointed from persons nominated by the Chief Justice of the Supreme Court.
- (4) The president of the Constitutional Court shall be appointed by

the President from among the Justices with the consent of the National Assembly.

Article 112

- (1) The term of office of the Justices of the Constitutional Court shall be six years and they may be reappointed under the conditions as prescribed by Act.
- (2) The Justices of the Constitutional Court shall not join any political party, nor shall they participate in political activities.
- (3) No Justice of the Constitutional Court shall be expelled from office except by impeachment or a sentence of imprisonment without prison labor or heavier punishment.

Article 113

- (1) When the Constitutional Court makes a decision of the unconstitutionality of a law, a decision of impeachment, a decision of dissolution of a political party or an affirmative decision regarding the constitutional complaint, the concurrence of six Justices or more shall be required.
- (2) The Constitutional Court may establish regulations relating to its proceedings and internal discipline and regulations on administrative matters within the limits of Act.
- (3) The organization, function and other necessary matters of the Constitutional Court shall be determined by Act.

CHAPTER VII ELECTION MANAGEMENT

Article 114

- (1) Election commissions shall be established for the purpose of fair management of elections and national referenda, and dealing with administrative affairs concerning political parties.
- (2) The National Election Commission shall be composed of three members appointed by the President, three members selected by

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the National Assembly, and three members designated by the Chief Justice of the Supreme Court. The Chairman of the Commission shall be elected from among the members.

- (3) The term of office of the members of the Commission shall be six years.
- (4) The members of the Commission shall not join political parties, nor shall they participate in political activities.
- (5) No member of the Commission shall be expelled from office except by impeachment or a sentence of imprisonment without prison labor or heavier punishment.
- (6) The National Election Commission may establish, within the limit of Acts and decrees, regulations relating to the management of elections, national referenda, and administrative affairs concerning political parties and may also establish regulations relating to internal discipline that are compatible with Act.
- (7) The organization, function and other necessary matters of the election commissions at each level shall be determined by Act.

Article 115

- (1) Election commissions at each level may issue necessary instructions to administrative agencies concerned with respect to administrative affairs pertaining to elections and national referenda such as the preparation of the pollbooks.
- (2) Administrative agencies concerned, upon receipt of such instructions, shall comply.

Article 116

- (1) Election campaigns shall be conducted under the management of the election commissions at each level within the limit set by Act. Equal opportunity shall be guaranteed.
- (2) Except as otherwise prescribed by Act, expenditures for elections shall not be imposed on political parties or candidates.

CHAPTER VIII LOCAL AUTONOMY

Article 117

- (1) Local governments shall deal with administrative matters pertaining to the welfare of local residents, manage properties, and may enact provisions relating to local autonomy, within the limit of Acts and subordinate statutes.
- (2) The types of local governments shall be determined by Act.

Article 118

- (1) A local government shall have a council.
- (2) The organization and powers of local councils, and the election of members; election procedures for heads of local governments; and other matters pertaining to the organization and operation of local governments shall be determined by Act.

CHAPTER IX THE ECONOMY

Article 119

- (1) The economic order of the Republic of Korea shall be based on a respect for the freedom and creative initiative of enterprises and individuals in economic affairs.
- (2) The State may regulate and coordinate economic affairs in order to maintain the balanced growth and stability of the national economy, to ensure proper distribution of income, to prevent the domination of the market and the abuse of economic power and to democratize the economy through harmony among the economic agents.

Article 120

- (1) Licenses to exploit, develop or utilize minerals and all other important underground resources, marine resources, water power, and natural powers available for economic use may be granted for

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a period of time under the conditions as prescribed by Act.

- (2) The land and natural resources shall be protected by the State, and the State shall establish a plan necessary for their balanced development and utilization.

Article 121

- (1) The State shall endeavor to realize the land-to-the-tillers principle with respect to agricultural land. Tenant farming shall be prohibited.
- (2) The leasing of agricultural land and the consignment management of agricultural land to increase agricultural productivity and to ensure the rational utilization of agricultural land or due to unavoidable circumstances, shall be recognized under the conditions as prescribed by Act.

Article 122

The State may impose, under the conditions as prescribed by Act, restrictions or obligations necessary for the efficient and balanced utilization, development and preservation of the land of the nation that is the basis for the productive activities and daily lives of all citizens.

Article 123

- (1) The State shall establish and implement a plan to comprehensively develop and support the farm and fishing communities in order to protect and foster agriculture and fisheries.
- (2) The State shall have the duty to foster regional economies to ensure the balanced development of all regions.
- (3) The State shall protect and foster small and medium enterprises.
- (4) In order to protect the interests of farmers and fishermen, the State shall endeavor to stabilize the prices of agricultural and fishery products by maintaining an equilibrium between the demand and supply of such products and improving their marketing and distribution systems.
- (5) The State shall foster organizations founded on the spirit of self-help among farmers, fishermen and businessmen engaged in

small and medium industry and shall guarantee their independent activities and development.

Article 124

The State shall guarantee the consumer protection movement intended to encourage sound consumption activities and improvement in the quality of products under the conditions as prescribed by Act.

Article 125

The State shall foster foreign trade, and may regulate and coordinate it.

Article 126

Private enterprises shall not be nationalized nor transferred to ownership by a local government, nor shall their management be controlled or administered by the State, except in cases as prescribed by Act to meet urgent necessities of national defense or the national economy.

Article 127

- (1) The State shall strive to develop the national economy by developing science and technology, information and human resources and encouraging innovation.
- (2) The State shall establish a system of national standards.
- (3) The President may establish advisory organizations necessary to achieve the purpose referred to in paragraph (1).

CHAPTER X AMENDMENTS TO THE CONSTITUTION

Article 128

- (1) A proposal to amend the Constitution shall be introduced either by a majority of the total members of the National Assembly or by the President.
- (2) Amendments to the Constitution for the extension of the term of office of the President or for a change allowing for the reelection

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of the President shall not be effective for the President in office at the time of the proposal for such amendments to the Constitution.

Article 129

Proposed amendments to the Constitution shall be put before the public by the President for twenty days or more.

Article 130

- (1) The National Assembly shall decide upon the proposed amendments within sixty days of the public announcement, and passage by the National Assembly shall require the concurrent vote of two thirds or more of the total members of the National Assembly.
- (2) The proposed amendments to the Constitution shall be submitted to a national referendum not later than thirty days after passage by the National Assembly, and shall be determined by more than one half of all votes cast by more than one half of voters eligible to vote in elections for members of the National Assembly.
- (3) When the proposed amendments to the Constitution receive the concurrence prescribed in paragraph (2), the amendments to the Constitution shall be finalized, and the President shall promulgate it without delay.

ADDENDA

Article 1

This Constitution shall enter into force on the twenty-fifth day of February, anno Domini Nineteen hundred and eightyeight: *Provided*, That the enactment or amendment of Acts necessary to implement this Constitution, the elections of the President and the National Assembly under this Constitution and other preparations to implement this

Constitution may be carried out prior to the entry into force of this Constitution.

Article 2

- (1) The first presidential election under this Constitution shall be held not later than forty days before this Constitution enters into force.
- (2) The term of office of the first President under this Constitution shall commence on the date of its enforcement.

Article 3

- (1) The first elections of the National Assembly under this Constitution shall be held within six months from the promulgation of this Constitution. The term of office of the members of the first National Assembly elected under this Constitution shall commence on the date of the first convening of the National Assembly under this Constitution.
- (2) The term of office of the members of the National Assembly incumbent at the time this Constitution is promulgated shall terminate the day prior to the first convening of the National Assembly under paragraph (1).

Article 4

- (1) Public officials and officers of enterprises appointed by the Government, who are in office at the time of the enforcement of this Constitution, shall be considered as having been appointed under this Constitution: *Provided*, That public officials whose election procedures or appointing authorities are changed under this Constitution, the Chief Justice of the Supreme Court and the Chairman of the Board of Audit and Inspection shall remain in office until such time as their successors are chosen under this Constitution, and their terms of office shall terminate the day before the installation of their successors.
- (2) Judges attached to the Supreme Court who are not the Chief Justice or Justices of the Supreme Court and who are in office at the time of the enforcement of this Constitution shall be

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considered as having been appointed under this Constitution notwithstanding the proviso of paragraph (1).

- (3) Those provisions of this Constitution which prescribe the terms of office of public officials or which restrict the number of terms that public officials may serve, shall take effect upon the dates of the first elections or the first appointments of such public officials under this Constitution.

Article 5

Acts, decrees, ordinances and treaties in force at the time this Constitution enters into force, shall remain valid unless they are contrary to this Constitution.

Article 6

Those organizations existing at the time of the enforcement of this Constitution which have been performing the functions falling within the authority of new organizations to be created under this Constitution, shall continue to exist and perform such functions until such time as the new organizations are created under this Constitution.

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