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, 2020 to December 31, 2020 by the Constitutional Court of Korea.

This volume contains the summaries of the Court's decisions in 19 cases, including the *Case on Execution of Levying of Penalties against Third Party*. The contents of this volume are also available on the English website of the Court (https://english.ccourt.go.kr).

I hope that this volume will enhance understanding of the constitutional adjudication in Korea and become a useful resource for many foreign readers and researchers. Lastly, I would like to thank all those who made possible the publication of this work.

October 29, 2021

Park Jongmun
Secretary General
Constitutional Court of Korea

EXPLANATION OF ABBREVIATIONS & CODES

- 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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1. Case on Execution of Levying of Penalties against Third Party

[2015Hun-Ka4, February 27, 2020]

In this case, the Court decided that Article 9-2 of the Act on Special Cases Concerning Confiscation on Offenses of Public Officials, which allows a judgment of levying of penalties for an offender of the Act to be executed against a person other than the offender on the unlawful property and the property occurring from it which such person other than the offender acquired knowing such circumstances, does not violate the principle of due process or principle against excessive restrictions in the Constitution.

Background of the Case

Chun Jae-gook, son of former president Chun Doo-hwan, bought the land of this case under the third party's name with the bearer bond delegated from Chun Doo-hwan. The prosecution perceived the land as an illegal property under the Act on Special Cases Concerning Confiscation on Offenses of Public Officials and suspected that the petitioner acquired it with knowledge of such circumstances. Accordingly, the prosecution forfeited part of the land of this case on August 19, 2013 as arrears of penalty ruled by the trial against Chun Doo-hwan pursuant to Article 9-2 of the Act on Special Cases Concerning Confiscation on Offenses of Public Officials and Article 477 Section 4 of the Criminal Procedure Act (hereinafter referred to as the "Forfeiture").

The petitioner appealed against the execution of the Forfeiture in accordance with Article 489 of the Criminal Procedure Act on December 11, 2013. While the appeal was pending, the petitioner lodged a motion to request a constitutional review on Article 9-2 of the Act on Special Cases Concerning Confiscation on Offenses of Public Officials and Article 2 of the Addenda of the same Act on September 24, 2014.

Accordingly, the requesting court referred the case regarding Article 9-2 of the Act on Special Cases Concerning Confiscation on Offenses of Public Officials to the Court on January 20, 2015, but rejected the motion on Article 2 of the Addenda of the same Act.

Subject Matter of Review

The subject matter of review in this case is whether Article 9-2 of the Act on Special Cases Concerning Confiscation on Offenses of Public Officials (amended by Act No. 11883, July 12, 2013) (hereinafter referred to as the "Provision at Issue") violates the Constitution.

Provision at Issue

Act on Special Cases Concerning Confiscation on Offenses of Public Officials (amended by Act No. 11883, July 12, 2013)

Article 9-2 (Levying of Penalties on Unlawful Property, etc.)

Levying of penalties under Article 6 may be executed on the unlawful property and the property occurring from it which a person other than an offender acquired knowing such circumstances, against such person other than an offender.

Summary of the Decision

1. Violation of Principle of Due Process

The legislative purpose of the Provision at Issue is to realize the punitive authority of the state and root out the culprit of corruption in the public sector through a complete recovery of illegal properties. The Provision at Issue is in place not to impose criminal sanctions on a third party on the premise that the third party committed a crime, but to allocate a limited financial liability onto the third person by expanding

the subject of execution of levying of penalties to the person who committed a specific offense by a public official to illegal properties obtained by the third party. Since the determination of the process of executing the final judgment on crime is at the discretion of the legislature, it is onerous to see that executing levying of penalties based on the Provision at Issue requires a process as strict as the criminal proceedings.

Execution of levying of penalties based on the Provision at Issue requires promptness and secrecy in nature. If the third party is notified of such execution beforehand or given the chance to declare statements, there is a high chance that such person would dispose of the illegal properties and eventually hinder the object of the execution. Hence, it is reasonable that the Provision at Issue neither notifies the third party of levying of penalties against him/her for a person who committed a specific offense by a public official nor grants an opportunity to express opinions before such execution.

Furthermore, the third party can appeal to the presiding court against the ruling for the execution if the prosecution's decision based on the Provision at Issue is found to be unfair (Article 489 of the Criminal Procedure Act). The third party can also contest the execution based on the Provision at Issue by filing a complaint against each step of the execution afterwards.

Consequently, the Provision at Issue does not violate the principle of due process.

2. Violation of principle against excessive restriction

If a third party is found to have acquired an illegal property with knowledge of the circumstances when a person who committed a specific offense by a public official is prosecuted, the illegal property can be confiscated with a ruling against the third party as prescribed in the Act on Special Cases Concerning Confiscation on Offenses of Public Officials (hereinafter referred to as the "Confiscation Act on Public

Official Crime"). However, it is impossible to confiscate the illegal property from the third party when the aforementioned accusation is not proved. The prosecution can file a lawsuit for revocation of fraudulent act based on the creditor's revocation right against the third party to return the illegal property into the liable property of the offender and finally execute levying of penalties against the offender. However, the requirement to exercise the creditor's revocation right is not met in certain cases, making it impossible to restore the illegal property. The prosecution can also indict the third party for violating the Act on Regulation and Punishment of Criminal Proceeds Concealment to forfeit the illegal property or levy penalties of the equivalent value directly from him/her through the criminal proceedings. If the measure against the third party is carried out covertly, however, it is certainly feasible that the illegal property cannot be confiscated or the penalties cannot be levied against the third party as the statute of limitations expires without the measure being revealed. This means that other procedures under the current law alone would bring an unfair result where we could not stop the offender from disposing of the illegal property obtained from a specific offense by a public official to the third party with knowledge of the circumstance and practically retaining the illegal property. Accordingly, the Provision at Issue enables the execution of levying of penalties on the illegal property obtained by the third party with knowledge of the circumstances and the property occurring from it.

The Provision at Issue restricts the property rights of the third party to the scope necessary to serve the legislative purpose by confining the subject of execution to the property acquired by a specific offense by a public official and the property occurring from it.

As stated earlier, there is an inevitable reason that it is onerous to build a process of giving advance notice and etc., because of the promptness and secrecy of the execution and the third party is assured of the process to fight the execution afterwards. If these are taken into account, it is difficult to conclude that the Provision at Issue infringes upon the principle of minimum restrictions simply because it is specified

that levying of penalties against the offender can be executed on the property belonging to the third party without a court involvement.

The Provision at Issue has a significant meaning in the society as its legislative purpose is to ensure the state's punitive authority and eliminate the culprit of corruption in the public sector through a complete recovery of illegal properties obtained by a specific offense by a public official. On the other hand, the Provision at Issue levies penalties on the illegal property that the third party obtained with knowledge of the circumstances and the property occurring from it, but the scope is confined to the property that a person obtained by committing a specific offense by a public official and the property occurring from it and the third party may have a court ruling on such execution afterwards. This suggests that the disadvantage to the third party caused by the Provision at Issue does not outweigh the public interest that the Provision at Issue intends to serve and, subsequently, it does not violate the balance of interests.

Thus, the Provision at Issue does not violate the principle against excessive restrictions or infringe upon the property rights.

Summary of Dissenting Opinion of Three Justices

The third party subject to the execution by the Provision at Issue is not informed of the criminal trial or given the chance to participate in the proceedings. Also, the third party is not informed of penalties to be levied on his/her property beforehand or provided with the opportunity to make a statement at a hearing. In case when a third party other than the offender obtained the illegal property knowing the illegal circumstances, even though there is no ground to see that levying of penalties needs greater urgency or secrecy than confiscation or unlawfulness of the third party resulting in levying of penalties is more serious than unlawfulness bringing about confiscation, the Provision at Issue does not specify any chance to be informed of a criminal trial that the third party may have or make a statement in the proceedings when penalties are levied on the

third party in accordance with the Confiscation Act on Public Official Crime at all.

Legislation to build a preservation process to levy penalties on the property of the third party would ensure a prior notification or hearing and also help prevent the third party from evading the execution. Thus, ease or secrecy of execution cannot be a shield that justifies the absence of the prior notification or hearing.

Levying of penalties is a measure that replaces confiscation, and should be imposed the same as confiscation. Nevertheless, the third party is not granted any chance to get a court ruling as to 'whether levying of penalties is lawful by meeting the requirement of the Confiscation Act on Public Official Crime' prior to the penalties are levied on his/her property pursuant to the Provision at Issue. Hence, the Provision at Issue restricts the third party's right to trial.

The Provision at Issue also imposes a restriction on the third party's property rights by allowing execution of levying of penalties on the illegal property and the property occurring from it, even when the third party has no intention to facilitate for the offender to evade confiscation or levying of penalties or conceal the illegal property.

Furthermore, the Provision at Issue grants an extensive discretion to the prosecution, enabling them to execute levying of penalties against the third party before the offender. Also, in case when there are multiple third parties, the prosecution may make an arbitrary decision on the order of the execution.

Unlike in ordinary court proceedings, the court can make a decision on an appeal against execution of a court decision (Article 489 of the Criminal Procedure Act) by reviewing documents only without subpoenaing the third party, which implies that the third party is not sufficiently assured of the chance to make a statement when levying of penalties is executed against him/her. Besides, no appeal is accepted after such execution is concluded, and the remedy is limited when the execution is completed quickly as suspension of the execution for the appeal is not effective.

Consequently, there may be a case of unexpected victims of goodwill that ‘the third party merely obtains the illegal property after the crime without knowledge of the circumstances and is not subject to levying of penalties, when the prosecution’s arbitrary decision to execute levying of penalties based on the belief that the requirement to levy penalties against the third party is met according to the Confiscation Act on Public Official Crime.’

Therefore, the Provision at Issue violates the principle of due process and the Constitution.

2. Case on Election Campaign by Teacher via Social Networking Service

[2016Hun-Ma1071, February 27, 2020]

In this case, the Court ruled that a mere act of simply sharing another user's posting on 'Facebook' account cannot be regarded as an 'election campaign' under the Public Official Election Act. The Court also found that whether the act of posting is to be concluded as an 'election campaign' should be determined by not only considering the contents of the posting but comprehensively examining the circumstances insinuating that it displays explicit intention of helping a specific candidate win or lose the election.

Background of the Case

The Public Official Election Act bans public officials from engaging in any 'election campaign', and those violating it are subject to criminal punishment. The Complainant is a public official serving as a public school teacher, who shared an online post (news and video) on a personal Facebook account telling that a specific candidate was lying, before the 20th General Election.

The Complainant was charged of unlawfully engaging in an election campaign by sharing such post. However, the Respondent, who is a prosecutor, suspended the prosecution against the Complainant on September 13, 2016, explaining that the act of posting is considered as the election campaign that is banned for public officials pursuant to the Public Official Election Act but the criminality of that act is minor. The Complainant filed this complaint to seek invalidation of the suspension of prosecution, arguing that this measure given by the prosecutor is unfair and infringes upon the Complainant's right to equality and right to pursue happiness.

Legal Ground of Suspension of Prosecution

Public Official Election Act (amended by Act No. 9974, January 25, 2010)

Article 255 Section 1 Item 2; and, Article 60 Section 1 Item 4

Summary of the Decision

1. Meaning of 'Election Campaign' under the Public Official Election Act

Regarding the 'election campaign' under the Public Official Election Act, the Supreme Court ruled that it shall mean an active and planned activity that is carried out with the objective intention of helping a certain candidate win or lose in a specific election. Accordingly, even when a teacher, who is banned from engaging in an election campaign under the Act, expresses his/her political opinion or belief through social networking services such as Facebook and the content is regarded relevant to the election, such act should not be concluded as the part of election campaign just for those reasons (Supreme Court, Case No. 2017DO2972, November 29, 2018).

In this regard, to decide whether a person's simple act of sharing online news articles or others' posts on a social networking service account constitutes an 'election campaign', the contents of the posts as well as other circumstances that may suggest actions with the explicit intention of helping a certain election candidate win or lose in a certain election such as the volumes of posts in the social media account; whether there were posts similar to the ones at issue; whether the account is created close to the election day and an excessive number of people were added to friends while posts with similar contents are uploaded exceptionally or continuously, should be examined comprehensively.

2. Judgment on This Case

The Complainant shared on a personal account, an online article regarding a certain candidate for the upcoming general election was telling a lie, but did not mention any additional comments toward it. By considering the contents of the post shared by the Complainant, total number of Facebook friends (4,583), and a mere fact that the Complainant uploaded one more posting about the aforementioned candidate on the same day on a personal Facebook account, it is difficult to conclude that such act amounts to the 'election campaign', which is an active and planned action with the objective intention of helping a certain candidate to win or lose in a certain election.

Therefore, the suspension of prosecution granted to the Complainant on the premise that the Complainant's action is part of the 'election campaign' was a result from the arbitrary judgment on evidence, insufficient investigation and misunderstanding on the law. Consequently, the right to equality and right to pursue happiness of the Complainant are infringed upon and, thus, the suspension of prosecution shall be nullified.

3. Case on State Compensation Claims Involving Emergency Measure Nos. 1 and 9

[2016Hun-Ba55 and 27 other cases (consolidated), March 26, 2020]

In this case, the Court held that Article 2 Section 1 of the State Compensation Act, which requires intention or negligence of a public official in order to acknowledge the State compensation liability, does not infringe the right to claim State compensation and thus does not violate the Constitution.

Background of the Case

The Petitioners are (1) individuals who were investigated by the police and prosecutors for alleged violations of Emergency Measure No. 1 or 9; or their family members, and (2) individuals who were convicted in court trials for violating Emergency Measure No. 1 or 9; or their family members. On March 21, 2013, the Court held in 2010Hun-Ba70, etc., that Emergency Measure Nos. 1, 2, and 9 are unconstitutional.

The Petitioners filed separate lawsuits under Article 2 Section 1 of the State Compensation Act against the State, seeking compensation for the damages incurred by the State's unlawful acts, which include the issuance of Emergency Measures; investigations and trials under those measures; and use of violence by the State investigative agencies during those investigations and trials.

The courts partly accepted the compensation claims in circumstances where there exists the sufferance of violence, such as physical assault, by the State investigative agencies, or a conviction based upon illegal evidence. However, the courts denied the liability for the unlawful acts with regard to the official duties by the State investigative agency that arrested, detained, investigated, and prosecuted the suspects without warrants, and the official duties by the judges that rendered judgments of conviction applying the Emergency Measures, on the ground that the

public officials at that time had no knowledge of the unconstitutionality of Emergency Measures (*see* Supreme Court Judgment 2013Da217962 on October 27, 2014).

The Petitioners filed separate motions in the courts to request constitutional review on Article 2 Section 1 of the State Compensation Act that requires a public official's intention or negligence. After the rejection of those motions, the Petitioners filed this constitutional complaint.

Subject Matter of Review

The subject matter of review in this case is whether the part "by intention or negligence" in the main text of Article 2 Section 1 of the former State Compensation Act (amended by Act No. 9803 on October 21, 2009, and before amendment by Act No. 14184 on May 29, 2016) (hereinafter referred to as the "Provision at Issue") violates the Constitution. The Provision at Issue reads as follows:

Provision at Issue

Former State Compensation Act (amended by Act No. 9803 on October 21, 2009, and before amendment by Act No. 14184 on May 29, 2016)

Article 2 (Compensation Liability)

(1) Where public officials or private persons entrusted with public duties (hereinafter referred to as "public officials") inflict harm on other persons by intention or negligence in performing their official duties, in violation of the statutes, or where they are liable to compensate for harm under the Compulsory Motor Vehicle Liability Security Act, the State or local governments shall compensate for such harm pursuant to this Act: (*Proviso omitted.*)

Summary of the Decision

1. Issue

The issue in this case is whether the Provision at Issue, which does not recognize strict liability and instead requires intention or negligence of a public official in order to acknowledge the right to claim State compensation, is an arbitrary exercise of legislative power which infringes the Petitioners' constitutional right to claim the compensation.

2. Summary of the decision in a prior case

On April 30, 2015, the Court decided in 2013Hun-Ba395 that the Provision at Issue is constitutional. The following is a summary of that decision:

(a) Because Article 29 Section 1 of the Constitution, in its second sentence, provides that, 'the public official concerned shall not be immune from liability', when it stipulates for the liability of the State or a public organization that derives from 'an unlawful act committed by a public official in the course of official duties' in its first sentence, it can be construed that the State compensation liability under the Constitution is partly premised on the liability of a public official. It shall also be construed that Article 29 Section 1 of the Constitution requires the scope of compensation liability of the State to be prescribed by law considering the national finance.

(b) The recognition of the State's compensation liability even in the absence of intention or negligence of a public official would expand the relief entitled to victims but at the same time would hamper the performance of public officials' official duties. It is therefore a matter of legislative policy to determine whether strict liability should be recognized.

(c) Most countries have the liability requirement of a public official

in accepting the State compensation liability. Moreover, recent foreign judicial decisions and academic commentaries have been expanding the relief entitled to victims by entailing the logics introduced in the State Compensation Act such as objectification of the idea of negligence, recognition of organizational negligence, and presumption of negligence. It is the judicial interpretation and application of the concerned provisions that supplement the remedy to victims if not fully accomplished.

(d) Accordingly, requiring intention or negligence of a public official in order to acknowledge State compensation does not exceed the limits of legislative power and thus does not violate the right to claim State compensation under Article 29 of the Constitution.

3. Whether there is the need to depart from the prior decision

Some may argue that the requirements for State compensation claims should be eased in cases where they involve issuance and enforcement of emergency measures that gravely violate human rights, because such cases are different from other ordinary circumstances enforcing statutes. Indeed, the Court recognizes that those emergency measures are distinct from other decisions of declaration of unconstitutionality by the Court, as the Petitioners were not able to validly argue their constitutionality at the time of their enforcement, and they were declared to be unconstitutional much later in the 2010s.

Nevertheless, the Court finds no need to make an exception in this case. If the State's compensation liability were recognized retroactively in cases involving enforcement of a statute that is subsequently declared unconstitutional, this would lead to either slow and cumbersome administration due to the State's reluctance to enforce its law or confusion in administration and thereby result in interference with the State's performance of its function.

Moreover, given that Article 2 Section 1 of the State Compensation Act merely provides the general requirements for establishing the State's

compensation liability, not all harm caused by State action should be remedied under this provision. If the State finds that there is a need to compensate a wide variety of harm resulting from Emergency Measure No. 1 or 9 after considering the unusual nature of, and the necessity to remedy such harm, the legislature may, based on a national consensus, enact additional legislation to remedy such harm without regard to intention or negligence.

Therefore, the Court finds no reason in this case to depart from the prior decision.

4. Conclusion

The Provision at Issue does not violate the Constitution.

Summary of Dissenting Opinion of Three Justices

We find that requiring intention or negligence of a public official in order to acknowledge the right to claim State compensation is unconstitutional with regard to the part concerning the State's intentional and active unlawful act through issuance, application, and enforcement of Emergency Measure Nos. 1 and 9.

Although the Court has previously held that the Provision at Issue does not violate the Constitution, it should be reviewed again if it is challenged on the ground that a part thereof is unconstitutional when applied to cases involving unusual and extraordinary circumstances.

The degree of illegality of intentional and active unlawful acts committed by the State issuance, application, and enforcement of Emergency Measure Nos. 1 and 9 is severe, because they completely undermine the "liberal-democratic basic order," a fundamental value of our Constitution, and are contrary to the State's fundamental duty to respect and protect basic rights of its people. Moreover, the public officials who committed those unlawful acts were at a position nothing but

a part that the State could replace, and resulting harm is unprecedentedly grave. In these respects, those unlawful acts are unusual and extraordinary.

It is unconstitutional for the legislature to enact, in relation to the right to claim State compensation, a grossly unreasonable statutory provision that poses a serious obstacle or makes it virtually impossible for a person to bring a State compensation claim. We find that the Provision at Issue has posed a serious obstacle to State compensation claims by requiring intention or negligence of an individual public official even in cases involving unlawful acts related to Emergency Measure Nos. 1 and 9, and that this has led to a failure to repair the harm resulting from compliance with unreasonable and unjust rules. In this regard, the Provision at Issue has caused a great vacuum in the rule of law, contrary to the State Compensation Act's purpose of promoting the rule of law, and the State has violated the second sentence of Article 10 of the Constitution which confers the duty to protect the fundamental rights of citizens upon the State.

Moreover, the requirements of intention or negligence made the State compensation claim against the unlawful State action with graver illegality more difficult than ordinary cases, and consequently, it resulted in failing to redress the harm caused by the unlawful act by the State. As a result, the Provision at Issue—a provision for the right to claim State compensation—runs counter to the purposes of the State compensation system, which seeks to ensure equitable distribution of harm and promote distributive justice in society.

The opinion of the Court declared the Provision at Issue constitutional based on the rationale that it serves the functions of imposing sanctions on public officials and deterring their unlawful conduct. This rationale, however, is not only unconvincing in the context of cases where the State essentially controls the conduct of individual public officials and orders them to do unlawful acts, but also inconsistent with the spirit of the State compensation system under the Constitution. Further, the financial condition of the State, the factor considered in the precedent, is insignificant in light of the fact that the essence of the State

compensation system is an ex-post remedy for an unlawful act committed by the State in violation of its duty to protect the fundamental rights of its citizens.

Accordingly, the part of the Provision at Issue requiring a showing of the intention or negligence of a public official as a prerequisite to the right to claim State compensation for the harm resulting from an intentional and direct tort committed by the State through the issuance, application, and enforcement of Emergency Measure Nos. 1 and 9 infringes the right to claim State compensation and thus violates the Constitution.

4. Case on Public Announcement of List of Successful Candidates for National Bar Examination

[2018Hun-Ma77, 2018Hun-Ma283, 2018Hun-Ma1024 (consolidated), March 26, 2020]

In this case, the Court decided whether the part related to making public the list in Article 11 of the National Bar Examination Act, which requires the Minister of Justice to make a public announcement of the names of successful candidates for the National Bar Examination, infringes upon the Complainants' fundamental right. The Court rejected the constitutional complaint, finding that the provision does not infringe upon their right to self-determination on personal information.

Background of the Case

The Complainants already graduated or will graduate from law school and each of them took the 7th National Bar Examination in 2018, the 8th in 2019 and the 9th in 2020 respectively. The Minister of Justice should immediately make public the list of successful exam candidates when they are determined pursuant to Article 11 of the National Bar Examination Act. The Complainants filed the constitutional complaint against the provision above, contending that disclosing the successful candidate list would let others know whether they passed the bar exam, which infringes upon their fundamental right.

The Court granted a motion for preliminary injunction filed by some of the Complainants on April 6, 2018 and decided to suspend the effect of the aforementioned provision until the final decision is made for 2018Hun-Ma77, 2018Hun-Ma283 (Consolidated). In line with the preliminary injunction, the Justice Minister did not disclose the successful candidates' names for the 7th and 8th bar exams. The list of the successful candidates for the 9th bar exam is scheduled to be announced in April 2020.

Subject Matter of Review

The subject matter of review in this case is whether the part related to announcing the list in Article 11 of the National Bar Examination Act (amended by Act No. 15154, December 12, 2017) (hereinafter referred to as the "Provision at Issue") infringes upon the fundamental right of the Complainants.

Provision at Issue

National Bar Examination Act (amended by Act No. 15154, December 12, 2017)

Article 11 (Announcement of Successful Candidates and Issuance of Certificates of Passage)

When successful candidates are decided, the Minister of Justice shall immediately make a public announcement of the list of successful candidates and issue certificates of passage to the successful candidates.

Summary of the Decision

○ Violation of Principle against Excessive Restrictions and Infringement of Right to Self-Determination on Personal Information

The right to self-determination on personal information is guaranteed by the general right to personality drawn from Article 10 of the Constitution that specifies human dignity, worth and right to pursue happiness, as well as the right to privacy of Article 17. This refers to the right that the information holder can determine on his/her own as to when, to whom, and to what extent his/her personal information can be disclosed and used.

Personal information includes whether an individual has applied for a certain test and has passed it, the year of the passage, etc. The right of the applicants themselves to decide the period and scope for which the

above information is known is part of the guaranteed right to self-determination on personal information. The National Bar Examination is taken by a specific group of people who graduated or will graduate from law school. If the list of the successful candidates is made public by the Provision at Issue, people with knowledge on specific persons' enrollment at a law school or graduation from it would be able to get to know the passage of the persons whose names are disclosed and also the failure of certain persons by combining the information. Therefore, the right to self-determination on personal information of the applicants is restricted by the Provision at Issue.

The legislative purpose of the Provision at Issue is to help those in need of legal service acquire necessary information by disclosing information on the attorney, a profession with publicness, and to indirectly ensure fairness and transparency of bar exam management.

The Provision at Issue merely requires the Minister of Justice to disclose the names of the successful candidates among the personal information collected for the exam management, suggesting that the right to self-determination on personal information is restricted to a very insignificant scope and degree. If the list of successful candidates is announced publicly, anyone can search for the result anytime. Subsequently, the Provision at Issue contributes to building public confidence in the qualification of an attorney, a profession with publicness, provides the means of obtaining information about attorneys, and eventually promotes easy access to the legal service. When the list is disclosed to the public, we can expect the exam authorities to select the successful candidates through stricter standards and procedures and enhance the fairness and transparency of the exam management accordingly.

Therefore, the Provision at Issue does not violate the principle against excessive restrictions or infringe upon the Complainants' right to self-determination on personal information.

Summary of Dissenting Opinion of Five Justices

○ Violation of Principle against Excessive Restrictions and Infringement of Right to Self-Determination on Personal Information

The National Bar Examination is taken by a specific group of people who graduated or will graduate from law school. If the list of the successful candidates is made public based on the Provision at Issue, people who know certain persons' enrollment at a law school would be able to get to know whether they failed to pass by comparing their names with the list of the successful candidates. As it shows, disclosing the information about who took the exam and who passed it to the public can be regarded as a grave restriction on the Complainants' right to self-determination on personal information.

The exam authorities can sufficiently ensure fairness and transparency of the exam management by offering only the application numbers of the successful candidates. Besides, people in need of legal service can visit the official website of the Korean Bar Association for more and better information about attorneys. Thus, there are other means to serve the legislative purpose with less restriction on their right to self-determination on personal information.

In practice, the public announcement of successful candidates is made by posting a document file containing the list of successful candidates with their application numbers, etc., without a time limit. Thus, anyone can search and see it at any time after the public announcement is made, and the list can be spread widely when it is quoted by news media or online posts. Such infringement of private interests would not be addressed with the lapse of time.

Consequently, the Provision at Issue violates the principle against excessive restrictions and infringes upon the Complainants' right to self-determination on personal information.

※ In this case, unconstitutionality was the majority opinion with four

rejection opinions and five unconstitutionality opinions. However, the Court failed to reach the quorum needed to uphold a constitutional complaint as prescribed by Article 113 Section 1 of the Constitution and Article 23 Section 2 Proviso 1 of the Constitutional Court Act and, therefore, rejected it.

5. Case on Firing a Straight Jet of Water Directly at Demonstrators Through Water Cannon

[2015Hun-Ma1149, April 23, 2020]

In this case, the Court held that the conduct of the Respondents in operating a vehicle-mounted water cannon and firing a straight jet of water at Complainant Baek __ at the intersection in front of Jongno-gu Office on November 14, 2015, around 19:00 violated the Constitution by infringing Complainant Baek __'s right to life and right to freedom of assembly.

Background of the Case

On November 14, 2015, while attending the assembly at issue in this case, Complainant Baek __ was knocked to the ground at the intersection in front of Jongno-gu Office after being hit in the head and other parts above his chest by a straight jet from a water cannon fired at him by police officers. As a result, he was injured, went into a coma, and treated in a hospital for ten months and died on September 25, 2016. The Respondents are the Commissioner of the Seoul Metropolitan Police Agency (SMPA) and the Commander of the 4th Unit of Seoul Public Security Force Command, who were in charge of the above police officers at the time of the assembly at issue in this case.

On December 10, 2015, the wife and children of Complainant Baek __, (hereinafter referred to as the "Original Complainants") filed a constitutional complaint against the above police officers' conduct in firing a straight jet of water at Complainant Baek __ and against the legal basis for their conduct, asserting that (1) their conduct violated the Constitution by infringing Complainant Baek __'s and the Original Complainants' right to life, physical freedom, freedom of expression, right to personality, right to pursue happiness, human dignity and worth, and freedom of assembly; and that (2) Article 10 Sections 4 and 6 of

the Act on the Performance of Duties by Police Officers, Article 13 Section 1 of the Regulations on Standards for the Use of Lethal Police Equipment, Article 97 Section 2 of the Rule on the Management of Police Equipment, and the part concerning a straight water jet in Chapter 2 of the Operation Manual for Water Cannon Vehicles contravene the Constitution.

On December 18, 2015, the Original Complainants filed an application to add Complainant Baek __ as a complainant. On April 18, 2016, one of the Original Complainants was appointed as the legal guardian of Complainant Baek __. On August 2, 2016, the Complainants filed a brief, approving the legal actions of Complainant Baek __.

Subject Matter of Review

The subject matter of review in this case is whether (1) the conduct of the Respondents in operating a vehicle-mounted water cannon and firing a straight jet of water at Complainant Baek __ at the intersection in front of Jongno-gu Office on November 14, 2015, around 19:00 (hereinafter referred to as the "Conduct at Issue"); and (2) Article 10 Sections 4 and 6 of the Act on the Performance of Duties by Police Officers (amended by Act No. 12600 on May 20, 2014), Article 13 Section 1 of the former Regulations on Standards for the Use of Lethal Police Equipment (enacted by Presidential Decree No. 16601 on November 27, 1999 and before amendment by Act No. 30328 on January 7, 2020), Article 97 Section 2 of the Rule on the Management of Police Equipment (amended by Police Directive No. 732 on April 28, 2014), and the part concerning a straight water jet in Chapter 2 of the Operation Manual for Water Cannon Vehicles (April 3, 2014) (these five provisions are hereinafter collectively referred to as the "Provisions at Issue") have violated the fundamental rights of the Complainants. The Provisions at Issue read as follows:

Provisions at Issue

Act on the Performance of Duties by Police Officers (amended by Act No. 12600 on May 20, 2014)
Article 10 (Use, etc., of Police Equipment)
(4) The use of lethal police equipment must be restricted to the necessary minimum.
(6) The kinds of lethal police equipment and standard for use thereof, standards for safety education and safety inspection, etc., must be prescribed by Presidential Decree.

Former Regulations on Standards for the Use of Lethal Police Equipment (enacted by Presidential Decree No. 16601 on November 27, 1999 and before amendment by Act No. 30328 on January 7, 2020)
Article 13 (Standards for Use of Tear Gas Vehicles, Water Cannon Vehicles, Special Crowd-Control Vehicles, and Water Cannons)
(1) The use of a tear gas vehicle or water cannon vehicle by police officers may be permitted upon the authorization of persons in charge of the scene and must be limited to the extent minimum necessary to prevent an unlawful assembly or demonstration or a riot from posing a threat to the lives or physical safety of members of the public or police officers and to property or a public facility.

Rule on the Management of Police Equipment (amended by Police Directive No. 732 on April 28, 2014)
Article 97 (Special Management)
(2) The use of equipment under Section 1 must be in compliance with the safety instructions described in the following:

1. Special crowd-control vehicles
   (a) It must be ascertained before the use of a tear gas launcher whether the launcher is at a 15-degree angle or more.
   (b) Liquefied gas must be kept safe from fire.
2. Gas vehicles

(a) It must be ascertained before the use of a tear gas launcher whether the launcher fires at a 15-degree angle or more.

(b) When using a multiple launcher, the shooter must fire into the air above the heads of demonstrators.

(c) Liquefied gas, which is flammable, must be kept safe from fire.

(d) The optimal mixing ratio of liquid tear gas and liquid smokescreen is 3:1.

(e) A gas vehicle must be, at all times, operated under the auspices of a special crowd-control squad, and backing the vehicle must be guided by a spotter.

3. Water cannon vehicles

(a) An oral warning and a water spray warning must be issued to demonstrators before water cannon vehicles are used so that they may disperse.

(b) The distance between demonstrators and water cannon vehicles, the level of water pressure, etc. must be kept to the minimum necessary to control assemblies and demonstrations, in consideration of the circumstances surrounding the use of water cannon vehicles.

(c) Further matters concerning management and operation of water cannon vehicles are governed by the Operation Manual for Water Cannon Vehicles.

Operation Manual for Water Cannon Vehicles (April 3, 2014)

Chapter 2 (Use of Water Cannon Vehicles)

3. Use of Water Cannon Vehicles at Assemblies and Demonstrations

B. Methods of using a water cannon

(3) Straight water jet

(a) Instructions: Fire a straight jet of water at a target at a maximum pressure of 3000 rpm (15 bar).

(b) Conditions of use:

1) When demonstrators impede the flow of traffic by unlawfully occupying streets or other places and refuse to comply with a dispersal order issued by police.

2) When demonstrators carry weapons, such as iron pipes, wooden poles, bottle bombs, or stones, or when they assault or fight with a police officer.

3) When demonstrators attempt to topple, set fire to, or otherwise damage a police line, including a vehicle barrier.

Summary of the Decision

1. Assessment of Complainant Baek __'s application to add himself as a Complainant

Complainant Baek __'s "application to add himself as a complainant" regarding the Provisions at Issue is in respect of the same provisions challenged by the Original Complainants, and decisions of unconstitutionality on the Provisions at Issue, if rendered, are binding upon all parties and third parties. Therefore, the question of constitutionality of the Provisions at Issue should be decided uniformly for the Complainants. Complainant Baek __'s application also seeks to challenge the constitutionality of the Conduct at Issue. In light of, *inter alia*, the fact that the Original Complainants have asserted in their original constitutional complaint that the Conduct at Issue infringed Complainant Baek __'s fundamental rights, the question of constitutionality of the Conduct at Issue should be decided uniformly for the Complainants as well. Therefore, the Court generously construes Complainant Baek __'s application to add himself as a complainant as his justiciable "application to join in the constitutional complaint."

2. Assessment of justiciability

(a) Original Complainants' claim regarding the Conduct at Issue

The Original Complainants are not persons directly affected by the Conduct at Issue, but are third parties. Because the Original Complainants'

fundamental rights have not been infringed by the Conduct at Issue, their claim regarding the Conduct at Issue fails to satisfy the self-relevance requirement and is thus non-justiciable.

(b) Complainants' claim regarding the Provisions at Issue

The infringement of fundamental rights asserted by the Complainants has not occurred as a result of the Provisions at Issue, but as a result of the Conduct at Issue, which amounts to enforcement of specific provisions. Because the Provisions at Issue have not directly infringed the Complainants' fundamental rights, their claim regarding the Provisions at Issue fails to meet the directness requirement and is thus non-justiciable.

(c) Complainant Baek __'s claim regarding the Conduct at Issue

Because the Conduct at Issue had been completed, and because Complainant Baek __ died on September 25, 2016, a legally protectable subjective interest no longer exists with respect to his claim regarding the Conduct at Issue. Nevertheless, since firing a straight jet from a water cannon at demonstrators is an exercise of public power that could pose a serious threat to people's lives or physical safety, and since the Court has heretofore never clarified whether such firing violates the Constitution, a justiciable interest exists with respect to Complainant Baek __'s claim regarding the Conduct at Issue.

The right to life, right to freedom of assembly, and other fundamental rights alleged by Complainant Baek __ to have been violated are inherent in an individual and are thus non-transferrable and non-hereditary. It is a general rule that adjudication proceedings involving a claim of violation of such inherent rights terminate when the holder of those rights dies. However, since the justiciable interest exists with respect to Complainant Baek __'s claim regarding the Conduct at Issue, and since as a result of the Conduct at Issue he died during the pendency of this case, his claim regarding the Conduct at Issue falls under an exception to the general rule. Therefore, the adjudication

proceedings in relation to his claim regarding the Conduct at Issue have not terminated.

3. Assessment of the merits

The Conduct at Issue was executed with the purpose of preventing the unlawful assembly from posing a threat to the lives or physical safety of members of the public or police officers or to property or a public facility, and therefore served a legitimate purpose.

At the time of the Conduct at Issue, Complainant Baek __ was pulling a rope attached to a police operations vehicle by himself, separate from the other demonstrators who backed away to avoid being hit by a jet from a water cannon. Therefore, at the time of the Conduct at Issue, Complainant Baek __ was not posing a threat to the lives or physical safety of police officers or others or to property or a public facility to the extent that the Conduct at Issue was warranted. For this reason, the Conduct at Issue was not an appropriate means of accomplishing the above purpose.

Firing a straight jet from a water cannon at demonstrators could have fatal consequences because the jet is sprayed directly on them. Therefore, such firing is allowed only when demonstrators pose a clear and direct threat to the legal interests of others or to public peace and order and there is no alternative method of obviating the threat. Further, in cases where such firing is allowed, police must observe the scene carefully and determine the appropriate firing distance, water pressure, and water stream direction to ensure that only a minimum level of force necessary is used to obviate the threat.

At the time of the assembly at issue in this case, Respondent SMPA Commissioner was the commander of the SMPA police force in charge of operating police equipment and managing safety, and the other Respondent, Head of the 4th Unit of the Seoul Public Security Force Command, was the commander of the SMPA police force deployed at the intersection in front of Jongno-gu Office in charge of operating

police equipment and managing safety at that intersection. The Respondents, who are in a position to order the use of water cannon vehicles, must ascertain the following information in order to accurately assess the situation at the scene: the size of the demonstration; tactics employed by demonstrators; presence of dangerous objects carried by demonstrators; presence of a violent clash between police and demonstrators; location of water cannon vehicles; distance between police and demonstrators; level of force used on demonstrators through water cannons; and presence of injuries caused by water cannons. Based on the information, they must next examine whether demonstrators pose a clear and direct threat to the legal interests of others or to public peace and order and whether there is no alternative method of obviating the threat other than to fire a straight jet from a water cannon directly at demonstrators. If, as a result of the examination, it is found that there is a need to fire the jet directly at demonstrators, the Respondents must give specific instructions and safety recommendations on the firing, including details on its timing, range, distance, and direction as well as water pressure, in order to ensure that only a minimum level of force necessary to obviate the threat is employed. They must thereafter closely monitor the situation at the scene and must promptly order a cessation of firing, change of water direction and pressure, or deployment of additional paramedical officers when the need for the firing terminates or when water cannons are being used in an excessive manner.

As noted above, Complainant Baek __'s act of pulling a rope attached to a police operations vehicle by himself at the time of the Conduct at Issue did not pose a clear and direct threat to the legal interests of members of the public or to public peace and order. Therefore, the necessity for the Conduct at Issue cannot be recognized. Rather, there was a need for the Respondents to order the cessation of the excessive use of the water cannon, change of water direction and pressure, or deployment of additional paramedical officers, as straight jets from water cannons which had been constantly fired directly at demonstrators' body parts above their chests were likely to inflict harm against demonstrators.

Moreover, because an additional water cannon vehicle, which performed the Conduct at Issue, was urgently deployed to the scene, and because it was a rainy evening when that vehicle was deployed, the water cannon operators inside it had neither sufficient time nor adequate visibility to grasp the situation at the scene. Further, they could not delicately manipulate the movement of the water cannon mounted on that vehicle because a control lever controlling its left or right movement was malfunctioning, and they could not easily regulate the force of the water jet because a water pressure restriction device of the vehicle was also malfunctioning.

Nevertheless, after deploying that vehicle, the Respondents simply ordered the water cannon to be used on demonstrators without properly assessing the situation at the scene. As a result, a powerful jet of water was fired directly at Complainant Baek __'s head and other parts above his chest continuously for about 13 seconds. Owing to the firing, he was injured, went into a coma, and remained so in the hospital for about ten months and died on September 25, 2016. Therefore, the Conduct at Issue failed to satisfy the least restrictive means test.

Considering that there was no substantial public interest to be served by preventing Complainant Baek __ from pulling the rope attached to the police operations vehicle by himself through the Conduct at Issue, and that he died as a result of the Conduct at Issue, the Court finds that the Conduct at Issue failed to meet the balance of interests test as well.

Accordingly, the Conduct at Issue infringed Complainant Baek __'s right to life and freedom of assembly by violating the rule against excessive restriction.

6. Case on School Teachers' Establishment or Joining of Political Party and Political Organization

[2018Hun-Ma551, April 23, 2020]

In this case, the Court decided that in relation to Article 65 Section 1 of the State Public Officials Act, which prohibits elementary and secondary school teachers from participating in organizing a political organization or from joining it, the part regarding 'No school teachers under Article 19 Section 1 of the Elementary and Secondary Education Act among the public educational officials provided in Article 2 Section 2 Item 2 of the State Public Officials Act may participate in organization of or join other political organizations,' violates the Constitution. However, the Court ruled that in relation to Article 22 Section 1 Item 1 of the Political Parties Act, which prohibits elementary and secondary school teachers from participating in organizing a political party or from joining it, the part regarding school teachers under Article 19 Section 1 of the Elementary and Secondary Education Act among the public educational officials provided in Article 2 Section 2 Item 2 under the State Public Officials Act, and the part regarding 'No school teachers under Article 19 Section 1 of the Elementary and Secondary Education Act among the public educational officials in Article 2 Section 2 Item 2 under the State Public Officials Act may participate in organization of or join any political party' from Article 65 Section 1 of the State Public Officials Act do not violate the Constitution.

Background of the Case

The Complainants are elementary and secondary teachers. On May 29, 2018, the Complainants filed a constitutional complaint over the part regarding 'public educational officials provided in Article 2 Section 2 Item 2 under the State Public Officials Act' from Article 22 Section 1 Item 1, and the part regarding 'teachers in private schools' provided in

Article 22 Section 1 Item 2 under the Political Parties Act as well as the part regarding 'public educational officials provided in Article 2 Section 2 Item 2 under the State Public Officials Act' from Article 65 Section 1 under the State Public Officials Act by claiming that their freedom to establish and join a political party is infringed upon by these provisions.

Subject Matter of Review

The subject matter of review in this case is whether the part regarding school teachers in Article 19 Section 1 under the Elementary and Secondary Education Act among the public educational officials in Article 2 Section 2 Item 2 of the State Public Officials Act from Article 22 Section 1 Section 1 of the Political Parties Act (amended by Act No. 12150, December 30, 2013) (hereinafter referred to as "Provision of the Political Parties Act"), and the part regarding school teachers in Article 19 Section 1 under the Elementary and Secondary Education Act among the public educational officials in Article 2 Section 2 Item 2 under the State Public Officials Act from Article 65 Section 1 under the State Public Officials Act (amended by Act No. 8996, March 28, 2008) (hereinafter referred to as "Provision of the State Public Officials Act") infringe upon the fundamental right of all the Complainants except Complainant number 9; and, whether the part regarding teachers in private schools in Article 22 Section 1 Item 2 under the Political Parties Act (amended by Act No. 12150, December 30, 2013) infringes upon the fundamental right of Complainant number 9.

Provisions at Issue

Political Parties Act (amended by Act No. 12150, December 30, 2013)

Article 22 (Qualifications of Party Members and Promoters)

(1) Anyone who has the right to elect members of the National Assembly is entitled to become either a promoter or a member of a political party,

notwithstanding the provisions of other statutes that prohibit him/her from joining any political party or engaging in political activity due to their status as a public official or others: Provided, That this shall not apply to any of the following persons.

1. Public officials provided in Article 2 of the State Public Officials Act or Article 2 of the Local Public Officials Act: Provided, That, the President, the Prime Minister, State Council members, members of the National Assembly, members of local councils, publicly elected heads of local governments, and the senior secretaries, secretaries, secretarial assistants and administrative assistants to the Vice Speaker of the National Assembly, administrative assistants to the Chairman of the National Assembly's Standing Committee, to the Chairman of the Special Committee on Budget and Accounts, to the Chairman of the Special Committee on Ethics, the advisors, secretaries and secretarial assistants to members of the National Assembly, administrative secretaries to the representatives of negotiating groups in the National Assembly, the policy research fellows in and administrative assistants to negotiating groups in the National Assembly, and school teachers provided in Article 14 (1) and (2) of the Higher Education Act shall be excluded.

2. Teachers in private schools excluding the school teachers provided in Article 14 (1) and (2) of the Higher Education Act.

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

Article 65 (Prohibition of Political Activities)

(1) No public official may participate in organization of or join any political party or other political organizations.

Summary of the Decision

1. Whether Some of Complainants' Filing Period had Lapsed

Considering each of the Complainants' date of initial appointment, some Complainants filed the constitutional complaint more than a year

from the day when the Provisions at Issue began to apply. Thus, such complaint is inadmissible as the filing period has lapsed.

2. Regarding the Part 'Political Party' in Provision of Political Parties Act and Provision of State Public Officials Act

In the previous cases including 2001Hun-Ma710 on March 25, 2004 and 2011Hun-Ba42 on March 27, 2014, the Court ruled that the provisions of the former Political Parties Act and former State Public Officials Act, which prohibited a state public official from being a promotor or member of a political party, do not violate the Constitution. The rationale behind such cases is as following.

'By forbidding public officials to join a political party, the Provision at Issue has guaranteed political neutrality for public officials to duly perform official duties to serve the entire public and it also promoted the neutrality of education for elementary or secondary school teachers to prevent any effect of partisan interests. Accordingly, the legitimacy of the legislative purpose and appropriateness of means of the Provision at Issue can be acknowledged. In many cases, it is difficult to distinguish whether political activities of public officials are within the scope of official duty or not, and their action has a significant impact on the people regardless of the fact that such act was performed during the official duty hours or not. Hence, regulating the political activities within their official duty alone would make it hard to achieve the legislative purpose. Besides, the provision to forbid joining a political party does not violate the principle of the least restriction since it permits public officials' political activities in a limited scope, including the expression of supports for a political party unrelated to the election in a personal occasion or the casting of a vote at elections. The public interests to promote political neutrality and ensure the right to education for elementary and secondary school students exceed the restricted private interests of public officials, thus the principle of balance of interests can be acknowledged as well. Therefore, the provision to prohibit public

officials from joining a political party does not violate the principle against excessive restriction. The provision to forbid joining a political party prohibits elementary and secondary school teachers from being a member of a political party whereas it allows university faculty to join a political party. Nonetheless, it is a reasonable discrimination under the comprehensive considerations of nature and contents of their works in knowledge transmission, research, etc., and working environments. Therefore, it does not violate the principle of equality.'

Any circumstance or need to reverse the above decision is not perceived and the purport of the decision is also reasonable in this case and, accordingly, the Court determines to maintain the opinion of the previous cases.

3. Regarding the Part 'Other Political Organizations' from Provision of State Public Officials Act

a. Unconstitutionality Opinion of Three Justices

They all agreed on the part 'Violation of Principle of Clarity' from section b. Unconstitutional Opinion of Other Three Justices. Moreover, the part regarding 'other political organizations' from the Provision of the State Public Officials Act is a regulation based on 'the contents of expression' in the collective form about what organization they join and, therefore, the concept of regulated expression should be defined more precisely. Nevertheless, the Provision of the State Public Officials Act used an ambiguous concept of 'other political organizations,' causing a chilling effect on those bound by the law and raising the possibility of arbitrary judgment by law enforcement officials. It is obvious that the Provision of the State Public Officials Act is unconstitutional as it violates the principle of clarity and infringes upon the freedom of political expression and freedom of association of the rest of the Complainants. Thus, the Court decides not to judge whether it violates the principle against excessive restriction and infringes upon their

freedom of political expression and freedom of association.

b. Unconstitutionality Opinion of Other Three Justices

(1) Violation of Principle of Clarity

Since the part 'other political organizations' from the Provision of the State Public Officials Act is a legal provision defining the conditions that constitute criminal punishment and restricts the freedom of political expression and freedom of association of the rest of the Complainants, it has to strictly comply with the principle of clarity. In a democratic state, all social activities of its citizens are related to 'politics'. Organizations, in particular, can be seen to have a political inclination when they agree or disagree with the state's policy or their ideas simply coincide with the argument of a certain political party or candidate by chance. As the State Public Officials Act specifies that it is 'any political party or other political organizations' that public officials are prohibited from joining and etc., it is hard to interpret that they are confined to political organizations that correspond to a political party according to the words. It is also difficult to draw a standard that distinguishes a 'political organization' and 'non-political organization' when there is no limit on their objectives or activities. Even though the legislative purpose of the provision to protect the political neutrality of both the public officials and education is taken into account, 'political neutrality' is a very abstract concept that is open to diverse interpretations and it is hard to believe that the members of this society have a unanimous understanding. It will also be the same, when it comes to the legal experts. Under the reasoning, the aforesaid provision violates the principle of clarity and infringes upon the freedom of political expression and freedom of association of the rest of the Complainants.

(2) Violation of Principle against Excessive Restriction

As the part regarding 'other political organizations' from the Provision of the State Public Officials Act is in place to protect the political neutrality of both the public officials and education, legitimacy of its

legislative purpose is acknowledged. However, appropriateness of means or minimum restriction of the provision cannot be acknowledged, since it prohibits public officials from creating an organization that has nothing to do with such legislative purpose or joining it. Furthermore, appropriateness of means or minimum restriction of the provision is not acknowledged because it completely prohibits participating in the creation of it or joining it that is not relevant with the official duty of the school teachers under Article 19 Section 1 of the Elementary and Secondary Education Act under among the public educational officials under Article 2 Section 2 Item 2 under the State Public Officials Act (hereinafter referred to as the 'Teachers') or not regarded as use of the Teachers' position. The political neutrality of public officials is required within the scope of performing their official duty in the position of serving the general public. As far as the opportunity to receive politically neutral education from the Teachers is guaranteed, the exercise of political freedom by the Teachers as the subject of the fundamental right does not necessarily infringe upon the right to education or undermine political neutrality of education. There is no logical or empirical ground that the political neutrality would be undermined even during the performance of the official duty if the Teachers exercise the political freedom as private figures. People's confidence in the political neutrality of the public officials and education can be protected sufficiently through monitoring and control to prevent actions that can hamper the political neutrality in connection with the official duty or by use of the position. The political neutrality of the public officials and education that the provision can realize by absolutely prohibiting the Teachers from involving in establishing a political organization or joining it is neither evident nor specific. But the restriction imposed on the Teachers' freedom of political expression and freedom of association and the damage done to the public interests such as openness of democratic decision making process and subsequent development of democracy resulting from the prohibition is very considerable. Hence, the provision fails to meet the balance of interests, violating the principle against excessive restriction and infringing

upon the freedom of political expression and freedom of association of the rest of the Complainants.

Summary of Dissenting Opinion of Three Justices Regarding the Part 'Political Party' from Provision of Political Parties Act and Provision of State Public Officials Act

1. Violation of Principle against Excessive Restriction

As the Court reasoned on the part regarding 'other political organizations' from the Provision of the State Public Officials Act, prohibiting establishing or joining the organization that is irrelevant with the official duty of the Teachers or not regarded as use of the position violates the principle against excessive restriction and infringes upon the freedom to establish and join a political party of the rest of the Complainants.

2. Violation of Principle of Equality

The proviso of Item 1 of the proviso of Article 22 Section 1 of the Political Parties Act states that the school teachers under Article 14 Sections 1 and 2 of the Higher Education Act (hereinafter referred to as the "University Faculty") can be a promoter or member of a political party. It is impossible to see that exercise of the political freedom by the teachers as private figures would undermine the political neutrality even during performance of their official duty and the same applies to the University Faculty. As education and training to develop the students to become democratic citizens begins from the elementary and secondary school, it is hard to find a reasonable ground to treat the University Faculty and teachers differently regarding organizing and joining a political party even when the nature or contents of their duty is taken into account. The part regarding 'political party' from the Provision of Political Parties Act and Provision of State Public Officials Act infringes

upon the equality right of the rest of the Complainants.

Summary of Dissenting Opinion of Three Justices on Part regarding 'Other Political Organizations' from Provision of State Public Officials Act

1. Violation of Principle of Clarity

The subject that the lawmakers regulate with the part regarding 'other political organizations' from the Provision of the State Public Officials Act is 'a political organization' and the typical and concrete example is 'political party' mentioned above. When the variability of a political organization whose nature is autonomous formation and operation in an ever-evolving political environment is taken into account, it is impossible or remarkably difficult in the perspective of the legislative technique for the lawmakers to specifically enumerate in advance political organizations that need to be regulated. As political activities of the day are carried out mainly by the people working under a political party or partisanship, an organization that supports or opposes a specific political party or politician beyond proclaiming an opinion about certain social issues can be seen to have an apparent political inclination. If the teachers participated in establishing such an organization or joining such an organization, confusion may be caused in the education field and people's confidence in the political neutrality of the public officials and education may be shaken. In this regard, there should be such action should be restricted. When the gist of the Constitution that declares the political neutrality of the public officials and education, the legislative purpose of the Provision of the Public State Officials Act and relations with relevant norms are comprehensively taken into account, 'the political organization' that the public officials are banned from joining according to the Provision of the Public State Officials Act can be confined to 'an organization that is very likely to undermine the political

neutrality of the public officials and education when they participate in its establishment or join it in a bid to support or oppose a specific political party or politician. Accordingly, the provision neither violates the principle of clarity nor infringes upon the freedom of political expression and freedom of association of the rest of the Complainants.

2. Violation of Principle against Excessive Restriction

As a political party is a form of a political association, the reasoning for the part regarding 'political party' from the Provision of Political Parties Act and Provision of State Public Officials Act may apply to the part regarding 'other political organizations' from the Provision of the State Public Officials Act as well. Consequently, the provision above neither violates the principle against excessive restriction nor infringes upon the freedom of political expression and freedom of association of the rest of the Complainants.

7. Case on Replacement of Member of National Assembly Special Committee

[2019Hun-Ra1, May 27, 2020]

In this case, the Court held that the conduct of Respondent, Speaker of the National Assembly, in removing Claimant, Oh Shin-hwan, a Bareunmirae Party (BP) member of the Assembly, from the Special Committee on Criminal Justice Reform (hereinafter referred to as the "Special Committee") and replacing him with another BP member of the Assembly, Chae Yi-bae, on April 25, 2019, (hereinafter referred to as the "Conduct at Issue") did not infringe Claimant's authority to deliberate and vote on bills, and rejected both the claim of infringement of Claimant's authority and the claim of invalidity of the Conduct at Issue.

Background of the Case

The Special Committee was formed on July 26, 2018, and its expiration date was originally set at December 31, 2018. On October 18, 2018, during the 364th session (regular) of the Assembly, Claimant was appointed as a BP member of the Special Committee. On December 27, 2018, during the 365th session (special) of the Assembly, the expiration date of the Special Committee was extended to June 30, 2019, and on June 28, 2019, during the 369th session (special) of the Assembly, it was again extended to August 31, 2019.

On April 22, 2019, the negotiation group leaders (caucus leaders) of the Democratic Party and the BP and the floor leaders of the Party for Democracy and Peace and the Justice Party announced a tentative agreement whereby bills entitled "A bill on the establishment and operation of a Corruption Investigation Office for High-Ranking Officials" and "A bill to amend the Criminal Procedure Act and the Prosecutors' Office Act to change the distribution of investigative power between the prosecution and the police" (hereinafter collectively referred

to as the “Bills”) would be subject to expedited consideration under Article 85-2 of the National Assembly Act (hereinafter referred to as the “Tentative Agreement”). On April 23, 2019, the BP held a general meeting of its members of the Assembly and ratified the Tentative Agreement. On April 24, 2019, Claimant, a BP member of the Special Committee, stated that he would vote against the expedited consideration of the Bills.

On April 25, 2019, during the 368th session (special) of the Assembly, the BP’s negotiation group leader requested Respondent to remove Claimant from the Special Committee and replace him with another BP member of the Assembly, Chae Yi-bae, and Respondent fulfilled that request. In response, on April 25, 2019, Claimant filed this competence dispute, alleging that the Conduct at Issue infringed his authority to deliberate and vote on bills and asking the Court to confirm the infringement of this authority and the invalidity of the Conduct at Issue.

Subject Matter of Review

The subject matter of review in this case is whether the Conduct at Issue infringed the authority of Claimant and whether the Conduct at Issue was invalid.

Summary of the Decision

1. Whether the principle of free mandate was violated

The conduct of the Speaker of the Assembly in appointing and replacing members of Assembly committees is performed on the basis of the Assembly’s autonomous authority to form and organize its legislative sub-groups. In other words, the performance of that conduct is within the broad and inherent discretion of the Assembly. Thus, in evaluating whether the Conduct at Issue infringed the authority of Claimant, the

Court confines its review to whether the Conduct at Issue violated the Constitution or statutes clearly.

Since the Constitution requires the Assembly to decide matters within its constitutional authority by majority rule, the Court notes that substantial constitutional interests exist in increasing the viability of forming a majority in the Assembly and in ensuring the efficiency of the Assembly's decision-making process. With this in mind, the Court finds that whether the Conduct at Issue violated the principle of free mandate should be decided by weighing the degree of interference with the principle of free mandate against the necessity of the Conduct at Issue in relation to the Assembly's execution of its functions.

The appointment or replacement of the members of Assembly committees is a matter relating to the operation of the Assembly. In this regard, promptness and efficiency are highly important factors to be considered in the appointment or replacement of those members, and this is especially true with respect to the appointment or replacement of special committee members. Special committees are established to efficiently review bills for a limited period of time, and the members of special committees are appointed from among the members of standing committees to serve this purpose. In view of these facts, the Court finds it necessary that special committees operate in a manner that efficiently considers the different circumstances bearing upon their members, the negotiation groups, or the special committees themselves. To this end, it is essential that a negotiation group identifies and resolves differences of opinion among its individual members regarding the appointment or replacement of its special committee member, and that the Speaker of the Assembly appoints or replaces the special committee member in accord with the final position adopted by the negotiation group. If the Speaker appoints or replaces special committee members by taking into account various factors, such as the personal preferences of individual Assembly members and the necessity of the replacement, the determination of the composition of special committees may be delayed. Further, such appointment or replacement may result in the abridgement of the

authority of Assembly members or negotiation groups and in the undemocratic operation of the Assembly, because the Speaker alone sets the standards for the appointment or replacement of the special committee members.

In addition to the above, the Court notes that the necessity of appointing and replacing members of the Special Committee in accord with the will of a negotiation group is recognized for the purpose of increasing the viability of making state policy decisions on criminal justice reform. The Special Committee was formed to scrutinize bills concerning criminal justice reform and determine those to be considered in a plenary meeting of the Assembly. However, if such determination of the Special Committee does not properly reflect the will of each political party, the bills approved by the Special Committee are unlikely to be passed in the plenary meeting of the Assembly.

Meanwhile, allowing the replacement of a member of an Assembly committee who refuses to be replaced does not mean that this member is prohibited from voting against the will of his or her political party or negotiation group or from introducing or commenting on bills independently based on the principle of free mandate. Given that (1) before the Conduct at Issue decisions on the Tentative Agreement were made during the general meeting of the BP members of the Assembly, and (2) after the Conduct at Issue the negotiation group leader of the BP resigned and, as per the request of Claimant who was elected as the new negotiation group leader, Chae Yi-bae was removed from the Special Committee and was replaced by another BP member of the Assembly, it cannot be said that even if a member of a committee is replaced as per the will of his or her negotiation group, this member is directly bound by decisions of his or her political party. Further, Claimant, appointed to the Special Committee upon the request of his negotiation group leader, served as a member of the Special Committee from October 18, 2018 until the time of the Conduct at Issue, well beyond the Special Committee's expiration date originally set at December 31, 2018. Claimant was also able to participate in the Special Committee's review

process as an Assembly member after the Conduct at Issue occurred.

In sum, the Conduct at Issue, which was an exercise of the autonomous authority of the Assembly, was performed to operate the Special Committee in a smooth manner and to increase the viability of making state policy decisions on criminal justice reform. Thus, the Court cannot conclude that these constitutional interests are clearly outweighed by the degree of interference with the principle of free mandate caused by the Conduct at Issue. Therefore, the Conduct at Issue did not violate the principle of free mandate.

2. Whether Article 48 Section 6 of the National Assembly Act was violated

The legislative purpose of Article 48 Section 6 of the National Assembly Act is *to allow members of committees to hold office for a certain period of time so as to enable committees to develop specialized expertise*. Thus, this provision should prohibit *removal of a member of a committee* for a certain period of time commencing from *the time he or she is appointed to the committee*. Therefore, the part "[d]uring a special session, a member of a committee shall not be replaced . . ." in the main text of Article 48 Section 6 of the National Assembly Act means that replacement of a member of a committee is prohibited *during the special session in which he or she is appointed to the committee.* The Assembly Secretariat's written response to the Court's inquiry shows that there was no prohibition by the Assembly based on the duration of special sessions against replacing members of committees, and this seems to be in line with the above meaning of the part of the provision.

By examining the legislative history of Article 48 Section 6 of the National Assembly Act, the Court observes that Assemblyman Kim Taek-gi et al., introduced a bill entitled "A bill to amend the National Assembly Act" to prohibit the replacement of a member of a committee during the session in which he or she is appointed as a replacement

member, and that this legislative intent was approved by the Subcommittee for Review of Assembly-related Bills of the Special Committee on Political Reform. The Court also observes that this legislative intent was later expressed in a bill entitled “A bill to amend the National Assembly Act” proposed by the chair of the Special Committee on Political Reform; a version of the bill reported out of the Legislation and Judiciary Committee that scrutinized the structure and language of the bill; and this version of the bill submitted to and passed in a plenary meeting: all these versions of the bill used the word “the” before the words “special session” in Article 48 Section 6.

It is true that the Speaker, while exercising his authority to make adjustments to the plenary meeting-passed bill, deleted the word “the” placed before the words “special session” in Article 48 Section 6 and inserted the word “a” in its place. However, interpreting Article 48 Section 6 on the basis of this version would alter the substantive content of the plenary meeting-passed version of the provision, implying that the changes made by the Speaker were substantive. As a result, such interpretation would create a problem of violations of legislative procedures under the Constitution and National Assembly Act.

Moreover, the Court finds that because Claimant was appointed as a member of the Special Committee on October 18, 2018, during the 364th session (regular) of the Assembly, the part “during a regular session, a member of a committee shall not be replaced . . . within 30 days after his or her appointment as a member or replacement member of the committee” in the main text of Article 48 Section 6 of the National Assembly Act was not applicable to Claimant after November 17, 2018, which was 30 days after the date of his appointment. Thus, the replacement of Claimant was permissible. The Court further finds that because the Conduct at Issue occurred on April 25, 2019, during the 368th session (special) of the Assembly, the part of the main text of Article 48 Section 6 of the National Assembly Act concerning a special session was not applicable to Claimant, who had been appointed as a member of the Special Committee during the regular session that had

taken place before the 368th session (special) of the Assembly.

Therefore, without determining whether the Conduct at Issue fell within the proviso of Article 48 Section 6 of the National Assembly Act, the Court concludes that it did not violate Article 48 Section 6 of the National Assembly Act.

Summary of Dissenting Opinion of Four Justices Regarding Claim of Infringement of Authority

1. Whether the principle of free mandate was violated

If the practice of party-line voting, which is merely a practical factor influencing the voting decision of an Assembly member, takes precedence over the status of the Assembly member with a free mandate, the principle of representative democracy is denied. Therefore, we are of the opinion that such precedence is constitutionally impermissible.

To obtain the Special Committee's approval of a motion to expedite consideration of specific bills, the negotiation group leader of the BP requested that Claimant, who opposed the motion, be replaced and thereby sought to exclude Claimant from the deliberation and voting process of those bills. By depriving Claimant, a BP member opposing his negotiation group's decision, of the status as a Special Committee member, the Conduct at Issue resulted in completely precluding Claimant from exercising his authority to deliberate and vote on specific bills. In other words, the Conduct at Issue created a situation in which the practice of party-line voting outweighed the principle of free mandate. Therefore, the Conduct at Issue infringed Claimant's authority to deliberate and vote on bills by clearly violating the principle of free mandate.

2. Whether Article 48 Section 6 of the National Assembly Act was violated

We construe the part "[d]uring a special session, a member of a committee shall not be replaced . . ." in the main text of Article 48 Section 6 of the National Assembly Act as clearly meaning that replacement of a member of a committee is not allowed during any special session. This construction is even supported by an interpretation of the language of the main text of the plenary meeting-passed version of Article 48 Section 6 of the National Assembly Act "[d]uring the special session, a member of a committee shall not be replaced . . .," because the word "the" may be used before a singular noun to refer to all the things represented by that noun. If the legislature had intended to prohibit the replacement of a member of a committee during the special session in which he or she was appointed as a member or replacement member, it would have more explicitly expressed its intent to do so. Moreover, we do not construe the term "unavoidable reasons" under the proviso of Article 48 Section 6 of the National Assembly Act to encompass, as Respondent claims, reasons relating to the smooth operation of negotiation groups.

In conclusion, we find that the Conduct at Issue amounts to the replacement of a member of a committee during a special session prohibited by the main text of Article 48 Section 6 of the National Assembly Act, and that it did not fall within the proviso of this section. Therefore, the Conduct at Issue clearly violated Article 48 Section 6 of the National Assembly Act.

Summary of Concurring Opinion of Two Justices Regarding Claim of Invalidity

Although we find that the infringement of Claimant's authority caused by the Conduct at Issue was constitutionally significant, we decline to

determine the claim of invalidity of the Conduct at Issue on the following grounds: (1) the infringed authority of Claimant and the decision of Respondent which occasioned the infringement are, in terms of their substantive nature, in the realm of discretionary powers of the Assembly; thus, the Court should, pursuant to the doctrine of separation of powers, refrain from interfering with that decision; (2) the infringed authority of Claimant is unlikely to be restored by a decision of the Court confirming the invalidity of the Conduct at Issue; and (3) the decision of the Court confirming the infringement of Claimant's authority provides an adequate explanation of the unconstitutionality of Respondent's act; thus, this decision alone will be sufficient to prevent the future recurrence of similar infringements of authority.

Summary of Concurring Opinion of One Justice Regarding Claim of Invalidity

The National Assembly is vested with broad political authority to use various procedures and measures to restore constitutionality on its own, and the constitutionality restored by the exercise of such authority may take different forms. Therefore, with regard to competence disputes between state agencies over an action of the Assembly related to legislation, the Court should refrain from making a decision that nullifies or otherwise affects that action.

Summary of Dissenting Opinion of One Justice Regarding Claim of Invalidity

The Conduct at Issue was a significant violation of the principle of free mandate, and ran contrary to the intent of Article 8 Section 2 of the Constitution requiring the objectives, organization, and activities of political parties to be democratic.

Because the authority that Claimant was entitled to exercise was no

ordinary one but was the authority to cast a tie-breaking vote in the Special Committee's decision on whether to approve the motion to expedite consideration of specific bills, and because after the Conduct at Issue Claimant lost the authority, guaranteed by the main text of Article 48 Section 6 of the National Assembly Act, to deliberate and vote on specific bills during the 368th session (special) of the Assembly, it is difficult to find that the degree of infringement of Claimant's authority was insubstantial.

The Conduct at Issue was the result of an individual decision made by the Speaker of the Assembly and not the result of a collective decision made by the members of the Assembly. In this regard, with respect to the claim of invalidity of the Conduct at Issue, this competence dispute is more in the nature of subjective litigation than objective litigation.

I believe that the decision of the Court confirming the infringement of Claimant's authority will not be sufficient to prevent the future recurrence of the same type of infringements, and that the invalidity or validity of the Conduct at Issue should be determined if this conduct is grossly unconstitutional.

8. Case on National Assembly Speaker's Refusal to Accept Demand for Unlimited Debate and His Announcement of Passage of Proposal for Amendments to Public Official Election Act

[2019Hun-Ra6, 2020Hun-Ra1 (consolidated), May 27, 2020]

In this case, the Court held that, because the agenda item "Determination of the length of the legislative session" is by nature not subject to unlimited debate under Article 106-2 of the National Assembly Act, the conduct of the Speaker of the Assembly in refusing to accept a demand for unlimited debate on this item did not infringe the authority of Claimant Assembly members to review and vote on it; and that, because a proposal for amendments to a bill entitled "A bill to partially amend the Public Official Election Act" satisfied the requirements for filing a motion for amendment under Article 95 Section 5 of the National Assembly Act during a plenary meeting, the conduct of the Speaker of the Assembly in announcing the passage of this proposal did not infringe the authority of Claimant Assembly members to review and vote on it.

Background of the Case

On April 22, 2019, the floor leaders of the Democratic Party, the Bareunmirae Party, the Party for Democracy and Peace, and the Justice Party agreed to give expedited consideration under Article 85-2 of the National Assembly Act to a bill amending the Public Official Election Act. The bill contained provisions establishing a "semi mixed-member proportional representation system," which combines parallel voting with mixed-member proportional representation by allocating 225 seats for constituency representatives and 75 seats for candidates on parties' regional lists with 50% of compensatory seats distributed to those candidates. On April 30, 2019, Respondent Speaker of the National Assembly ordered in accordance with a decision of the Special Committee

on Political Reform that expedited consideration be given to the above bill, entitled "A bill to partially amend the Public Official Election Act" (introduced by Assemblywoman Sim Sang-jung and 16 other Assembly members) (hereinafter referred to as the "Bill").

On December 23, 2019, during the first plenary meeting of the 372nd session (special) of the National Assembly, Respondent Speaker of the Assembly presented agenda item 1, Determination of the length of the 372nd session (special) of the Assembly. As for this item, he suggested that the Assembly should be in session for 30 days—from December 11, 2019 through January 9, 2020. Thereafter, a proposal was submitted to amend that suggestion. The proposal stated that the Assembly should be in session for 15 days—from December 11, 2019 through December 25, 2019. Liberty Korea Party members of the 20th Assembly (hereinafter referred to as "Claimant members") demanded unlimited debate under Article 106-2 Section 1 of the National Assembly Act for agenda item 1. Respondent Speaker of the Assembly, however, considered unlimited debate on this item inappropriate and refused to accept the demand. Instead, he allowed a "for and against" debate. After the end of this debate, he put the above proposal to a vote and announced its passage.

Subsequently, Respondent Speaker of the Assembly presented the Bill as agenda item 4 at the plenary meeting and announced that a proposal for amendments to the Bill (proposed by Assemblyman Kim Kwan-young and 155 other Assembly members) (hereinafter referred to as the "Proposal") was submitted by a motion for amendments to the Bill pursuant to Article 95 Section 1 of the National Assembly Act. Thereafter, unlimited debate on the Proposal was conducted.

On December 26, 2019, Claimant members filed a competence dispute (2019Hun-Ra6). They claimed that Respondent Speaker of the Assembly's conduct (1) in refusing to accept their demand for unlimited debate on agenda item 1, Determination of the length of the 372nd session (special) of the Assembly, during the first plenary meeting of the 372nd session (special) of the Assembly and (2) in presenting the Proposal, which was different in terms of content from the Bill, at this plenary meeting

infringed their authority to review and vote on and was therefore invalid.

On December 27, 2019, during the first plenary meeting of the 373rd session (special) of the Assembly, Respondent Speaker of the Assembly proceeded with the vote on the Proposal and announced its passage.

On January 7, 2020, Claimants filed a competence dispute (2020Hun-Ra1). They claimed that Respondent Speaker of the Assembly's announcement of the passage of the Proposal infringed the authority of Claimant members to review and vote on bills and the authority of the Liberty Korea Party to participate in the legislative process, and that this announcement was invalid. They also claimed that the act of amendment to the Public Official Election Act executed by Respondent Assembly was unconstitutional and invalid.

Subject Matter of Review

The subject matter of review in this case is as follows:

(1) whether the conduct of Respondent Speaker of the Assembly in announcing the passage of the proposal—which was submitted by Assemblyman Yoon Hu-duk and 155 other Assembly members in relation to the item "Determination of the length of the 372nd session (special) of the Assembly"—stating that the Assembly should be in session for 15 days, from December 11, 2019 through December 25, 2019 (such conduct hereinafter referred to as the "Session Length Amendment Announcement"), infringed the authority of Claimant members to review and vote on and was invalid;

(2) whether the conduct of Respondent Speaker of the Assembly in announcing the passage of the Proposal on December 27, 2019 (such conduct hereinafter referred to as the "Proposal Passage Announcement"), infringed Claimant members' authority to submit bills, and their authority to review and vote on bills, and the Liberty Korea Party's equal participatory power in the legislative process and was invalid; and

(3) whether the conduct of Respondent Assembly in amending the Public Official Election Act (amended by Act No. 16864 on January 14, 2020) by the Proposal Passage Announcement (such conduct hereinafter referred to as the "POEA Amendment") infringed Claimant members' authority to review and vote on bills and the Liberty Korea Party's participatory power in the legislative process and was invalid.

Summary of the Decision

1. Whether political parties are legal entities that can be parties to competence disputes

A political party is an organization formed by citizens of their own volition. Therefore, it does not possess the status of a state agency, an entity exercising governmental power. Even though it may be represented in the National Assembly by its negotiation group (parliamentary group), the Constitution does not state that the negotiation group may request adjudication of a competence dispute. In addition, given that an infringement of the negotiation group's authority is likely to entail infringements of its affiliated individual Assembly members' authority, such as the authority to review and vote on, it cannot be said that there is no appropriate institution or measure to resolve disputes concerning such infringement of the negotiation group's authority. For these reasons, a political party cannot be considered a "state agency" under Article 111 Section 1 Item 4 of the Constitution and Article 62 Section 1 Item 1 of the Constitutional Court Act. Therefore, the political party is not recognized as a legal entity that can be a party to a competence dispute.

2. Whether the POEA Amendment is likely to infringe Claimant members' authority to review and vote on bills

In order for a competence dispute relating to a legislative act of the

Assembly to be justiciable, such act should infringe or should pose a clear danger to the authority of the claimant. Because the substance of the Public Official Election Act (amended by Act No. 16864 on January 14, 2020), amended by the POEA Amendment, only concerns elections, such as the establishment of the semi mixed-member proportional representation system, this Act bears no relation to the authority of Claimant members to review and vote on bills. Therefore, Claimant members' such authority will not be infringed by the POEA Amendment.

3. Assessment of Claimant members' claim regarding the Session Length Amendment Announcement

The Speaker of the Assembly's broad discretion to preside over meetings of the Assembly amounts to the autonomous authority of the Assembly. Thus, state agencies should respect the Speaker's act of presiding over meetings of the Assembly unless such act clearly violates the Constitution or statutes.

The legislative intent of the unlimited debate system is *to ensure that minorities have the opportunity to express their opinions,* while at the same time *enabling efficient review of items on the Assembly's agenda* by forestalling significant delay in the progress of Assembly meetings or by preventing agenda items from not being considered at all.

The National Assembly Act expects that normal operations of the Assembly include, in accordance with Article 7, the determination of the length of its legislative session immediately after the Assembly convenes. The Assembly cannot, however, determine the length of its legislative session if unlimited debate on the agenda item "Determination of the length of the legislative session" (hereinafter referred to as the "Item") is conducted and if the filibustering Assembly members continue to take the floor or a cloture motion is not passed. In other words, in such cases, unlimited debate results in obstructing the consideration of the Item. This result not only runs counter to the legislative intent of the unlimited debate system which is not to block consideration of an

agenda item but to delay consideration thereof, but also is in direct violation of Article 7 of the National Assembly Act.

Further, if the Assembly permits unlimited debate on the Item every time it convenes, and permits that debate to continue until its legislative session ends in accordance with Article 47 Section 2 of the Constitution, it will not be able to review and vote on other agenda items at all and will be, in effect, paralyzed. To avoid this consequence, the Assembly will have no choice but to forgo determining the length of every legislative session. However, by adopting the unlimited debate system, the legislature did not intend to allow the Assembly to abnormally operate in a manner that forgoes determination of the length of every legislative session, but rather intended to bring parliamentary politics back to normal. In addition, if the Assembly is considerably hamstrung by unlimited debate on the Item, there will be delays in discussing agenda items that are national imperatives; consequently, the Assembly may not properly perform its role as the representative body of the people.

Moreover, Article 106-2 Section 8 of the National Assembly Act presumes that an agenda item subject to unlimited debate can be put to a vote in the next legislative session. The Item on the agenda for a given legislative session, however, cannot be voted on in the next session. Thus, an interpretation subjecting the Item to unlimited debate is contrary to Article 106-2 Section 8 of the National Assembly Act.

In sum, the Court finds it reasonable to conclude that the Item, by its nature, is not subject to unlimited debate under Article 106-2 of the National Assembly Act. Because the Session Length Amendment Announcement did not violate the authority of Claimant members to review and vote on, this announcement is deemed valid without assessment of its validity.

4. Assessment of Claimant members' claim regarding the Proposal Passage Announcement

The legislative intent of Article 95 Section 5 of the National Assembly

Act is to restrict the filing of a motion for an amendment to a bill when such amendment could not have been discussed during committee consideration of the bill, thereby strengthening the committee system.

In view of the language, legislative intent, and legislative history of the main text of Article 95 Section 5 of the National Assembly Act, the decision whether a proposal for an amendment is germane to the purpose and content of a bill considered by committees and presented to a plenary meeting should depend upon (1) whether the amendment proposal adds text to, deletes text from, or alters the text of the bill; and (2) whether the content of the amendment proposal could have been discussed during committee consideration of the bill.

The Proposal and the Bill shared the same purposes. They both sought to reduce wasted votes, mitigate imbalances between parties' shares of votes and their shares of seats, and overcome regional partisanship.

The Proposal revised Article 21 Section 1 in the Bill, which sought to alter the allocation of Assembly seats between constituency members and proportional members, so as to maintain the Assembly seat allocation provided for in the then-current Public Official Election Act. The issue of whether to maintain or alter the Assembly seat allocation provided for in the then-current Public Official Election Act could have been discussed during committee consideration of the Bill.

The Proposal also revised and deleted the provisions in the Bill concerning the establishment of the best runner-up system and the regional proportional representation system so that the then-current Public Official Election Act was retained intact. The amendment was basically an indication of a partial objection to the Bill. Since committee consideration of a bill includes "for and against" debate, the issue of whether to establish the best runner-up system and the regional proportional representation system could have been discussed during committee consideration of the Bill.

In addition, the Proposal inserted Article 4 to the Addenda in order to allow an exception to Article 189 Section 2 (semi mixed-member proportional representation system) in the Bill only in the case of the

proportional representation election of Assembly members on April 15, 2020. The issue of the scope of application of the semi mixed-member proportional representation system could have been discussed during committee consideration of the Bill.

Taking the above into account, the Court finds that the Proposal did not modify the Bill's legislative intent. It merely adopted some of the various legislative means that the Bill introduced to achieve the Bill's intent. Thus, the content of the Proposal could have been discussed during committee consideration of the Bill. Therefore, the Proposal is germane to the purpose and content of the Bill. Accordingly, the Proposal Passage Announcement did not violate the main text of Article 95 Section 5 of the National Assembly Act.

In sum, because the Proposal Passage Announcement did not violate the main text of Article 95 Section 5 of the National Assembly Act, it did not infringe the authority of Claimant members to review and vote on. Therefore, the Proposal Passage Announcement is deemed valid without assessment of its validity.

Summary of Dissenting Opinion of Four Justices as to Claimant members' Claim for Infringement of Authority by Session Length Amendment Announcement and Claim for Infringement of Authority by Proposal Passage Announcement

1. Assessment of Claimant members' claim regarding the Session Length Amendment Announcement

The system of unlimited debate ensures that the minority in the Assembly has ample opportunity to express its opinion and, by motivating the majority and minority to reach agreement on a bill, enables them to avoid extreme confrontation. This system was implemented to provide the Assembly minority with a legal means to delay legislative action, and the provision on unlimited debate should be interpreted, in light of

the spirit of protection for the Assembly minority, in such a way as to enlarge its right to unlimited debate.

Moreover, there is neither written provision in the National Assembly Act excluding the Item, "Determination of the length of the legislative session," from unlimited debate or from "for and against" debate nor record supporting the existence of a practice of exempting it from unlimited debate.

Unlimited debate on the Item cannot be repeated indefinitely beyond the time limits under Article 47 Section 2 of the Constitution providing for the maximum duration of legislative sessions. If the Item, after being considered under unlimited debate in one legislative session, is not presented to the next legislative session, legislative action will not be delayed on account of unlimited debate on the Item and the majority or Speaker of the Assembly will not be able to weaken unlimited debate on controversial agenda items by setting a short legislative session.

Further, Article 106-2 Section 8 of the National Assembly Act, which, in its second sentence, states that an agenda item that has been under unlimited debate "in one legislative session must be put to a vote in the next legislative session without delay," should be construed in connection with Sections 7 and 9, whose intent is to bring a dispute to a close by mandating a vote on the disputed agenda item after unlimited debate on that item ends. The Item is no different from general agenda items in that a dispute is resolved when unlimited debate on the disputed matter ends during a given legislative session and that matter is put to a vote without delay. The only difference is that, in the case of the Item, there is no room for the application of the second sentence of Article 106-2 Section 8, because a dispute over the Item on the agenda for a legislative session is automatically settled when that legislative session is concluded. The fact that the second sentence of Article 106-2 Section 8 of the National Assembly Act cannot apply to the Item does not mean that it is by nature unsuitable for unlimited debate.

In conclusion, the Session Length Amendment Announcement, as well as Respondent Speaker of the Assembly's conduct in refusing to accept

Claimant members' demand for unlimited debate on the Item at issue in this case, violated Article 106-2 Section 1 of the National Assembly Act providing for unlimited debate. Accordingly, these acts of Respondent Speaker of the Assembly infringed the authority of Claimant members to review and vote on the Item at issue in this case.

2. Assessment of Claimant members' claim regarding the Proposal Passage Announcement

The Assembly operates on a *committee system* under which it reviews items of legislative business. In order to protect the committee system, it is necessary that an amendment proposal presented by a motion for amendment during an Assembly plenary meeting is germane to the purpose and content of the text of a bill it proposes to amend. In construing the requirement of "germaneness to the purpose and content of a bill" under Article 95 Section 5 of the National Assembly Act, we consider the meaning of the language of this statutory requirement, the structural essence of bills, the inherent limitations of amendments, the legislative history and purpose of Article 95 Section 5 of the National Assembly Act, and the relation of this provision to other provisions of this Act. On the basis of these considerations, we identify the following three tests of germaneness: (1) germaneness between the purpose of an amendment proposal and that of a bill it proposes to amend—the amendment proposal and the bill must share the same fundamental purpose; (2) germaneness between the amendment proposal's content and the bill's purpose—the amendment proposal's content, i.e., provisions in the proposal, must be an appropriate means of accomplishing the fundamental purpose of the bill; and (3) germaneness between the amendment proposal's and the bill's content—the amendment proposal and the bill must address the same subject matter. We are of the opinion that an amendment proposal filed under Article 95 Section 5 of the National Assembly Act must satisfy these three tests. If an amendment proposal fails to meet any of these tests, it is not subject to a motion for

amendment.

To determine the germaneness of the Proposal, we first examine whether its content was germane to the purpose of the Bill. One of the fundamental purposes of the Bill was to reduce wasted votes and enhance the representativeness of the electoral system by increasing the rate of proportional seats while maintaining the total number of seats in the Assembly—in other words, by increasing the number of proportional seats. The Proposal, however, contained a provision requiring 300 members of the Assembly be composed of 253 constituency and 47 proportional representatives. This provision altered the Bill specifying that the Assembly members be composed of 225 constituency and 75 proportional representatives. This provision was contrary to the Bill's fundamental purpose in enhancing the national representativeness of Assembly members by using a more proportional representation system. Therefore, it was not an appropriate means of achieving the fundamental purpose of the Bill.

Another fundamental purpose of the Bill was to mitigate regional partisanship by distributing regional proportional seats to constituency candidates who lost in elections by a narrow margin. The Proposal, however, eliminated the best runner-up system and the regional proportional representation system, thereby completely eradicating the appropriate means to accomplish the fundamental purpose of the Bill.

Because the Proposal failed to satisfy the test of "germaneness between the amendment proposal's content and the bill's purpose," we find, without application of other tests of germaneness, that it was not subject to a motion for amendment. Therefore, the conduct of Respondent Speaker of the Assembly in presenting the Proposal along with the Bill to the plenary meeting and in announcing the passage of the Proposal violated Article 95 Section 5 of the National Assembly Act. Accordingly, such conduct infringed the authority of Claimant members to review and vote on the Proposal.

9. Case on the Requirement of Two Voting Assistants for an Elector with Physical Disability to Cast His or Her Ballot

[2017Hun-Ma867, May 27, 2020]

In this case, the Court held that a provision of the Public Official Election Act which provides that if an elector with a physical disability seeks non-family assistance, instead of assistance of a family member, he or she is required to bring two non-family voting assistants with him or her does not infringe the voting right of the Complainant.

Background of the Case

The Complainant is an individual with a first-degree physical disability; he has a brain lesion and receives assistance with activities from an activity assistant. On the 19th presidential election day, on April 9, 2017, the Complainant sought to vote at a polling station with the assistance of his activity assistant. However, an official in charge of the management of the polling station excluded him from voting, invoking the second clause of Article 157 Section 6 of the Public Official Election Act which requires that non-family assistance in voting be provided by two non-family voting assistants.

In response, on August 5, 2017, the Complainant filed this constitutional complaint, alleging infringement of his voting right and other rights by the second clause of Article 157 Section 6 of the Public Official Election Act and by the act of the Respondents, National Election Commission and Incheon Election Commission, in excluding him from entering the balloting booth with his activity assistant.

Subject Matter of Review

The subject matter of review in this case is whether (1) the Respondents' act of excluding the Complainant from entering the balloting booth with

his activity assistant, a non-family member who was designated by the Complainant to assist him in voting, on the 19th presidential election day on May 9, 2017 (hereinafter referred to as the "Exclusion at Issue"); and (2) the part "an elector who is unable to record a vote by himself or herself due to a physical impairment may bring with him or her two non-family members designated by him or her to assist in voting" in Article 157 Section 6 of the Public Official Election Act (amended by Act No. 7189 on March 12, 2004) (hereinafter referred to as the "Provision at Issue") infringe the fundamental rights of the Complainant. The Provision at Issue reads as follows:

Provision at Issue

Public Official Election Act (amended by Act No. 7189 on March 12, 2004)
Article 157 (Procedure for Receiving and Recording Ballot Papers)
(6) An elector may enter a polling station with a primary school pupil or younger child (in cases of a primary school pupil, that pupil is excluded from entering a balloting booth) within the limit of not impeding the order of the polling station, and one who is unable to record a vote by himself or herself due to a visual or physical impairment may bring with him or her his or her family member or two non-family members designated by him or her to assist in voting.

Summary of the Decision

1. Regarding the Exclusion at Issue

Even if the claim challenging the constitutionality of the Exclusion at Issue is upheld, the lost rights of the Complainant will not be remedied, because the 19th presidential election process has been completed. Further, preventing the recurrence of similar violations of his fundamental

rights is impossible as long as the Provision at Issue and other relevant provisions remain in effect. Taking these into account, the Court finds that the Complainant has neither a protectable legal interest nor any other interest in the claim challenging the constitutionality of the Exclusion at Issue. Therefore, this claim has become moot and is non-justiciable.

2. Regarding the Provision at Issue

(a) The principle of secret elections and the limitations on voting right restrictions

The Provision at Issue requires a physically disabled elector seeking non-family assistance in voting to disclose his or her vote to two non-family voting assistants. Therefore, the issue in this case is whether the Provision at Issue infringes the Complainant's voting right by making an exception to the principle of secret elections.

The principle of secret elections is a prerequisite for guaranteeing the principle of free elections. Additionally, the voting right is an important instrument of popular sovereignty and representative democracy in a democratic state. Therefore, establishing exceptions to the principle of secret elections is only permitted in extraordinary circumstances in which those exceptions are unavoidably necessary.

(b) Whether the Provision at Issue infringes the Complainant's voting right

The Provision at Issue seeks to ensure the fairness of elections by practically guaranteeing an elector with a physical disability the voting right and by preventing a voting assistant from exerting undue influence upon that elector in voting. It is for this purpose that the Provision at Issue requires a physically disabled elector seeking non-family assistance in voting to bring two non-family voting assistants with him or her. Therefore, the Provision at Issue serves a legitimate purpose and is an appropriate means to accomplish it.

9. Case on the Requirement of Two Voting Assistants for an Elector with Physical Disability to Cast His or Her Ballot

It is true that the disclosure of the elector's vote can be limited by other means including (1) establishing strict requirements and procedures regarding voting assistance and allowing him or her to vote with the assistance of one non-family member; or (2) more fundamentally, employing voting assistance tools enabling the elector to mark a ballot by himself or herself without the help of a voting assistant. However, the former does not ensure the fairness of elections and may even impede access to the voting assistance system, and the latter is not readily feasible given that each type or level of disability requires a different voting assistance tool. Therefore, the Court finds that there is presently no alternative to the Provision at Issue.

Moreover, the Provision at Issue seeks to minimize the disclosure of the elector's vote by limiting the disclosure thereof to two non-family voting assistants. Further, the National Election Commission allows the elector to designate one or two polling clerks to assist him or her in marking a ballot if he or she does not bring two non-family voting assistants with him or her. In addition, the Public Official Election Act punishes a person who discloses the vote of an elector whom he or she has assisted in voting, thereby mandating the voting assistant to maintain the secrecy of the elector's vote. Therefore, the Provision at Issue minimizes harm to the Complainant.

The Court notes that there are vital public interests in guaranteeing the voting right of electors with physical disabilities and in ensuring the fairness of elections, and that the requirement of two non-family voting assistants causes minimum harm to the secrecy of the Complainant's vote. Therefore, these public interests outweigh the disadvantages that the Complainant suffers as a result of the Provision at Issue.

For the above reasons, the Court concludes that the Provision at Issue establishes an exception to the principle of secret elections for an extraordinary case in which the exception is unavoidably necessary. Accordingly, the Provision at Issue does not violate the rule against excessive restriction and thus does not infringe the Complainant's voting right.

Summary of Dissenting Opinion of Three Justices

An elector's freedom to vote may be infringed by the mere possibility that his or her vote might be disclosed. For this reason, an exception to the principle of secret elections is permitted only when it is ascertained that the elector is guaranteed the freedom of suffrage.

Expressing political opinions through voting is one of the most personal acts that an individual performs. Thus, an elector should be entitled to designate a trustworthy person as his or her voting assistant. However, the Provision at Issue does not allow the elector from determining the number of voting assistant(s) needed in voting and discourages him or her from exercising the voting right by requiring him or her to disclose the vote to two voting assistants. Further, even though the National Election Commission allows an elector who brings one non-family voting assistant with him or her to appoint a polling clerk as an additional voting assistant, and even though the Public Official Election Act punishes a voting assistant who discloses the vote of an elector whom he or she has assisted in casting a ballot, the elector's freedom of suffrage is curtailed because, regardless of his or her wishes, he or she has to disclose his or her personal political opinion to a third party who is a stranger. For these reasons, we find that the Provision at Issue disregards the significance of a secret ballot while overemphasizing the fairness of elections.

Moreover, even if an elector seeking non-family assistance in voting is required to bring only one non-family voting assistant with him or her, the fairness of elections will be secured if specific and clear procedures regarding voting assistance are created. Furthermore, we believe that a new voting assistance tool should be employed to enable electors with a different type and degree of physical disability to mark their ballots by themselves without the help of any voting assistant, even if that tool may not satisfy every elector with a disability. Therefore, the Provision at Issue fails to minimize harm to the Complainant.

We find that the Provision at Issue serves little public interest because

it not only fails to essentially prevent a voting assistant from having undue influence on elections but also curtails the freedom of suffrage. At the same time, it imposes a substantial restriction on the voting right of the Complainant by requiring him to designate an additional person as his voting assistant and disclose his vote to that person, even though the vote is the most personal political choice he makes. Additionally, the Provision at Issue may disadvantage many other people with disabilities who use the voting assistance system. Moreover, it does not consider that an elector with a disability is capable of fully exercising the right to political self-determination by himself or herself by taking responsibility for such exercise, but rather focuses solely on providing benefits to that elector and assumes that the fairness of elections can only be ensured by two voting assistants checking each other; as a result, it forces electors with disabilities to exercise the voting right in a manner that is completely different from electors without disabilities. Therefore, the disadvantages caused by the Provision at Issue to the Complainant outweigh the public interests served by the Provision at Issue.

Accordingly, the Provision at Issue violates the rule against excessive restriction and thus infringes the voting right of the Complainant.

10. Case on Mandatory Revocation of All Types of Driver Licenses of a Person When that Person Obtains a Driver License by Improper Means

[2019Hun-Ka9 · 10 (consolidated), June 25, 2020]

In this case, the Court, in relation to the part 'when a person obtains a driver license by fraud or other improper means' in Item 8 of the proviso of Article 93 Section 1 of the Road Traffic Act, which provides for mandatory revocation of driver licenses in its entirety when a single license has been obtained by fraud or other improper means, held that mandatory revocation of driver licenses other than 'the driver license obtained by fraud or other improper means' infringes on the freedom of occupation or the general freedom of action in violation of the Constitution.

Background of the Case

Petitioners are holders of driver licenses including Class 1 ordinary driver license and Class 1 driver license for large motor vehicles. They registered for a driving academy, but did not take the required education and skills examinations. Despite this fact, they obtained a Class 1 driver license for special motor vehicles (large towing vehicles) from the Commissioner of the Jeonnam Provincial Police Agency in August 2016 by typing in false information into the academic affairs management system.

For the above reason, the Commissioner of the Jeonnam Provincial Police Agency revoked all types of driver licenses held by Petitioners including Class 1 ordinary driver license and Class 1 driver license for large motor vehicles, as well as Class 1 driver license for special motor vehicles (large towing vehicle). Petitioners filed a lawsuit to nullify the revocation and filed a motion to request a constitutional review during the lawsuit on the part regarding 'when a person obtains a driver license by fraud or other improper means' specified in Article 93 Section 1 Item

8 of the former Road Traffic Act. The ordinary court, accepting the motion, filed a constitutional review in this case.

Subject Matter of Review

The subject matter of review in this case is whether the part concerning 'when a person obtains a driver license by fraud or other improper means' in Item 8 of the following provisions violate the Constitution: (1) the proviso of Article 93 Section 1 of the former Road Traffic Act (amended by Act No.13829 on January 27, 2016 and before amended by Act No.14839 on July 26, 2017); (2) the proviso of Article 93 Section 1 of the former Road Traffic Act (amended by Act No.14839 on July 26, 2017 and before amended by Act No.15530 on March 27, 2018); and (3) the proviso of Article 93 Section 1 of the Road Traffic Act (amended by Act No.15530 on March 27, 2018) (hereinafter these three provisions referred to as the "Provisions at Issue"). The Provisions at Issue read as follows:

Provisions at Issue

Former Road Traffic Act (Amended by Act No.13829 on January 27, 2016 and before amended by Act No.14839)
Article 93 (Revocation and Suspension of Drivers' Licenses)
(1) When a person who has obtained a driver's license (excluding any student license; hereafter in this Article, the same shall apply) falls under any of the following cases, the commissioner of a district police agency may revoke the driver's license (including the entire scope of drivers' licenses obtained by the driver; hereafter in this Article, the same shall apply) or suspend the effect thereof by up to one year according to the standards set by Ordinance of the Ministry of the Interior: Provided, That when such person falls under Items 2, 3, 7 through 9 (excluding where the regular aptitude test period has lapsed), 12, 14, 16 through 18,

or 20, his/her driver's license shall be revoked:

8. When a person ineligible to obtain a driver's license pursuant to Article 82 obtains a driver's license fraudulently or deceptively or is found to have been issued a driver's license or other certificate in lieu of a driver's license in the period during which the effect of his/her driver's license is suspended;

Former Road Traffic Act (amended by Act No.14839 on July 26, 2017 and before amended by Act No.15530)
Article 93 (Revocation and Suspension of Drivers' Licenses) (1) When a person who has obtained a driver's license (excluding any student license; hereafter in this Article, the same shall apply) falls under any of the following cases, the commissioner of a district police agency may revoke the driver's license (including the entire scope of drivers' licenses obtained by the driver; hereafter in this Article, the same shall apply) or suspend the effect thereof by up to one year according to the standards set by Ordinance of the Ministry of the Interior: Provided, That when such person falls under Items 2, 3, 7 through 9 (excluding where the regular aptitude test period has lapsed), 12, 14, 16 through 18, or 20, his/her driver's license shall be revoked:

8. When a person ineligible to obtain a driver's license pursuant to Article 82 obtains a driver's license fraudulently or deceptively or is found to have been issued a driver's license or other certificate in lieu of a driver's license in the period during which the effect of his/her driver's license is suspended;

Road Traffic Act (amended by Act No.15530 on March 27, 2018)
Article 93 (Revocation and Suspension of Drivers' Licenses) (1) When a person who has obtained a driver's license (excluding any student license; hereafter in this Article, the same shall apply) falls under any of the following cases, the commissioner of a district police agency may revoke the driver's license (including the entire scope of drivers' licenses obtained by the driver; hereafter in this Article, the same shall apply) or

suspend the effect thereof by up to one year according to the standards set by Ordinance of the Ministry of the Interior and Safety: Provided, That when such person falls under Items 2, 3, 7 through 9 (excluding where the regular aptitude test period has lapsed), 14, 16 through 18, or 20, his/her driver's license shall be revoked:

8. When a person ineligible to obtain a driver's license pursuant to Article 82 obtains a driver's license by fraud or other improper means or is found to have been issued a driver's license or other certificate in lieu of a driver's license in the period during which the effect of his/her driver's license is suspended;

Summary of the Decision

1. The basic rights restricted and the structure of adjudication

The Provisions at Issue prevent a person from driving freely by revoking his/her driver license and thus they restrict the general freedom of action. In addition, they also restrict the freedom of occupation for individuals whose job involves driving.

The Provisions at Issue require mandatory revocation of ‘a driver license obtained legally’ as well as ‘a driver license obtained improperly’ when the driver acquires a single driver license by improper means. Hereinafter, the Court, when necessary, will divide the Provisions at Issue into ‘mandatory revocation of driver license obtained by improper means’ and ‘mandatory revocation of driver license not-obtained by improper means’, and continue to discuss on this basis.

2. Whether the rule against excessive restriction has been violated

The Provisions at Issues are introduced to maintain the foundation of driver license system and to prevent traffic-related danger and disturbance, and thus their legislative purposes are legitimate. Also, in order to

achieve these purposes, the Provisions at Issues are requiring mandatory revocation of driver licenses in their entirety and it is an appropriate means to achieve the legislative purpose.

Firstly, the Court examines the part concerning mandatory revocation of a driver license obtained by improper means in the Provisions at Issue. The foundation of driver license system will be shaken if an improperly-obtained driver license becomes subject to discretionary revocation and suspension. Besides, other legal sanctions including criminal punishment are still insufficient to preclude drivers from driving with such license obtained improperly. Therefore, the Provisions at Issue do not violate the principle of minimum restriction. Furthermore, an improperly-obtained driver license lacks in its requirements from the beginning and thus revocation of such license does not lead to an additional restriction on the basic rights. Hence, the Provisions at Issue do not infringe the principle of balance of interests.

Next, the Court reviews the part relating to mandatory revocation of a driver license not-obtained by improper means in the Provisions at Issue. In case of a driver license not-obtained by improper means, the legislative purposes can be achieved to the same level as mandatory revocation and suspension by subjecting it to discretionary revocation and suspension, and thereby imposing legal sanctions corresponding to the degree of illegality that fit the individual and particular characteristic of each case. Accordingly, mandatory revocation of a driver license not obtained by improper means violates the principle of minimum restriction. Furthermore, it revokes a driver license in all cases including cases with minor misconduct or less censurable acts, and further forbids obtaining one for two years. Even after considering the importance of the public interest, such restrictions infringe upon Petitioners' basic rights excessively and thus violate the principle of balance of interests.

For these reasons, each part in the Provisions at issue requiring mandatory revocation of a driver license other than those obtained by fraud or improper means violates the rule against excessive restriction and thus infringes upon the general freedom of action or the freedom of

occupation.

Summary of Dissenting Opinion of Three Justices

The Provisions at Issue are introduced to forbid a person who obtained a driver license improperly from engaging in traffic and to prevent any attempt to inappropriately obtain one. Therefore, their legislative purposes are legitimate and accompanying means are appropriate.

The legislative power has the discretion to decide what kind of disadvantageous measures to be used, and how severe those measures to be in order to substantially prevent attempts to violate related administrative regulations, and such discretion needs to be respected. If revocation of driver licenses only confines to a driver license obtained improperly, it only nullifies the license whose validity is already severely contested. It would merely return the situation to where there was no violation of administrative regulations. Furthermore, from the fact that a driver with an improperly acquired license is subjectively aware that he/she has used a deceptive or inappropriate means to obtain it, his/her unfitness to drive can be sufficiently demonstrated. The Provisions at Issue provide for how a disadvantageous measure could have substantial power to suppress illegal activities related to the acquisition of a driver license, and lesser means cannot achieve the legislative purposes to the same extent. Accordingly, they do not contravene the principle of the minimum restriction.

Occupations that involve driving on a regular basis have a bigger influence on public safety related to the road traffic compared to other occupations. Thus, in order to protect the people's lives and health, there is a greater need to exclude individuals in such occupations if he/she obtained a driver license improperly. As the public interest to serve with the Provisions at Issue is no less significant than the restricted private interest, the Provisions at Issue do not violate the principle of balance of interests.

Consequently, the Provisions at Issue do not contravene the rule against excessive restriction and thus not infringe on the general freedom of action or the freedom of occupation.

11. Case on Competence Dispute over Land Reclaimed from Public Waters

[2015Hun-Ra3, July 16, 2020]

In this case, the Court dismissed Petitioners' request for competence dispute adjudication, on the grounds that in the case of land reclaimed from public waters which is subject to Article 4 Section 3 of the Local Autonomy Act amended on April 1, 2009, by Act. No. 9577, the Petitioners who had jurisdiction over the public waters before land reclamation do not have any authority over the newly reclaimed land, and thus the autonomous authority of the Petitioners is not deemed to have been infringed or be considerably threatened to be infringed.

Background of the Case

The Pyeongtaek Regional Maritimes Affairs and Port Office conducted coastal reclamation for the construction of the Inner and Outer Port of Pyeongtaek-Dangjin from December 12, 2003 to October 1, 2009 by reclaiming the public waters faced Sinyoung-ri, Poseung-eup, Pyeongtak-si, and reclaimed a land area of 902,350.5 m^2. Upon completion of the above reclamation work, Dangjin-si, the Petitioner, registered part of the newly reclaimed land as its own jurisdiction in the cadastral record.

The Local Autonomy Act amended on April 1, 2009 by Act No. 9577 (hereinafter referred to as the "amended Local Autonomy Act") provides that in cases of reclaimed land under the Public Waters Management and Reclamation Act, the Minister of the Interior and Safety shall, upon receipt of a request by licensing authorities or the head of a relevant local government for the decision of a local government to which the relevant region will belong, make the decision in accordance with deliberation and resolution by the central dispute arbitration committee for local governments (Article 4 Sections 3, 4 and 6). Accordingly, the Mayor of Pyeongtaek-si, filed a request with the Minister of the Interior

and Safety on August 24, 2010 for the decision of a local government to which the foregoing reclaimed land belongs.

The central dispute arbitration committee for local governments, after taking into comprehensive consideration geological proximity, the convenience of local residents, efficient use of national land, administrative efficiency, and the clarity and availability of demarcation, determined on April 13, 2015 that a parcel of the reclaimed site which was registered by Dangjin-si, the Petitioner (hereinafter referred to as the "registered reclamation site in this case"), as its jurisdiction, and part of the reclaimed site that was unregistered and belonged to Asan-si, the Petitioner, in conformity with the maritime boundary line (hereinafter referred to as the "unregistered reclamation site in this case" and together with the registered reclamation site in this case, referred to as the "reclamation site in this case") belonged to Pyeongtaek-si, the Respondent. The Minister of the Interior and Safety, the Respondent, notified the heads of the relevant local governments, etc. of the decision of a local government to which the reclamation site, etc. belongs based on the above-mentioned resolution on May 4, 2015.

Upon such decision, the Minister of the Land, Infrastructure and Transport made a change to the parcels-register for the site on May 8, 2015 by assigning the parcel number of Sinyoung-ri, Poseung-eup, Pyeongtak-si to the reclamation site in this case.

Thereafter, the Petitioners filed a motion to seek affirmation that Chungcheongnam-do and Dangjin-si, the Petitioners, have jurisdiction over the registered reclamation site in this case and the unregistered reclamation site in this case belongs to Chungcheongnam-do and Asan-si, the Petitioners, on June 30, 2015; and filed the request for competence dispute adjudication, seeking the revocation of the decision by the Minister of the Interior and Safety on May 4, 2015 regarding a local government, to which the relevant reclaimed site belongs, and the revocation of the registration of modification to the parcels-register for sites by the Minister of the Land, Infrastructure and Transport on May 8, 2015.

Meanwhile, on May 18, 2015, the Governor of Chungcheongnam-do, the Mayor of Dangjin-si and the Mayor of Asan-si, the heads of the Petitioning local governments, filed a separate lawsuit for revocation of the decision made by the Minister of the Interior and Safety on May 4, 2015 (Supreme Court, 2015Chu528) and the lawsuit is still pending.

Subject Matter of Review

The subject matter of review is,

(1) Whether jurisdictional authority of the registered reclamation site in this case belongs to Chungcheongnam-do and Dangjin-si, the Petitioners, and whether the unregistered reclamation site in this case belongs to Chungcheongnam-do and Asan-si, the Petitioners;
(2) Whether the decision by the Minister of the Interior and Safety regarding a local government to which the relevant reclamation site, etc. belongs (hereinafter referred to as the "decision in this case") on May 4, 2015 has violated the jurisdictional authority of the Petitioners and thus is void;
(3) Whether a future disposition by Pyeongtaek-si, the Respondent (hereinafter referred to as the "future disposition in this case"), infringes on or is in obvious danger of infringing upon jurisdictional authority of the Petitioners; and
(4) Whether the registration of modification to the parcels-register for sites regarding the reclamation site in this case by the Minister of Land, Infrastructure and Transport on May 8, 2015 (hereinafter referred to as "the modified registration in this case") has violated the jurisdictional authority of the Petitioners and therefore is invalid.

Summary of the Decision

The Local Autonomy Act amended in 2009 newly added Article 4 Section 3 under which the local governments, to which the land reclaimed

from public waters belongs, shall be determined by the Minister of the Interior and Safety; the competent authority shall file a request for such determination; and even if the inspection of work completion is conducted on the reclamation site prior to the implementation of the amended law, the competent authority shall file an application and request with the Minister of the Interior and Safety for the decision to register the reclamation site in the cadastral record after its enforcement.

Meanwhile, the reclamation of public waters is a significant national project which not only requires a huge amount of time and budget, but also entails a loss of valuable natural resources including the foreshore along the coastline of the region and the destruction of the environment. Reclaimed land considerably differs from public waters in terms of their specific uses as public waters are generally used for fishing activities in neighboring communities while reclaimed land has a clearly defined subject and purpose. Therefore, the maritime boundary of the public waters cannot be recognized as the “previous jurisdiction” of the reclaimed land.

Considering the purport of the amended Local Autonomy Act and differences in character between public waters and reclamation land, a newly reclaimed land is initially excluded from the application of Article 4 Section 1 pursuant to Section 3 of the same Article and therefore its relation to the previous jurisdiction is severed; and as the jurisdiction of the reclaimed land can only be determined by the Minister of the Interior, no local government has jurisdictional authority over the reclaimed land until such decision is made. Then, it cannot be said that the Petitioners who only had jurisdictional authority over the public waters before the reclamation of the new land area have jurisdiction over the newly reclaimed site in this case. Therefore, the jurisdictional authority of the Petitioners cannot be considered to have been infringed or be in imminent danger of being infringed.

Summary of Concurring Opinion of One Justice

When a request for competence dispute adjudication is filed with

regard to the jurisdiction of land reclaimed from public waters, the issue of which side has jurisdiction over the reclaimed land should be argued in judgment on the merits. In admissibility review, insofar as there exists a possibility of autonomous authority over the reclaimed land being granted to either side, it can be deemed to infringe upon or be in obvious danger of infringing upon the autonomous authority. The Petitioners in this case are the local governments who had jurisdictional authority over the public waters before land reclamation. As the delimitation of a new jurisdiction may lead to them losing the autonomous authority over the public waters and also failing to obtain it over the newly reclaimed site, the decision of the Minister of the Interior and Safety, etc. may infringe upon or be in considerable danger of infringing upon the autonomous authority of the Petitioners.

Even if Article 4 Section 8 of the Local Autonomy Act which provides that a person who has objection to the decision of the Minister of the Interior and Safety may file a suit with the Supreme Court excludes the jurisdiction of the Constitutional Court on competence dispute adjudication over the delimitation of reclaimed land, this does not deny the Court's inherent jurisdiction over competence dispute adjudication, and thus it cannot be deemed to have violated the Constitution.

Consequently, the adjudication request regarding whether or not the reclamation site in this case belongs to the Petitioners, the decision of the Minister of the Interior and Safety, the Respondent, and the future disposition of Pyeongtaek-si, the Respondent, does not fall into the jurisdiction of competence dispute adjudication rendered by the Constitutional Court, and thus this competence dispute is dismissed.

Summary of Dissenting Opinion of Two Justices

There are provincial boundaries over public waters or land reclaimed from public waters, and a dispute arising from unclear boundaries between local governments requires affirmation applying a standard of

substantive law. While Article 4 Section 3 of the Local Authority Act merely provides for the form of a jurisdictional affirmation, it cannot be said that it completely severed the relationship between the public waters where a boundary exists subject to the "previous jurisdiction" as specified in Article 4 Section 1 of the Act and the said reclaimed land, thereby giving the Minister of the Interior and Safety the authority to create a jurisdiction in a jurisdictional vacuum. The decision of the Minister of the Interior and Safety, as prescribed in Article 4 Section 3 of the Local Autonomy Act, is only a disposition to affirm, among the local governments located adjacent to the whole or part of the reclaimed land, who has the jurisdictional authority over the land reclaimed from the public waters, by confirming the existence and the concrete form of the jurisdictional boundary over the reclaimed site. The local governments which have exercised jurisdictional authority over the public waters are the parties which have a substantial interest in the decision by the Minister of the Interior and Safety, who expect themselves to be recognized as the local governments with autonomous authority over the whole or part of the land reclaimed from the public waters.

Which side has jurisdiction over the whole or part of the reclaimed land in this case, among the Petitioners and Pyeongtaek-si, the Respondent, should be determined in judgment on the merits. As long as there exists a possibility of autonomous authority over the reclaimed site being granted to either side, it can be deemed to have met the legal requirements for adjudication request. As the Petitioners are the local governments located adjacent to the public waters and had autonomous authority thereover before land reclamation, they were sufficiently acknowledged for the possibility to have constitutional and legal autonomous authority over the public waters before such reclamation. Thus, the Petitioners' request for affirmation of the jurisdictional authority of the registered reclamation site in this case and the unregistered reclamation site in this case, and the request for adjudication on the decision of the Minister of the Interior and Safety, the Respondent, are all recognized as potentially infringing upon the rights of the Petitioners, and thus justifiable.

The request for adjudication on the future disposition of Pyeongtaek-si, the Respondent, is admissible as such disposition by the Respondent is definite, and the request for adjudication on the decision of the Minister of Land, Infrastructure and Transport, the Respondent, is also justifiable, as the issue is not the question of whether the State has the authority to register in the cadastral record, but whether the Petitioners have the jurisdictional authority of the reclamation site in this case as a preliminary consideration before exercising the authority to register it, therefore the registration of modification to the parcels-register for sites has violated the jurisdictional authority of the Petitioners.

Furthermore, as the case filed pursuant to Article 4 Section 8 of the Local Authority Act and the adjudication on competence dispute in this case differ not only in terms of the subject matter but also the binding power of the decisions, it cannot be viewed that the aforementioned provision excludes the jurisdiction authority of the Constitutional Court on competence dispute adjudication. Therefore, the Court should proceed with judgment on the merits and conduct a judicial review of the existence and scope of the Petitioners' autonomous authority over the reclamation site in this case.

Summary of Concurring Opinion of Two Justices

The Local Authority Act amended on April 1, 2009 remained the provision that has the same purport as Article 4 Section 1 of the former Local Authority Act unchanged, and amended Section 3 of the Article to provide for the Minister of the Interior and Safety to determine the local governments to which the land reclaimed from the public waters belongs, 'notwithstanding Section 1'. Taking the relevant provisions into consideration, Article 4 Section 3 can be interpreted to mean that excluding the whole part of Section 1, local governments to which the land reclaimed from the public waters belongs, shall only be determined by the Minister of the Interior and Safety. Consequently, the land

reclaimed from the public waters does not belong to any local governments until the decision of the Minister of the Interior and Safety is made.

Meanwhile, as stated in the Court's opinion, public waters and land reclaimed from public waters differ in their nature. Thus, it is difficult to use the maritime boundary of the public waters as the jurisdictional boundary of the newly reclaimed land and determine which local governments have jurisdiction over the reclaimed land. Having taken into account the differences in nature, etc. between them, the Court overruled the previous doctrine which recognized the maritime demarcation over the public waters as the jurisdictional boundary of the reclaimed land under Article 4 Section 1 of the former Local Authority Act in its decision in Case No. 2015Hun-Ra2 issued on April 11, 2019.

The Court's previous doctrine on the competence dispute case over land reclaimed from public waters stating that "it is unacceptable that any jurisdiction of local government is left without a boundary" and "it meets the prerequisites for admission in so far as there exists a possibility of autonomous authority over the reclaimed land being granted to either side", is no longer applicable with the amendment to the Local Autonomy Act under which no local government is allowed to have jurisdictional authority over a newly reclaimed land until the decision of the Minister of the Interior and Safety takes effect.

In this case, the Petitioners who had jurisdictional authority over the public waters before land reclamation cannot be seen to have any authority over the newly reclaimed land, and consequently, it is difficult to find that the Petitioners' autonomous authority is infringed upon or in obvious danger of being infringed upon.

12. Case on Pseudo Legislative Omission in Article 14 Section 1 of the Act on Registration of Family Relations

[2018Hun-Ma927, August 28, 2020]

In this case, the Court found that pseudo legislative omission of the part "lineal blood relatives may request for the issuance of a family relation certificate and an identification certificate, which are among the certificates specified under Article 15" in the main text of Article 14 Section 1 of the Act on Registration of Family Relations which fails to provide for concrete measures to protect the personal information of victims of domestic violence, due to incompleteness and insufficiency, infringes upon Complainant's right to self-determination on personal information. Therefore, the Court declared the Provision at Issue nonconforming to the Constitution and ordered its temporary application until the legislature amends it.

Background of the Case

Complainant has divorced due to domestic violence from a former spouse and was designated as the custodian with the parental authority of her son, and she is currently raising her son.

Her former spouse visited Complainant's father to assault and injure him. Consequently, XX District Court issued a restraining order preventing the former husband from approaching Complainant or using telecommunications to approach her, as well as a victim protection order which required him to stay at least 100 meters away from Complainant and banned him from approaching her through telecommunications. Despite these orders, her previous spouse violated the Court's victim protection order by continuously calling Complainant's cellphone and sending her multiple threatening text messages. As a result, he was sentenced to imprisonment and fines for violation of the Act on Special Cases Concerning the Punishment, Etc. of Crimes of Domestic Violence.

12. Case on Pseudo Legislative Omission in Article 14 Section 1 of the Act on Registration of Family Relations

Complainant filed a constitutional complaint to challenge the constitutionality of pseudo legislative omission in the Act on Registration of Family Relations on September 11, 2018. Complainant alleged that the legislative omission in the said Act, which did not enact regulations limiting the issuance of Complainant's family relation certificate and identification certificate even though it is clear that her former husband, the perpetrator of domestic violence, is requesting the issuance for the purpose of unauthorized acquisition of her personal information necessary to approach and inflict additional harm on Complainant even after the divorce, infringes on Complainant's right to self-determination on personal information.

Subject Matter of Review

Complainant in this case seeks to challenge against pseudo legislative omission in the main text of Article 14 Section 1 of the Act on Registration of Family Relations which does not provide for concrete measures to protect the personal information of victims of domestic violence due to its incompleteness and insufficiency. Therefore, the subject matter of review in this case is whether the part "lineal blood relatives may request for the issuance of a family relation certificate and an identification certificate, which are among the certificates specified under Article 15" in the main text of Article 14 Section 1 of the Act on Registration of Family Relations (amended by Act No. 14963 on October 31, 2017, hereinafter referred to as the "Family Relations Registration Act") infringes upon the fundamental rights of Complainant, and the Provision at Issue reads as follows.

Provision at Issue

Act on Registration of Family Relations (amended by Act No. 14963 on October 31, 2017)

Article 14 (Issuance, etc. of Certificates)

(1) The person him/herself or his/her spouse, and lineal blood relatives (hereinafter referred to as "person him/herself, etc." in this Article) may request for the issuance of a certificate issuable with respect to matters entered in registers, etc. as provided for in Article 15, and where an agent of the person him/herself, etc. makes such a request, the agent shall be delegated by the person him/herself. etc. (proviso omitted)

Summary of the Decision

1. Whether the principle against excessive restrictions was infringed upon

The legislative purpose of the Provision at Issue is to grant lineal blood relatives the right to request for the issuance of a family relation certificate and an identification certificate for the interests of lineal blood relatives and children, which is justifiable. Also, granting, without any restriction, lineal blood relatives the right to request for the issuance thereof under the Act on Registration of Family Relations in this Provision at Issue is an appropriate means to serve the legislative purpose.

However, (1) in case of exposure of sensitive information provided in a family relation certificate or an identification certificate, the disclosure of such information against his/her will can be an infringement of personality and there are cases where it is practically impossible to recover the damage caused by the exposure; (2) there is a need to establish a mechanism to prevent the possibility of personal information misuse or abuse even among family members; (3) as the Provision at Issue does not provide measures to protect the personal information of victims of domestic violence unlike the Resident Registration Act, the perpetrator can acquire personal information of the victim through the

issuance of a family relation certificate or an identification certificate under the child's name; and (4) even if where a perpetrator of domestic violence requests for the issuance thereof under the child's name for the interests of the child or to fulfill his or her legitimate right to know, there are alternative means available to address the issue, such as requiring prior consent from the child or a detailed explanation that the perpetrator who is a lineal blood relative does not have an unjust intention or purpose to inflict additional harm, and even in such cases, preparing alternative measures such as deleting the personal information of the victim. In light of the above reasons, the Provision at Issue violates the principle of the least restriction.

In addition, it is difficult to recognize the balance of interests because of the disadvantages caused to the former spouse when the child's family relation certificate and identification certificate are issued by request of the lineal blood relative who is also the perpetrator of domestic violence, resulting in the leakage of the personal information of the former spouse who is the victim of domestic violence, are significantly greater than the public interests to be served with the Provision at issue.

For these reasons, the Provision at Issue is an incomplete and insufficient regulation that fails to provide for concrete measures to protect the personal information of victims of domestic violence and therefore infringes upon Complainant's right to self-determination on personal information.

2. The need for making decisions of nonconformity with an order granting the temporary application

If we were to render a decision of unconstitutionality on this Provision at Issue, we would be creating a legal vacuum in which even lineal blood relatives who are not perpetrators of domestic violence cannot be issued with a family relation certificate or an identification certificate. For these reasons, we render, on this Provision at issue, a decision of

nonconformity to the Constitution in lieu of a decision of simple unconstitutionality, and order the Provision at Issue to remain applicable until the legislature removes the unconstitutional elements from the Provision at Issue and amends it corresponding to this decision by December 31, 2021, at the latest.

13. Case on Access to Election Information by Persons with Disabilities, etc.

[2017Hun-Ma813, August 28, 2020]

In this case, the Court held that (1) the prohibition imposed on Complainant Yoon ○○ against watching the 19th presidential election interviews and debates on television at the time when he was receiving military training from the Korea Army Training Center; (2) the part concerning "within the page limit for booklet-type election campaign bulletins imposed by Section 2" in the main text of Article 65 Section 4 of the Public Official Election Act, requiring the number of pages of braille-type election campaign bulletins to be within the page limit for booklet-type election campaign bulletins; and (3) Article 70 Section 6, part of Article 71 Section 3 concerning Article 70 Section 6, Article 72 Section 2, and Article 82-2 Section 12 of the Public Official Election Act, prescribing Korean sign language or a caption to be discretionary in making an election broadcast do not violate the Constitution.

Background of the Case

1. Complainant Yoon ○○, while he was receiving military training at the Korea Army Training Center, requested for watching the 19th presidential election interviews and debates on April 23 and 27, 2017, and Respondents, the platoon leader and the company commander of the Korea Army Training Center, prohibited such request (hereinafter referred to as "Watching Prohibition of this case"). Complainant Yoon ○○, arguing infringement of his right to vote and equality, filed this constitutional complaint on July 21, 2017.

2. Complainant Kim □□, who is visually impaired, filed this constitutional complaint on July 21, 2017, claiming that Article 65 Section 4 of the Public Official Election Act, requiring the number of pages of election campaign bulletins in braille to be within the page

limit for booklet-type election campaign bulletins, has violated the Complainant's right to vote and equality.

3. Complainants Kim △△ and Ham ▲▲ are hearing impaired and filed this constitutional complaint on July 21, 2017, arguing that Article 70 Section 6, Article 71 Section 3, Article 72 Section 2, and Article 82-2 Section 12 of the Public Official Election Act have violated the right to vote and equality of the Complainants as they do not require Korean sign language or captions mandatory in airing the broadcast advertisement, broadcast speech of candidates, etc., broadcast of candidates' campaign speeches supervised by broadcasting facilities and interviews and debates supervised by the Election Debate Broadcasting (hereinafter referred to as "Election Broadcast Programs of this case").

Provisions at Issue

The subject matter of this case is whether (1) the Watching Prohibition of this case; (2) the part concerning "within the page limit for booklet-type election campaign bulletins imposed by Section 2" in the main text of Article 65 Section 4 (hereinafter referred to as "Provision on Election Campaign Bulletins of this case") of the Public Official Election Act (amended by Act No. 15551, Apr. 6, 2018); and (3) Article 70 Section 6, part of Article 71 Section 3 concerning Article 70 Section 6, Article 72 Section 2 of the Public Official Election Act (amended by Act No. 6265, Feb. 16, 2000), and Article 82-2 Section 12 of the Public Official Election Act (amended by Act No.7681, Aug. 4, 2005) (hereinafter collectively referred to as "Provisions on Korean Sign Language or Captions of this case") violate the fundamental rights of Complainant Yoon ○○, Complainant Kim □□, and Complainant Kim △△ and Ham ▲▲, respectively.

Public Official Election Act (Amended by Act No. 15551, Apr.6, 2018)
Article 65 (Election Campaign Bulletins) (4) Any candidate may prepare election campaign bulletins of one kind (hereinafter referred to as

"election campaign bulletins in braille") for visually impaired electors (referring to visually impaired persons who are registered pursuant to Article 32 of the Act on Welfare of Persons with Disabilities; the same shall apply hereafter in this Article) within the number of pages of booklet-type election campaign bulletins under Section 2, other than the election campaign bulletins referred to in Section 1: Provided, That a candidate running in a presidential election, an election of National Assembly members of local constituency, or an election of the head of a local government shall prepare and submit election campaign bulletins in braille; however, such election campaign bulletins may be substituted by print-ready barcodes whose contents are converted into voice or braille output.

Public Official Election Act (Amended by Act No. 6265, Feb.16, 2000) Article 70 (Broadcast Advertisements) (6) the candidate may, in making a broadcast advertisement under Section 1, air the finger language or a caption for the electors with a defective auditory sense.

Article 71 (Broadcast Speech of Candidates, etc.) (3) The latter part of Article 70 (1), Article 70 (6), and (8), shall apply mutatis mutandis to broadcast speeches of the candidates, etc.

Article 72 (Broadcast of Candidate’s Campaign Speeches Supervised by Broadcasting Facilities) (2) In making a broadcast of the candidates' campaign speeches under Section 1, sign language or a caption may be aired for the hearing impaired electors.

Public Official Election Act (Amended by Act No. 7681, Aug.4, 2005) Article 82-2 (Interviews or Debates Supervised by Election Debate Broadcasting Committee) (12) When the Election Debate Broadcasting Committee of each level holds the interviews or debates, it may conduct a superimposed broadcasting or a sign language interpretation for the hearing impaired electors.

Summary of the Decision

1. Watching Prohibition of this case

The Watching Prohibition of this case was rendered as part of military training to nurture those assigned to supplementary service as military resources and help them adjust to military life. Given the facts that (1) allowing the presidential election interviews and debates to be watched would have posed a high possibility of interference with the military training, considering the time of broadcasting; (2) no television was furnished in the trainees' dormitory at the Korea Army Training Center; and (3) Complainant Yoon ○○ was able to acquire election information through other means, it is difficult to say that the Watching Prohibition of this case infringes upon the Complainant's right to vote and equality.

2. Provision on Election Campaign Bulletins of this case

There are only about 40 braille libraries functioning as braille publication facilities and about 20 of which are located in the capital area. Unlike the booklet-type election campaign bulletins, the costs of preparing braille-type election campaign bulletins are borne by the State. The Provision on Election Campaign Bulletins of this case was introduced taking into account the practical difficulties caused by the lack of braille publication facilities and persons who engage in braille translation or correction, and the possibility of the State taking excessive financial burden relating thereto.

The legislators have the freedom to legislative formation through which various ways can be explored to guarantee the right to access to election information for individuals with visual disabilities. The legislators amended the Public Official Election Act on August 13, 2015 to require a candidate or a political party running in a presidential election, etc. to prepare and submit election campaign bulletins in braille

or substitute them with print-ready barcodes. This is a considerably improved legislation in terms of expanding opportunities for persons with visual disabilities to obtain election information. Also, adopting the above method instead of increasing the number of pages of braille-type election campaign bulletins does not seem to go beyond the limitations of legislative discretion.

In addition, given that the Public Official Election Act stipulates that essential issues shall be included in the braille-type election campaign bulletins and that there are many other means for the visually impaired to obtain election information, the Provision on Election Campaign Bulletins of this case does not violate the right to vote and the right to equality of Complainant Kim □□.

3. Provisions on Korean Sign Language or Captions of this case

The Provisions on Korean Sign Language or Captions of this case prescribe the airing of Korean sign language or captions as a discretionary matter, in consideration of the facts that the decision on airing Korean sign language or captions depends on the substantial capability of broadcasting business operators to secure staff, equipment, technical level, etc.; and that prescribing it as a mandatory matter may incur excessive election costs and impose restrictions on the freedom of broadcasting and programming of a broadcasting business operator and on the freedom of election campaign of a candidate or a political party.

Making it compulsory to provide election information for hearing-impaired persons, particularly with captions, has mostly been realized in a normative sense by means of the Broadcasting Act, the Act on Welfare of Persons with Disabilities and the Act on the Prohibition of Discrimination against Persons with Disabilities, Remedy against Infringement of Their Rights, Etc. (hereinafter referred to as the “Act on the Prohibition of Discrimination against Persons with Disabilities”) and subordinate statues thereof. For example, a terrestrial broadcasting business entity or a program provider that engages in general

programming or specialized programming of news reports are required, among the Election Broadcast Programs of this case, to broadcast speeches of candidates, candidate's campaign speeches supervised by broadcasting facilities, and interviews or debates supervised by Election Debate Broadcasting Committee with closed captions.

Broadcasting in Korean sign language and captions has continuously and gradually improved to provide hearing-impaired persons with more opportunities to obtain election information. The aforementioned Acts established different targets and timelines for providing broadcasts for persons with disabilities based on the types and sizes of broadcasting business entities, conditions for producing broadcasting programs for persons with disabilities, demand for viewers, the characteristics of broadcasting channels, and the types and costs of broadcasting for persons with disabilities, thereby continuously increasing the portion of programs for persons with disabilities from 2012 to 2016. Also, Korea Smart Sign Language Broadcasting Service which was developed in 2014 and has been in service since 2019 allows users to adjust the size and placement of the sign language screen or delete it. At least all interviews and debates supervised by the Election Debate Broadcasting Committee during the recent general election campaigns have been broadcast with Korean sign language.

Also comprehensively considering the fact that there are many other means for the hearing impaired to obtain election information, the Provision of Korean Sign Language or Captions of this case is not deemed to violate the right to vote and equality of Complainant Kim △△ and Ham ▲▲.

Summary of Dissenting Opinion by Three Justices

1. Standard of Review

A proportionality test with strict scrutiny should be carried out in this

case as the right to vote holds a significant value in a representative democracy.

2. Provision on Election Campaign Bulletins of this case

Persons with visual disabilities may experience difficulties in getting election information through visual means. They also have limited access to auditory information as it requires using a specific medium or going to a specific place, or it can only be heard once. Accordingly, persons with visual impairment are likely to find it harder to obtain a broad and deep background knowledge about politics in general, such as political party platforms, political philosophies and ideologies of candidates, and political realities, compared to individuals without such disabilities.

The only means for visually-impaired voters to get election information regardless of time or space and without help from others or assistive devices, among election campaign methods permitted in all public official elections under the Public Official Election Act, is the braille-type election campaign bulletins and they contain essential election information. Therefore, they are essential means for persons with visual disabilities who find it difficult to access other types of election information to collect political information on political parties or candidates in a comprehensive and systematic manner.

As braille cannot adjust the font size and has a unique characteristic of writing every consonant and vowel independently from one another unlike general letters, it requires about 2.5 to 3 times more number of pages than general letters. Therefore, limiting the number of pages of braille-type election campaign bulletins within that of booklet-type ones would inevitably lead to not being able to contain all contents included in booklet-type election campaign bulletins.

As increasing the page limit of braille-type election campaign bulletins does not necessarily mean forcing a candidate to prepare a greater number of pages thereof, it does not impose impossible obligations on the candidate when considering realistic conditions such as the availability of

braille publication facilities and persons who engage in braille translation or correction. The issue with securing facilities, staff, and costs necessary to prepare and mail braille-type election campaign bulletins can be resolved by providing the visually-impaired with various options to choose from when receiving election campaign bulletins, such as mailing election campaign bulletins by post, downloading an electronic version thereof, etc.

In light of the Act on the Prohibition of Discrimination against Persons with Disabilities which imposes on candidates for public election and political parties the obligation to convey information about them to persons with disabilities on an equal basis with persons without disabilities and the Braille Act which stipulates that where any visually impaired person makes a request, the relevant public institution shall provide him/her with braille documents the contents of which are the same as the corresponding documents in general letters, the cost of preparing and mailing braille-type election campaign bulletins borne by the State cannot be considered excessive to the point of having to give up on ensuring the visually-impaired equal access to election information.

Article 34 Section 5 of the Constitution provides that “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.” Nevertheless, people with disabilities have long been considered as a group of a minority or the socially weak, and such inequality and discrimination have only been consolidated as they were excluded from policy decision-making processes. Given the constitutional significance of substantially guaranteeing the right of the visually-impaired to vote, including the right to know about political information and opinion of candidates for public election and political parties, and public interest of the development of democratic politics, the Provision on Election Campaign Bulletins of this case runs counter to the principle against excessive restriction and thus infringes upon the right to vote of Complainant Kim □□.

3. Provisions on Korean Sign Language or Captions of this case

There are different types of individuals with hearing disabilities such as those who use Korean sign language as their first language and have difficulty understanding the Korean language and those who cannot use Korean sign language but are able to understand the Korean language. Korean sign language is the common language for hearing-impaired Koreans and has equal status as the Korean language. As people who have acquired the Korean language as their mother tongue have to study anew a foreign language, persons with hearing disabilities who use Korean sign language as their first language consider learning the Korean language the same as learning a foreign language.

People with hearing disabilities cannot get election information through auditory means and particularly those who have difficulty reading and understanding the Korean language cannot even get such information through election campaigns using visual means or print media. Accordingly, there is a great need to provide Korean sign language or captions when broadcasting election programs through television, a universal medium. To ensure that all people with hearing disabilities get election information, they should be broadcast with both Korean sign language and captions. It should be especially noted that the broadcast of election programs is almost the only means for the hearing-impaired who use Korean sign language as their first language and have difficulty understanding the Korean language to acquire election information.

Even considering other laws, captions in the Election Broadcast Programs of this case, except for broadcast advertisements, are the only ones provided as mandatory by terrestrial broadcasting businesses or program providers that engage in general programming or specialized programming of news reports. However, given that the Election Broadcast Programs of this case may be provided through CATV broadcasting businesses and others, and that the broadcast of such programs with Korean sign language is indispensable, the broadcast of aforementioned captions alone does not seem to provide sufficient

election information for the hearing-impaired.

Since broadcasting business entities which are obliged to provide a certain portion of broadcasts for persons with disabilities under the existing law have already secured staff, facilities and technical level required to broadcast Korean sign language or captions, imposing on them the obligation of airing the Election Broadcast Programs of this case with Korean sign language or captions does not seem to put too much financial burden on the State or an excessive restraint on the freedom of broadcasting and programming of a broadcasting business operator and on the freedom of election campaign of a candidate or a political party.

The topics covered in the Election Broadcast Programs of this case may become a subject of public discussion and decisively influence the perception of the general public. Without presumption that people with hearing impairment are able to understand the Election Broadcast Programs of this case, the issue of discrimination against them is highly unlikely to be covered in such programs. The Provisions of Korean Sign Language or Captions of this case isolates individuals with hearing impairment from policy-decision making processes.

Therefore, the Provisions of Korean Sign Language or Captions of this case violate the rule against excessive restriction and thus infringe upon the right to vote of Complainant Kim △△ and Ham ▲▲.

14. Case on Detention in a Guardhouse

[2017Hun-Ba157, 2018Hun-Ka10 (consolidated), September 24, 2020]

In this case, the Court held that the part 'detention in a guardhouse' in Article 57 Section 2 of the former Military Personnel Management Act, which prescribes that detention in a guardhouse in a military unit, a ship or other detention facilities for a certain period is possible as a disciplinary measure to enlisted personnel in active service, violates the Constitution in terms of the rule against excessive restriction.

Background of the Case

Petitioners are enlisted personnel in active service submitted to detention in a guardhouse who each filed a suit for revocation of such disciplinary measure. While these trials were pending, Petitioners motioned to request constitutional review of the main text of Article 57 Section 2 of the former Military Personnel Management Act etc. to the trial courts. Petitioner of the 2017Hun-Ba157 case filed this constitutional complaint after the motion was denied by the presiding court. Meanwhile, the presiding court of Petitioner of the 2018Hun-Ka10 case accepted the motion, and the court requested constitutional review of the case.

Subject Matter of Review

The subject matter of this case is whether the part 'detention in a guardhouse' in Article 57 Section 2 of the former Military Personnel Management Act (amended by Act No. 10703 on May 24, 2011, and before amendment by Act No. 16928 on February 4, 2020, hereinafter referred to as the "former Military Personnel Management Act") (hereinafter referred to as the "Provision at Issue") violates the Constitution. The Provision at Issue is as follows.

Provision at Issue

The former Military Personnel Management Act (amended by Act No. 10703 on May 24, 2011, and before amendment by Act No. 16928 on February 4, 2020)

Article 57 (Kinds of Disciplinary Actions) (2) Disciplinary measures for enlisted personnel shall be classified into demotion, detention in a guardhouse, restriction on leave, and probation, and each kind of disciplinary actions shall be defined in detail as follows:

2. The term "detention in a guardhouse" means detention in a guardhouse in a military unit, a ship or other detention facilities for a period that shall not exceed 15 days.

Summary of the Decision

The Provision at Issue was enacted to tighten the service discipline of enlisted personnel and enforce strict compliance with military regulations, under the aim of reinforcing the military chain of command and enhancing combat power, and thus its legislative purpose is legitimate. Also, as the Provision at Issue has a strong deterrent effect on enlisted personnel, it is an appropriate means to achieve the legislative purpose.

Given that the detention measure subject to the Provision at Issue goes beyond its scope as disciplinary action by not only creating disadvantageous change of status but also causing deprivation of bodily freedom; that while the detention measure subject to the Provision at Issue is *de facto* administered in a similar way to sentence of penal detention, and therefore requires a procedure equivalent to that of criminal proceedings with significantly restricted scope of action, the grounds and standards for the detention measure are excessively broad in content and unclear, and thus does not guarantee the subsidiarity principle it has to comply with; that although the detention measure subject to the Provision at Issue is taken after the deliberation and

resolution from a disciplinary committee and a legitimacy test from a judge advocate in charge of the protection of human rights, it is difficult to find such procedures as neutral and objective as that of criminal proceedings, as the committee and the judge advocate belong to a military unit or agency led by the person having the authority to impose disciplinary actions; that taking serious disciplinary action *id est* detention falls short of achieving the purpose of the Provision at Issue, while providing adequate education and training so as to redress wrongdoings of enlisted personnel and correct their behavior is a possible way to achieve the purpose; the Provision at Issue violates the rule against excessive restriction. The legislative cases in Japan, Germany, the United States, etc. are suggesting the same.

Even though reinforcing military chain of command and enhancing combat power bring significant public interests, these interests cannot be held to outweigh the Provision at Issue's excessive restriction on bodily freedom of enlisted personnel, and thereby the Provision at Issue fails to meet the balance of interests test as well.

Considering the above, the Provision at Issue violates the rule against excessive restriction.

Summary of Concurring Opinion of Four Justices

The Provision at Issue is unconstitutional, as it not only runs contrary to the rule against excessive restriction but also the principle of arrest by warrant for the following reasons.

The constitutional right of bodily freedom, considering Article 12 Section 1 of the Constitution and its nature as a natural right, is a basic right that is not only protected at the stages of criminal proceedings. The reason why the arrest and detention by investigative authorities serve as prerequisites for the principle of arrest by warrant prescribed in Article 12 Section 3 of the Constitution is that the need for *ex ante* control by a judge in criminal proceedings is particularly high. It does not intend to

exclude the application of the principle of arrest by warrant to state actions other than criminal proceedings. Rather, the essence of the principle of arrest by warrant is to allow any forcible measure that severely infringes on fundamental rights, such as restraint of the human body, only when a judge issues a warrant after reviewing specifics of the matter. Therefore, the principle of arrest by warrant by its nature should be applicable to detention because albeit a non-criminal measure, detention has substantially the same effect as restraint of the human body by investigative authorities.

The detention in a guardhouse under the Provision at Issue, in view of its substance and essence in execution and effect, inflicts *de facto* severe damage on fundamental rights just as restraint of the human body in criminal proceedings, and thus the principle of arrest by warrant under Article 12 Sections 1 and 3 of the Constitution is applicable.

However, nowhere in the detention measure under the Provision at Issue did it prescribe a judge - as a disinterested person whose independence is guaranteed - to make a review before the application of detention. Thus, the detention measure violates the nature of the principle of arrest by warrant prescribed in Article 12 Sections 1 and 3 of the Constitution.

Therefore, the Provision at Issue violates the principle of arrest by warrant under Article 12 Sections 1 and 3 of the Constitution.

Summary of Dissenting Opinion of Two Justices

1. Whether the Principle of Arrest by Warrant is Applicable

Considering the wording and characteristics of Article 12 Section 3 of the Constitution, the principle of arrest by warrant cannot be deemed to be directly applicable to disciplinary measures. Nevertheless, taking into account the idea of the principle of arrest by warrant, whether or not the Provision at Issue violates the principle of due process needs to be

reviewed with a strict standard.

2. Whether the Principle of Due Process is Violated

As per the amendment in the Military Personnel Management Act on April 28, 2006, the detention measure subject to the Provision at Issue requires a legitimacy test from a judge advocate in charge of the protection of human rights. Considering the content of relevant laws and statistics on operations practice, the legitimacy test is run in an objective and neutral manner as to reviewing the validity of the detention measure. Further, the former Military Personnel Management Act prohibits the person having the authority to impose disciplinary actions to order detention or aggravate the penalty of detention at one's sole discretion, and thereby prevents his or her arbitrary decision-making and abuse of power. Also, there are effective relief measures in connection with the detention measure, such as complaints under Military Personnel Management Act, revocation litigation under Administrative Litigation Act and habeas corpus petition under Habeas Corpus Act. Therefore, the Provision at Issue does not violate the principle of due process.

3. Whether the Principle against Excessive Restriction is Violated

The Provision at Issue was enacted to tighten service discipline within the military, ensure enlisted personnel to strictly comply with military regulations, as well as to establish command authority, and thus it is legitimate in its purpose and performs as a suitable means to serve the purpose. Given that there is a high risk of enlisted personnel in conflict and violence against one another in light of the reality of military service practice in Korea; that the detention measure is stricter and more effective compared to other disciplinary measures; that the military in the United States, Germany and various other countries has physical restraint as a disciplinary measure as well; and that relevant rules provide standards for the imposition of detention measure, prescribe the concept

of subsidiarity in applying the measure and lay out effective relief measures against the detention measure so as to prevent the rampant use of the detention measure and keep the restriction to the minimum extent necessary, the Provision at Issue does not violate the principle against excessive restriction. Taking into account that tightening service discipline within the military, ensuring enlisted personnel to strictly comply with military regulations and establishing command authority through the Provision at Issue bring significant public interests, as the restriction on bodily freedom of enlisted personnel is conducted in a short period of time and under restricted grounds, it cannot be held to outweigh the public interests the Provision at Issue brings, and thus the Provision at Issue is not against the principle of balance of legal interests. Therefore, the Provision at Issue does not violate the principle against excessive restriction.

15. Case on Prohibiting a Person with Multiple Nationalities from Renouncing Korean Nationality after Assigning to the Preliminary Military Service

[2016Hun-Ma889, September 24, 2020]

The Court declared that the main text of Article 12 Section 2 and the part concerning the main text of Article 12 Section 2 in the proviso of Article 14 Section 1 of the Nationality Act, which prohibit a person with multiple nationalities from renouncing the nationality of the Republic of Korea after three months from the date of assignment to the preliminary military service unless and until the person is relieved of the military service obligation, are nonconforming to the Constitution and shall continue to apply until amended by September 30, 2022. The Court also rejected the claim against Article 12 Section 2 Item 1 of the Enforcement Rule of the Nationality Act, a provision requiring a person applying to renounce Korean nationality to attach to the application a certificate of family relationships records.

Background of the Case

Complainant is a holder of dual nationality of the U.S. and the Republic of Korea as he was born in 1999 to a father with U.S. citizenship and a mother who is a Korean national.

Under the main text of Article 12 Section 2 and the proviso of Article 14 Section 1 of the Nationality Act, Complainant shall choose one nationality until March 31, 2017, three months from January 1, 2017 when he attains the age of 18 years as provided in the Military Service Act. After the prescribed period, he cannot declare his intention to renounce Korean nationality unless and until he is relieved of his military service obligation. Also, in accordance with Article 12 Section 2 Item 1 of the Enforcement Rule of the Nationality Act and the practice thereunder, the applicant's Identification Certificate and Family Relation

Certificate and the Identification Certificates of both parents shall be attached to the application for a declaration of renunciation of his Korean nationality. However, these documents can only be issued by those who are recorded on the family relations register. Complainant attained Korean nationality by birth, but his birth was not registered in Korea. Therefore, he should first file a report of birth to prepare the required documents.

Complainant wishes to renounce his Korean citizenship. However, under the said provision of the Enforcement Rule, he shall first file a report of birth to declare his renunciation of Korean nationality. Also, he is prohibited from renouncing his Korean nationality after March 31, 2017 until he is relieved from his military service obligation under the provisions above. Accordingly, Complainant filed for this constitutional complaint on October 13, 2016, claiming that these provisions infringed his basic rights.

Provisions at Issue

Nationality Act (Amended by Act No.14183 on May 16, 2016)
Article 12 (Obligations of Persons with Multiple Nationalities to Choose One Nationality)
(2) Notwithstanding the main sentence of paragraph (1), a person assigned to the preliminary military service under Article 8 of the Military Service Act shall choose one nationality either within three months from the date of enlistment, or within two years from the date he/she falls under any Item of Section 3 (proviso omitted).

Nationality Act (Amended by Act No.10275 on May, 2010)
Article 14 (Requirements and Procedures for Renunciation of Nationality of the Republic of Korea)
(1) A person with multiple nationalities who intends to choose the nationality of a foreign country may declare his/her intention to renounce the nationality of the Republic of Korea to the Minister of Justice via

the head of a diplomatic mission overseas having jurisdiction over the place of the person's residence, only if the person has overseas domicile: Provided, That anyone prescribed in the main sentence of Article 12 (2) or paragraph (3) of the same Article may make such declaration within the relevant period or only after the relevant grounds arise.

Enforcement Rule of the Nationality Act (Amended by Ordinance of the Ministry of Justice No. 817 on June 18, 2014)

Article 12 (Application Form for Renouncement of Nationality and Accompanying Documents)
(2) An application for the renouncement of nationality specified in Section 1 shall attach the following documents:
1. A certificate of family relationships records

Summary of the Decision

1. Period of choosing one nationality and restrictions on the declaration of renouncement of nationality for a person with multiple nationalities

In principle, a person who has attained multiple nationalities before fully turning 20 years of age shall choose one nationality before fully turning 22 years of age; and a person who has attained multiple nationalities after fully turning 20 years of age shall choose one nationality within two years from such time (the main text of Article 12 Section 1 of the Nationality Act). However, a person enlisted in the preliminary military service under Article 8 of the Military Service Act shall choose one nationality either within three months from the time of enlistment, or within two years from the date the person is relieved of the obligation for military service (the main text of Article 12 Section 2 of the Nationality Act). As every male of the Republic of Korea shall be enlisted for the preliminary military service at the age of 18, a person who has attained multiple nationalities before the 1st of January in the

year in which he turns 18 years of age and is assigned to the preliminary military service shall choose one nationality by March 31, three months from the date of enlistment (refer to Article 2 Section 2 and Article 8 of the Military Service Act).

A person with multiple nationalities may voluntarily renounce the nationality of the Republic of Korea. Such a person shall declare an intention to renounce the nationality to the Minister of Justice and lose the nationality at the time the Minister of Justice accepts the declaration thereof (the main text of Article 14 Section 1 and Section 2 of the Nationality Act). However, a Korean male who has military service obligation may declare his intention to renounce Korean nationality within the period to choose one nationality as prescribed above, and if he misses the time frame, he can renounce the nationality only when he is relieved of his military service obligation as prescribed in any Item of Article 12 Section 3 of the Nationality Act (refer to the proviso of Article 14 Section 1 of the Nationality Act).

The Minister of Justice shall order a person with multiple nationalities who fails to choose one nationality within the prescribed period to choose one nationality within one year in principle. However, in practice, the order to choose one nationality is not strictly enforced upon a person with multiple nationalities who was assigned to the preliminary military service but has failed to choose one nationality within the prescribed period (refer to Article 14-2 of the Nationality Act).

In light of the above, a Korean male who has attained multiple nationalities before the 1st of January in the year when he turns 18 years of age shall voluntarily declare his intention to renounce Korean nationality before the 31st of March of the same year; and a Korean male who has attained multiple nationalities after the above date shall voluntarily declare such intention within three months from the date he has attained Korean nationality. If he fails to make such declaration within the relevant period, he may not renounce Korean nationality until he is relieved of his military service obligation.

2. Summary of the Opinion on the Provisions of the Act at Issue

- Whether the Provisions of the Act at Issue violate the rule against excessive restriction and thus infringe on the freedom to renounce one's nationality

The legislative objective of the Provisions of the Act at Issue is to acquire equality in the burden of military service duty by restricting a person assigned to the preliminary military service from renouncing Korean nationality for the purpose of evading his military service duty.

Korean males with multiple nationalities are restricted the freedom to renounce the nationality of the Republic of Korea without exception. However, they are not individually informed of the matters including the procedure of choosing one nationality and restrictions applied if they fail to choose one nationality within the prescribed period. The Nationality Act prescribes that a person whose father or mother is a Korean national shall acquire Korean nationality by birth without declaration thereof. Accordingly, there is always a possibility that a person with multiple nationalities may not be aware of the fact that he or she has attained Korean nationality, the procedure to choose one nationality, or restrictions on renouncing the nationality of the Republic of Korea under the Provisions of the Act at Issue.

There are certain circumstances that may be considered difficult, under prevailing social norms, for a person with multiple nationalities to declare the renunciation of Korean nationality within the period prescribed by the Provisions of the Act at Issue, such as having his or her main residence in a foreign country or little experience of sojourning or residing in Korea. For example, if a person with multiple nationalities who has acquired Korean nationality by birth without declaration thereof has a principal residence in a foreign country and has continued his or her academic and economic activities there, it would be difficult to expect such a person to understand the laws and institutions of the Republic of Korea regarding the attainment of multiple nationalities and

the renunciation of nationality.

If the competent authority, through a concrete review, makes an exception for permitting a person with multiple nationalities to renounce the nationality of the Republic of Korea after the prescribed period only where it is deemed as not infringing the equality in the burden of military service duty, excluding those who have their main residence in Korea and have enjoyed benefits as a Korean national for a considerable period of time, but intend to renounce Korean nationality as they are close to fulfilling their military service obligation, concerns regarding possible infringement upon the equality in the burden of performing the duty of military service can be addressed.

Even if a person with multiple nationalities assigned to the preliminary military service has failed to choose one nationality within the relevant period, measures may be needed to make an exception for permitting such a person to renounce Korean nationality where there are grounds that make it difficult to hold the person accountable, under prevailing social norms, for having failed to declare such renunciation within the prescribed period. That is, if there are legitimate grounds for such failure, and it can be objectively acknowledged that the renunciation has not infringed the legislative objective of acquiring equality in the burden of military service, measures can be taken to provide an exception for granting permission to renounce Korean nationality, rather than imposing an outright ban on renouncing Korean citizenship for failing to choose one nationality within the relevant period.

The practical disadvantages Complainant suffers as a result of maintaining dual citizenship under the Provisions of the Act at Issue may be considerably huge in certain circumstances. In some countries, a person with multiple nationalities may be restricted from working in public service or national security or performing work that may have a conflict of interest with the other country of which he or she holds citizenship. If such restrictions exist in reality, the infringed private interest caused by restrictions on choosing certain professions or taking charge of certain duties cannot be taken lightly.

3. Summary of the Opinion on the Provision of the Enforcement Rule at Issue

- Whether the rule of clarity has been violated

The Provision of the Enforcement Rule at Issue prescribes that a person who wishes to renounce the nationality of the Republic of Korea shall attach a certificate of family relationships records to the application for the renouncement of Korean nationality. In accordance with the practice under the said Rule, an applicant shall submit his or her Identification Certificate and Family Relation Certificate and the Identification Certificates of both parents; and an applicant born to a Korean national father and a foreign national mother shall submit the Marriage Relation Certificate of the father under the Act on Registration of Family Relations (hereinafter collectively referred to as "Identification Certificate, etc.").

Each applicant for the renouncement of Korean nationality has different circumstances at the time of declaration, such as the details of how the person has acquired Korean nationality and foreign nationality, gender, and nationalities of the applicant's parents. Therefore, it may be deemed inappropriate to specify the names of the required documents in the Enforcement Rule and it would be difficult to conceive of alternative measures other than keeping the current expression in consideration of the contents of required accompanying documents and the purpose of proof of identity.

- Whether the rule against the excessive restriction has been violated and thus infringe the freedom to renounce one's nationality

Identification Certificate, etc. are the documents necessary to identify the applicant and verify whether the person holds Korean nationality, a precondition for the renouncement of Korean nationality. The Provision of the Enforcement Rule at Issue requires the applicant to submit

necessary documents for the Minister of Justice to accept a declaration of renunciation of Korean nationality as deemed appropriate.

The Minister of Justice has no choice but to require the applicant to submit a reliable formal document in order to ascertain whether the requirements for renouncing Korean nationality are being met. Identification Certificate, etc. under the Act on Registration of Family Relations are the official documents of the Republic of Korea containing such information, and it would be difficult for the Minister of Justice to conceive of other types of documents that are reliable as well as containing necessary information sufficient to determine whether the applicant meets the requirements.

Either the father or the mother of a child is required to file a report of birth for his or her child under the Act on Registration of Family Relations. The burden of filing a report of birth at the time of declaring the renunciation of Korean nationality has only arisen because the father or the mother of Complainant failed to fulfill his or her duty to report a birth under the said Act.

The Provision of the Enforcement Rule at Issue which requires an applicant for the renouncement of Korean nationality to submit Identification Certificates, etc. may cause the person some inconvenience. However, it cannot be deemed that such inconvenience is so great that it practically prevents the applicant from renouncing Korean nationality.

4. The Decision of Nonconformity to the Constitution and Order for Continued Application

In the case of a person with dual citizenship whose main residence is in a foreign country, the legislature can remove unconstitutional elements of the Provisions of the Act at Issue by establishing the requirements and procedure for granting an exception permitting such a person to declare the renunciation of Korean nationality even after the period prescribed under the Provisions above if the person has justifiable grounds for failing to do so.

However, immediately invalidating the effect of the above Provisions by declaring them simply unconstitutional would also eliminate forthwith restrictions justifiably imposed on the period of choosing and renouncing nationality, creating difficulty in ensuring the equality of performing the duty of military service. The legislature shall amend these Provisions by September 30, 2022, at the latest, and if no amendment is made by then, these Provisions will be null and void as of October 1, 2022.

Summary of Dissenting Opinions of Two Justices Regarding the Provisions of the Act at Issue

- Whether the rule against the excessive restriction has been violated and thus infringe the freedom to renounce one's nationality

The Court already made two rulings on the Provisions of the Act at Issue or the provisions of the Nationality Act whose contents are substantially the same, holding that taking into account the legislative objective, the loss of military manpower resources, the need to prevent the infringement of the principle of equality in the burden of military service duty and the impact of regulations on a person with multiple nationalities, they do not violate the freedom of persons with multiple nationalities to renounce their nationality. It is hard to believe that any circumstance or need to reverse the precedents is perceived in this case.

The principle of equality in sharing the burden of military service derived from Article 39 of the Constitution which provides for universal conscription system and Article 11 of the Constitution which prescribes the principle of equality is a constitutional request. Also, it is a social request so strong and absolute that it is incomparable to other societies. The purpose of the Provisions of the Act at Issue is to achieve the principle of equal sharing of the burden of military service enshrined in the Constitution.

The freedom to renounce nationality of persons with multiple

nationalities is just partly restricted, not fully deprived by the relevant Provisions at Issue. They can freely renounce Korean nationality within three months from the date of enlistment into the preliminary military service at the age of 18. Since then, they are prohibited from renouncing nationality just until they are released from the duty of military service. The Provisions of the Act at Issue are the result of the legislature's coordinating and balancing the interests of the constitutional values of national defense and equality in military service duty on one side, and the individual fundamental value of renunciation of nationality on the other side, avoiding unilateral discrimination against either side.

Given the fact that either one or both parents of persons with multiple nationalities were or are Korean nationals in most cases, and that Korean diplomatic missions abroad continue to inform the system of renunciation of nationality through various means, it is hard to see that there are circumstances to justify such ignorance of the relevant law.

As the legislative purpose of the Provisions of the Act at Issue is to achieve the principle of equal sharing of the burden of military service required by the Constitution, an exception from such application without establishing a well-defined standard on the basis of social consensus shall not be permitted rashly just because individuals may have inevitable circumstances for having failed to declare such renunciation within the prescribed period.

Summary of Dissenting Opinions of Two Justices Regarding the Provision of the Enforcement Rule at Issue

- Whether the rule against the excessive restriction has been violated and thus infringe Complainant's freedom to renounce his nationality

In accordance with the Provision of the Enforcement Rule at Issue and the practice thereunder, if persons with multiple nationalities who acquired Korean nationality at birth but have never filed a report of birth

such as Complainant were to renounce their Korean nationality, they should first file a report of birth and then be issued the Identification Certificate through relatives in Korea or Korean diplomatic missions abroad. However, if such a person has spent most of his or her life residing in a foreign country, it is a reasonable assumption that he or she would face significant difficulty in understanding and proceeding with such procedure.

It may be too severe given the fact that persons with multiple nationalities have acquired Korean nationality by birth regardless of their will. There are circumstances that may lead them to give up on declaring the renunciation of Korean nationality, such as their place of residence, ease of access to a Korean diplomatic mission, and the level of understanding of Korean law and language.

It may lead to increased workload for the Minister of Justice as he or she has to decide on the type of supporting documents to be accepted other than Identification Certificate, etc. under the Act on Registration of Family Relations so as to confirm whether the declarant satisfies the requirements for renunciation of nationality, and review whether the submitted documents are sufficient to process the application for a declaration of renunciation of nationality. However, persons with multiple nationalities such as Complainant should be fully guaranteed the freedom of renunciation of nationality by providing them with means to declare the renunciation of nationality without the need to file a report of birth.

16. Case on Two-Wheeled Driver's License Test Motor Vehicle Adapted for Use by Person with Physical Disability

[2016Hun-Ma86, October 29, 2020]

In this case, the Court rejected a constitutional complaint against the inaction of Respondent to provide a specially adapted two-wheeled motor vehicle at a driver's license examination office for Complainant seeking to take a skills test to obtain his driver's license. This decision of rejection was rendered as a result of five Justices' opinion for unconstitutionality that the inaction amounts to unconstitutional non-exercise of governmental power and infringed Complainant's right to equality and four Justices' opinion for dismissal that the inaction is not subject to a constitutional complaint because it is not recognized as non-exercise of governmental power which amounts to a failure to fulfill a concrete duty of action.

Background of the Case

Complainant is a person with a third-degree physical disability who has undergone an above-knee amputation of his right leg as a result of a traffic accident. Under the relevant statute and regulations, persons with his type of physical disability are eligible to obtain a driver's license, and Complainant seeks to acquire his Class 2 Small Motor Vehicle License. Respondent is the president of the Road Traffic Authority.

In July 2015, Complainant visited Seobu Driver's License Examination Office in Seoul to obtain his Class 2 Small Motor Vehicle License. He could not, however, take a test for "the skills needed to drive motor vehicles, etc." under Article 83 Section 1 Item 4 of the Road Traffic Act (hereinafter referred to as the "skills test"), because a specially adapted two-wheeled motor vehicle was not provided for him to take the skills test.

Subsequently, on February 1, 2016, Complainant filed this constitutional

complaint, asserting that the inaction of Respondent to provide the specially adapted two-wheeled motor vehicle for Complainant to take the skills test infringed his right to equality.

Subject Matter of Review

The subject matter of review in this case is whether the inaction of Respondent to provide an authorized disability-adapted two-wheeled skills test motor vehicle at Seobu Driver's License Examination Office in Seoul in July 2015 for Complainant, a physically disabled person eligible to obtain a driver's license under the relevant statute and regulations, seeking to take the skills test to procure his Class 2 Small Motor Vehicle License (such inaction hereinafter referred to as the "Inaction") infringed Complainant's basic right.

Summary of Unconstitutionality Opinion of Justices Lee Seon-ae, Lee Suk-tae, Kim Kiyoung, Moon Hyungbae, and Lee Mison

1. Assessment of legal prerequisite

In view of (1) the content and purpose of Articles 10, 11, and 34 of the Constitution; (2) Articles 1, 4, 6, and 8 and Article 19 Sections 6 and 7 of the "Act on the Prohibition of Discrimination against Persons with Disabilities, Remedy against Infringement of their Rights, Etc. (hereinafter referred to as the "Disability Discrimination Act")," the law whose foundation is the above provisions of the Constitution; and (3) Articles 80 and 83 of the Road Traffic Act establishing a driver's license system, we consider that the Road Traffic Authority, which administers driver's license tests, has an obligation to provide human and material resources and take the relevant actions for persons with physical disabilities who are eligible to obtain a driver's license under the relevant statute and regulations, so that they can apply for, take, and

pass driver's license tests.

In this regard, in spending its driver's license test administration budget on supplying skills test applicants with vehicles used for the skills test in particular, the Road Traffic Authority has a concrete duty to furnish the vehicles to those with physical disabilities eligible for a driver's license—the same duty it owes to those without disabilities. Specifically, it must provide physically disabled persons eligible for a driver's license with authorized skills test vehicles adapted for their physical needs.

In conclusion, we find that Respondent has the concrete duty to provide Complainant—a physically disabled person eligible to obtain a driver's license under the relevant statute and regulations—with an authorized disability-adapted two-wheeled skills test motor vehicle when he takes the skills test to obtain his Class 2 Small Motor Vehicle License.

2. Assessment of merits

Respondent failed to fulfill the above-mentioned duty of action (hereinafter referred to as the "Failure of Duty"). We will determine whether the Failure of Duty was constitutionally justifiable.

Respondent argues that it was in effect not able to perform its duty of action owing to its limited budget. We reject this argument because the Road Traffic Authority was capable of supplying skills test vehicles to non-disabled and physically disabled persons by properly allocating and spending its budget in a manner that prevents arbitrary discrimination among those persons and because, in light of the amount of the Road Traffic Authority's budget for driver's license test administration, it would not be an undue burden for the Road Traffic Authority to provide a two-wheeled skills test vehicle adapted for the physical needs of Complainant.

Respondent also argues that there is little need for persons with physical disabilities to obtain a Class 2 Small Motor Vehicle License

and that this license has little to do with the advancement of these persons' right to travel or with the enhancement of their employment opportunities. Neither of these arguments establishes a constitutionally justifiable basis for the Failure of Duty, because the creation of a driver's license system and driver's license examination process which allow persons with physical disabilities to drive on their own lays the practical foundations for them to drive and participate in society to the same extent as those without physical impairment drive and participate in society.

Additionally, Respondent asserts that Complainant could have taken the skills test by using a vehicle he owned or rode. It is true that the relevant provision of the Enforcement Rule of the Road Traffic Act allows a person with a physical disability to take the skills test by using a vehicle he or she owns or has ridden. This provision, however, merely confers a benefit to the person and does not practically guarantee this individual the opportunity to take the skills test.

In sum, we do not see that the reasons advanced by Respondent provide a constitutionally justifiable basis for the Failure of Duty. Nor do we find any circumstances indicating that the Failure of Duty was constitutionally justifiable. Therefore, the Failure of Duty amounts to unconstitutional non-exercise of governmental power which violates the right to equality of Complainant.

Summary of Dismissal Opinion of Justices Yoo Namseok, Lee Eunae, Lee Jongseok, and Lee Youngjin

The State has a duty to create a just social order in which persons with physical disabilities can lead lives worthy of human beings. However, when it comes to the right to a life above the subsistence level necessary for human dignity, the existence and scope of a duty to ensure this right should be determined by considering the State's finances and the harmonization and prioritization of its tasks. Because

Article 19 Section 8 of the Disability Discrimination Act provides that matters necessary for the application of Article 19 Sections 6 and 7, namely the scope of facilities to which Article 19 Sections 6 and 7 apply per phase and the details of legitimate conveniences, shall be prescribed by Presidential Decree, we do not see that a concrete duty of action that is beyond the duty under Article 13 Section 3 of the Enforcement Decree of the Disability Discrimination Act can be directly deduced from this Act. Nor do we find, as argued by Complainant, that the Road Traffic Act and its regulations impose on the Road Traffic Authority the concrete duty to provide a specially adapted two-wheeled vehicle at a driver's license examination office for Complainant seeking to take the skills test to obtain his Class 2 Small Motor Vehicle License.

It is difficult to predict the financial burden that the cost of producing skills test vehicles adapted for persons with physical disabilities in accordance with Appendix 20 to the Enforcement Rule of the Road Traffic Act, listing details of the vehicle required for each type and degree of physical disability, and the cost of providing those vehicles at driver's license examination offices will place on the State. Thus, the Road Traffic Act and its regulations are not clearly arbitrary inasmuch as they allow a person with a physical disability to take the skills test by using an authorized disability-adapted motor vehicle or other vehicle he or she owns or has ridden.

In conclusion, since the Inaction is not recognized as non-exercise of governmental power which amounts to a failure to fulfill a concrete duty of action, Complainant's constitutional complaint against the Inaction is non-justiciable.

17. Case on Taking a Temporary Measure on the Information Disclosed via Information and Communications Network

[2016Hun-Ma275, 2016Hun-Ma606, 2019Hun-Ma199 (consolidated), November 26, 2020]

In this case, the Court held that the part "temporary measure" of Article 44-2 Section 2 and Section 4 of the said provision of Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. – which require a provider of information and communications services to take, for a period not exceeding 30 days, a temporary measure of blocking access to information publicly disclosed through an information and communications network if such information invades privacy, defames reputation, or violates a right of an individual in other ways, if the individual requests for deletion of such information, and if it is difficult for the provider to ascertain the violation of the individual's right or the provider anticipates that a dispute will arise between the interested parties with respect to such information – do not infringe on the freedom of expression of Complainants.

Background of the Case

A blog post by Complainant Kim ○○ (of 2016Hun-Ma275 case), published on Complainant's blog, was put under a measure that temporarily blocks its public access (hereinafter, "temporary measure") by the provider of information and communications services △△ Inc. upon the request from □□ Inc. to suspend the post.

A blog post by Complainant Lim ◆◆ (of 2016Hun-Ma606 case), published on Complainant's blog, was put under the temporary measure by the provider of information and communications services ♠♠ Inc. upon the request from Pastor Oh ◉◉ and ★★ Church Foundation to delete the post.

17. Case on Taking a Temporary Measure on the Information Disclosed via Information and Communications Network

An online post by Complainant Lee ▶▶ (of 2019Hun-Ma199 case), published on an online community provided by web portal △△, was put under the temporary measure by the provider of information and communications services △△ Inc. upon the request from ▷▷ Church to suspend the post.

As such, the Complainants filed a constitutional complaint over the legal provisions concerning the temporary measure provided in the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. by claiming that their fundamental right is infringed upon by these provisions.

Subject Matter of Review

The subject matter of this case is whether the part of Article 44-2 Section 2 concerning "temporary measure" and Section 4 of the said provision of Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. (amended by Act No. 9119 on June 13, 2008) (hereinafter collectively referred to as "Provisions at Issue") infringe on fundamental rights of Complainants. The Provisions at Issue and related provisions are as follows.

Provisions at Issue

Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. (amended by Act No. 9119 on June 13, 2008)

Article 44-2 (Request for Deletion of Information)

(2) Upon receiving a request for deletion or rebuttal of the information under Section 1, a provider of information and communications services shall delete the information or take temporary or any other necessary measure and shall notify the applicant and the publisher of the information immediately. In such cases, the provider of information and

communications services shall make it known to users that he or she has taken necessary measures by posting a public notification on the relevant message board or in any other way.

(4) Notwithstanding a request for deletion of the information under Section 1, if it is difficult to judge whether information violates any right or it is anticipated that there will probably be a dispute between interested parties, a provider of information and communications services may take a measure to block access to the information temporarily (hereinafter referred to as "temporary measure"). In such cases, the period for the temporary measure shall not exceed 30 days.

Related Provisions

Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. (amended by Act No. 14080 on March 22, 2016)

Article 44-2 (Request for Deletion of Information)

(1) Where information provided through an information and communications network purposely to be made public intrudes on other persons' privacy, defames other persons, or violates other persons' right otherwise, the victim of such violation may request the provider of information and communications services who managed the information to delete the information or publish a rebuttable statement (hereinafter referred to as "deletion or rebuttal"), presenting explanatory materials supporting the alleged violation.

Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. (amended by Act No. 9119 on June 13, 2008)

Article 44-2 (Request for Deletion of Information)

(5) Every provider of information and communications services shall clearly state in advance the details, procedures, and other matters regarding necessary measures in the terms and conditions.

Summary of the Decision

1. Whether the Principle of Clarity is Violated

The Provisions at Issue prescribe information and communications services provider to provisionally take the temporary measure in a situation where it is difficult for the provider to judge by materials submitted or allegations of the person claiming violation of one's rights whether a piece of information published in information and communications networks violates any right or where there is a dispute between interested parties regarding such materials or allegations. As people with a common sense of legal sentiment can ascertain which cases fall under the above situations and as it is difficult to understand that there is a risk of arbitrary interpretation, the Provisions at Issue do not violate the principle of clarity.

2. Whether the Principle against Excessive Restriction is Violated

In its decision on May 31, 2012 for 2010Hun-Ma88 case, the Constitutional Court of Korea viewed that there is no means other than the temporary measure, as provided in the contested provision of this case, that is less restrictive on the information publisher's freedom of expression and concurrently is effective in achieving the contested provision's legislative purpose; and that the procedural requirements and contents in placing the temporary measure, as provided in the contested provision of this case, are *in tandem* devised to restrict the information publisher's freedom of expression to the minimum extent necessary. Therefore, the Court held that the contested provision of this case is not in violation of the principle against excessive restriction.

Those who provide and use information and communications services are Parties to a contract for the use of information and communications services, such as an online bulletin board. Hence, information publisher *id est* information and communications services users are entitled to raise

an objection or request for a revocation of the temporary measure in accordance with the Terms of Use provided by the information and communications services provider. Considering that the objective of prescribing temporary measure in the Provisions at Issue is to prevent the chilling effect on information and communications service itself, which may result from the information and communications services provider's compensation liability for a myriad of information in possible violation of rights, it cannot be viewed that an information publisher's freedom of expression is excessively restricted because his/her right to raise an objection or request for a revocation is not stipulated in the Provisions at Issue but left in the hands of information and communications service provider via the provider's policy. Further, the temporary measure taken by the information and communications provider – a private party – is not interpreted as a ban on expression of the information. As the information can be republished by information publishers and various other communication channels are present, the temporary measure prescribed in the Provisions at Issue hardly disturbs the free formation of public opinion or gravely restricts the freedom of expression thereof. Considering the above, it is difficult to believe that any particular circumstance or need to reverse the precedent is perceived in this case, and therefore, the Court shall maintain legal precedents from its prior decision.

3. Conclusion

To conclude, the Provisions at Issue do not infringe on the freedom of expression of the Complainants.

Summary of Dissenting Opinion of Three Justices

The Provisions at Issue – which provide for the temporary measure, without any further procedural requirements, in a situation where it is

difficult to ascertain whether information violates any right or where it is anticipated that there will probably be a dispute between interested parties – are problematic in a way that they provide room for information and communications service provider to impose the temporary measure based solely on claims made by a person alleging violation of his/her right. In addition, although it is constitutionally required to practice interest balancing for every conflict of interests between personality rights and the right to freedom of expression in a specific and detailed manner, the Provisions at Issue has already been engaged in balancing of interests at the legislative stage, consequently precluding the possibility for information and communications services provider to practice interest balancing in individual cases of conflict and giving priority to the right to personality over the freedom of expression for a certain period of time. Such aspect strips the "timeliness" of expression – the desire to timely express when discussion on a particular case has grown in size – which results in a grave restriction on the freedom of expression and neglects the constitutional call for a balance in harmoniously guaranteeing the personality rights and the freedom of expression. Therefore, the Provisions at Issue violate the principle of minimum intrusion.

Meanwhile, the public interest the Provisions at Issue aim to achieve is to protect individual's personality rights by preventing the transmission of information that has a possibility or probability to infringe on one's rights, not information with a clear and present risk of infringing on one's rights. On the other hand, the private interest limited by the Provisions at Issue is a timely expression of one's idea or opinion on the internet. As it cannot be predicated that the former interest is absolutely superior to the latter interest, the Provisions at Issue do not pass the balance of interest test as well.

As such, the Provisions at Issue violate the principle of minimum restriction and infringe on the freedom of expression, and thus, is against the Constitution.

18. Case on Blacklisting Artists and Cultural Organizations and Directing Their Exclusion from Government Support Programs

[2017Hun-Ma416, December 23, 2020]

In this case, the Court held that the following acts of President, Minister of the Ministry of Culture, Sports and Tourism (the "MCST") and etc., for the purpose of excluding artists or cultural organizations in support of an election candidate from the country's opposition party or in criticism against the government from governmental programs providing support for the arts and culture sectors, were unconstitutional: ① the acts of collecting, retaining, and using data concerning the political opinions of individuals, and ② the act of directing affiliated organizations of the MCST to exclude these artists or cultural organizations from government programs providing support for the arts and culture sectors.

Background of the Case

Chief of Staff and Secretaries to President, under the direction of President Park Geun-hye, created a database on the so-called left-leaned figures and groups from around September 2013 to May 2014, and devised ways to restrict or block their access to the government support scheme. In doing so, a list of names to exclude from the support scheme was issued and delivered to the MCST.

From around May 2014, on the basis of the Office of President's exclusion list and the list delivered from the National Intelligence Service, the MCST gathered and continuously updated the list of artists and cultural organizations to be excluded from governmental support and remained attentive to prevent any individuals or groups on the list from benefiting from governmental support.

Under the instruction of Cheong Wa Dae (known as the Blue House), the MCST directed the staff of Arts Council Korea, Korean Film Council, and Publication Industry Promotion Agency of Korea to exclude

Complainants from the government support programs for artists and cultural organizations and blocked the Complainants' access to governmental support.

That being the case, Complainants filed this complaint on April 19, 2017 arguing that actions taken by Respondents infringe upon Complainants' right to self-determination of personal information, freedom of expression and right to equality.

Subject Matter of Review

The subject matter of this case is whether the fundamental rights of Complainants were infringed upon by the following acts of Respondents Chief of Staff to President, Senior Secretary to President for Political Affairs, Senior Secretary to President for Education and Culture, and Minister of MCST, that were performed under the direction of Respondent President for the purpose of excluding artists or cultural organizations in support of an election candidate from the country's opposition party or in criticism against the government, from government programs providing support for the arts and culture sectors: (1) collecting, retaining, and using data concerning the political opinion of Complainants Yoon ◆◆ and Jeong ◈◈ (hereinafter referred to as the "intelligence gathering and other activities in this case"); and (2) directing the staff of Arts Council Korea, Korean Film Council, and Publication Industry Promotion Agency of Korea to exclude Complainants from government support programs for artists and cultural organizations as prescribed in [Annex 2] (hereinafter referred to as the "order of exclusion in this case").

Summary of the Decision

1. The Intelligence Gathering and Other Activities in This Case

The intelligence gathering and other activities in this case were conducted

on information about self-expression of individuals in support of an election candidate from the opposition party or in criticism against the government. Such political expression belongs to personal information in a way that it reveals one's personal identity. Furthermore, notwithstanding that it was made in public, such political expression is within the scope of protection under the right to self-determination of personal information.

To guarantee the freedom of political expression to the maximum extent possible, it is important to fully protect the information about one's political expression. Also, the State's collection, retention and use of the information about one's political expression requires a concrete legal basis as such activities impose a grave restriction on the right to self-determination of personal information.

Nevertheless, as there is no statutory basis for delegation of powers to the government to process information concerning political opinions of artists and cultural organizations – so as to exclude them from government programs providing support for the arts and culture sectors, the intelligence gathering and other activities in this case violates the principle of statutory reservation.

Furthermore, the intelligence gathering and other activities in this case was devised to enforce an unconstitutional direction, which is, to block those in support of an election candidate from the opposition party or in criticism against the government from access to governmental support programs for artists and cultural organizations. Such activities in this case do not serve a legitimate legislative purpose and therefore is not a constitutionally permitted exercise of governmental authority.

2. The Order of Exclusion in This Case

○ Whether the freedom of expression is infringed

The order of exclusion in this case is an *ex post* restriction on individuals with a particular political opinion, which stripped away the opportunity to receive an impartial evaluation of their works submitted to apply for public arts and cultural projects. Such an order is a restriction

on the right of individuals or groups to freely express one's political opinion.

Expressing political views against policies etc., of the government is the most essential element in political freedom guaranteed by the Constitution and imposing restrictions based on a speaker's particular viewpoint is among one of the most extreme and harmful ways to suppress the freedom of expression. The order of exclusion in this case, nonetheless, lacks a legal basis, and the order was used as a means to impose restriction on Complainants holding critical views about the government. Such activities in this case run contrary to the fundamental constitutional principles of popular sovereignty and the free democratic basic order, and thus infringes the freedom of expression of Complainants.

○ Whether the right to equality is infringed

The order of exclusion in this case is a discriminatory practice that differentiated individuals who expressed a particular political opinion from those who did not do so, and excluded the former from governmental support programs.

In accordance with the principle of cultural state specified in the Constitution, the government is tasked to develop the national culture in a way that will harmoniously nurture diversity, autonomy and creativity while remaining impartial and fair. It should be viewed that the exclusion of individuals or groups from government programs providing support for the arts and culture sectors based on their political opinion is an arbitrary discrimination, and therefore infringes on the right to equality.

19. Case on Exclusion of Persons Who Are Less Than 65 Years of Age and Suffer from Geriatric Diseases from Eligibility to Apply for Activity Support Allowances

[2017Hun-Ka22, 2019Hun-Ka8 (consolidated), December 23, 2020]

In this case, the Court held that the part of the main text of Article 5 Item 2 of the Act on Support for Activities of Persons with Disabilities, which excludes from eligibility to apply for activity support allowances any persons with disabilities who are less than 65 years of age and unable to perform activities of daily living by themselves and suffer from geriatric diseases under the Long-Term Care Insurance Act, does not conform to the Constitution by violating the principle of equality.

Background of the Case

Petitioners, two individuals with brain lesions, are each a "person who is less than 65 years of age and suffers from a specified geriatric disease" under Article 2 Item 1 of the Long-Term Care Insurance Act. Each Petitioner applied for an activity support allowance, which is for persons with disabilities, but the applications were refused and denied, respectively, because Petitioners were eligible for long-term care benefits.

Each Petitioner filed a lawsuit seeking to revoke the decision issued on each Petitioner's application. While the cases were pending, Petitioners petitioned the courts deciding these cases to request constitutional review of, *inter alia*, the main text of Article 5 Item 2 of the Act on Support for Activities of Persons with Disabilities, which formed the basis for the decisions issued on the activity support allowance applications.

The courts granted the petitions for constitutional review of the main text of Article 5 Item 2 of the Act on Support for Activities of Persons with Disabilities and requested this constitutional review.

19. Case on Exclusion of Persons Who Are Less Than 65 Years of Age and Suffer from Geriatric Diseases from Eligibility to Apply for Activity Support Allowances

Subject Matter of Review

The subject matter of review in this case is whether the part concerning "a person who is less than 65 years of age and suffers from a geriatric disease specified by Presidential Decree, such as dementia or a cerebrovascular disease" (such part hereinafter referred to as the "Provision at Issue") of the phrase "'senior citizen' within the meaning of Article 2 Item 1 of the Long-Term Care Insurance Act" in the main text of Article 5 Item 2 of the Act on Support for Activities of Persons with Disabilities (enacted by Act No. 10426 on January 4, 2011) (hereinafter referred to as the "ASAPD") violates the Constitution. The Provision at Issue reads as follows:

Provision at Issue

ASAPD (enacted by Act No. 10426 on January 4, 2011)

Article 5 (Eligibility to Apply for Activity Support Allowances)

An individual eligible to apply for an activity support allowance is a person who meets all the following requirements:

2. The person is not a "senior citizen" within the meaning of Article 2 Item 1 of the Long-Term Care Insurance Act and is over the age prescribed by Presidential Decree; or has been a recipient of an activity support allowance pursuant to this Act [ASAPD], does not receive long-term care benefits under the Long-Term Care Insurance Act after 65 years of age, and meets the standards determined by the Minister of Health and Welfare.

Related Provision

Long-Term Care Insurance Act (enacted by Act No. 8403 on April 27, 2007)

Article 2 (Definition)

The terms used in this Act shall be defined as follows:

1. The term “senior citizen” means a senior citizen who is not less than 65 years of age or a person who is less than 65 years of age and suffers from a geriatric disease specified by Presidential Decree, such as dementia or a cerebrovascular disease;

Summary of the Decision

1. Whether the principle of equality is violated

Geriatric diseases under the Long-Term Care Insurance Act (hereinafter referred to as “Geriatric Diseases”) can be classified into four categories: dementia, stroke, arteriosclerosis, and parkinsonism. The specific symptoms or progression of Geriatric Diseases varies by type and age of onset of the disorder and by individuals’ health conditions and treatment.

Persons less than 65 years of age are in the stages of life where they actively engage in social activities. Thus, they are likely to have a strong desire for independent living or be in great need of support therefor. They are also likely to improve considerably with treatment or be rehabilitated if early diagnosed with Geriatric Diseases.

Therefore, it is difficult to conclude that the onset of Geriatric Diseases brings about objective inability to perform social activities or results in a surge in a need or desire for long-term care at home.

Additionally, there is a wide disparity between the amount of an activity support allowance (maximum of 6,480,000 won per month for Class 1) and the amount of a long-term care benefit (maximum of 1,498,300 won per month for Grade 1). There is also a significant difference between activity support allowances and long-term care benefits in whether the payment provides support for social activities and other activities promoting independent living.

Notwithstanding the above, the Provision at Issue excludes from eligibility to apply for activity support allowances any persons with

disabilities who are less than 65 years of age and suffer from Geriatric Diseases, and this exclusion constitutes unreasonable discrimination. Consequently, the Provision at Issue violates the Constitution by contravening the principle of equality.

2. A decision of nonconformity to the Constitution and an order for temporary application

If the Provision at Issue was rendered instantly void by the decision of simple unconstitutionality, there would be problems associated with concurrent payment of activity support allowances and long-term care benefits, and a legal vacuum would be created on the dividing line between the allowance under the ASAPD, provided based on need of support for independent living, and the benefit under the Long-Term Care Insurance Act, provided based on need of care and nursing.

Further, because of the characteristics of entitlement to social security benefits, it is in principle within the discretion of the legislature to decide the manner in which the unconstitutionality of the Provision at Issue is rectified and its constitutionality is achieved.

Therefore, we declare the Provision at Issue nonconforming to the Constitution and order its temporary application until the legislature amends it by December 31, 2022.

Appendix

THE CONSTITUTION OF THE REPUBLIC OF KOREA

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

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.

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.

(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

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 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 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.

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

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, 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 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 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.

(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.

(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 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

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 move ment 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

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

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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