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## The Effects of the Constitutional Adjudications on Politics in Korea

Young-Joon Mok

### I. Preface

On behalf of the Constitutional Court of Korea, I truly congratulate the 20th anniversary of the establishment of the Constitutional Court of Hungary, and I am really grateful to President Paczolay for inviting us to this valuable conference.

Also, it is my great honor to speak at this meeting before such famous persons, and I sincerely hope that this presentation will be informative.

Since the main theme of this conference is "Politics and Law in Constitutional Justice: from the political question's doctrine to judicial politics", I would like to present on "The Effects of the Constitutional Adjudications on Politics in Korea".

It would be the status of the Constitutional Court in Korea, the constitutional adjudications on political issues, and the role of the Constitutional Court in relation with politics in sequence.

### II. Status of the Constitutional Court

#### 1. Independence of the Constitutional Court

We can hardly imagine the constitutional justice without the independence of the Constitutional Court from political powers. Thus, the Constitution of Korea guarantees the Constitutional Court not only the independence of Justices but also the autonomy of the Court's management.

The Constitutional Court is composed of 9 Justices, three of whom shall be elected by the National Assembly, that is, the Congress of other countries, three of whom shall be designated by the President of Korea, and three of whom shall be designated by the Chief Justice of the Supreme Court.

No Justices shall be discharged from his/her office against his/her will unless he/she is impeached or is sentenced to a punishment heavier than imprisonment.

#### 2. Competence of the Constitutional Court

The Constitutional Court has jurisdiction over the adjudications on ① constitutionality of statutes, ② impeachment, ③ dissolution of political parties, ④ competence disputes between state agencies and local governments, ⑤ constitutional complaint.

##### (1) Constitutionality of statutes

The Court will adjudicate on the constitutionality of statutes when an ordinary court requests to the Court the review of unconstitutionality of the statutes pending at the case.

On the other hand, if an ordinary court rejects the motion from the party to the pending case for requesting the aforesaid review of statutes to the Constitutional Court, the party may file a constitutional complaint against the decision of the ordinary court rejecting the motion, which makes the Constitutional Court review the unconstitutionality of the statutes as the same procedure mentioned above.

##### (2) Impeachment

The Constitutional Court has exclusive jurisdiction over the impeachments on high-ranking public officials including the President, the Prime Minister, Justices and judges and so on.

When a request of impeachment is upheld by the National Assembly, the Constitutional Court shall decide whether the accused person be removed from his/her office or not.

##### (3) Dissolution of political parties

The Constitutional Court shall adjudicate on dissolution of the political parties when the Executive requests so on the ground that the objectives and activities of the party are contrary to the basic order of democracy.

##### (4) Competence disputes

When any controversy on the existence or the scope of competence arises between state agencies, between a

state agency and a local government, between local governments, the Constitutional Court shall decide, on the request of any party, whether or not the other party infringes on its competence granted by the Constitution and laws.

#### **(5) Constitutional complaint**

Anyone, whose fundamental right guaranteed by the Constitution has been violated by an exercise or non-exercise of governmental power or directly by the legislative act, may file a constitutional complaint to the Constitutional Court.

The judgments of ordinary courts, however, cannot be the subject of the complaint, unless they are contrary to the precedents of the Constitutional Court.

The decision of the Constitutional Court to uphold the complaint shall bind all the state agencies, including the Legislative and the Executive, and the local governments.

### **III. Constitutional Adjudications on political issues**

During 21 years, the Constitutional Court has dealt with a lot of cases which were deeply related with sensitive political issues.

Among them I would like to introduce to you two crucial cases, which are the impeachment case where the President of Korea of those days were accused, and the constitutional complaint case where the relocation of the capital of Korea were debated.

#### **1. Impeachment of the President**

The Constitution of Korea specifies the ground for impeachment as the accused violates the Constitution or laws in performing his/her official duty.

In 2004, just before the national election, then President Roh made a few speeches supporting his own political party at press conferences, in spite that the Election Act required all public officials to be neutral in politics and prohibited them from electoral campaigns. Then the National Assembly which was dominated by the opponent party resolved to accuse the President for the impeachment by over two thirds of all members on the ground that he violated the Election Act by doing electoral campaigns against the duty of neutrality. Since not only the legitimacy of the accusation for impeachment were fiercely controversial among the people, but also the function of the President should be suspended until the decision of the Constitutional Court was made, it was very urgent for the Court to settle down the political turmoil by judging on the case.

The Constitutional Court specified that the constitutional ground for impeachment that "he/she violates the Constitution or laws in performing his/her official duty" meant not that "there is any violation of laws", but that "there is the serious violation which could justify the discharge", and thus, a decision to remove the President from his/her office should be made in such limited circumstances as either where the maintenance of the presidential office could be no longer permitted from the standpoint of protecting the Constitution, or where he had lost the qualification to administrate state affairs by betraying the trust of the people. In this context, the Court ruled that, though the President violated the Election Act against the duty of neutrality at the time close to the election, the motion for his impeachment should be dismissed because such violations would not fall within the extent of the ground for impeachment mentioned above.

As we have seen above, the Court, on the one hand, gave the President the warning not to ignore laws any more by clearly expressing the violation of laws, but on the other hand, considering the democratic legitimacy of the President who were directly elected by the people, interpreted the meaning of the ground so strictly that it could dismiss the motion for impeachment.

#### **2. Relocation of the capital of the nation**

In 2004, under the initiative of the President and the ruling Party, the National Assembly passed "the Special Act of Establishing New Administrative Capital", which would practically move the capital of the country from Seoul into Chungcheong province.

The residents of Seoul and other provinces filed a constitutional complaint on the ground that the Act encroached on their rights of national referendum and others.

In this case, the Court set forth as a premise that the relocation of the capital where the President, the National Assembly and the Judiciary were located was the core of the Constitution, and that the concept that 'Seoul is the capital' was the constitutional custom that had been maintained for over 600 years. The Court also said that, though such substance was not written in the Constitution, it was also a part of the Constitution and was endowed with the same effect as that of the written Constitution.

Accordingly, the Court ruled that the relocation of the capital should be decided not by the statute of the

National Assembly, but by the constitutional revision procedure, that is, the national referendum, and held by 8 to 1 that the Act was in violation of the Constitution as it excluded the constitutional fundamental right to vote on national referendum.

The judgment of the Court finished the heated debates and the serious conflicts on the relocation of the capital, though there are still criticisms that the Court introduced the unwritten concept of 'constitutional custom' into constitutional adjudications.

#### **IV. Role of the Court**

As we have seen before, the adjudications of the Constitutional Court have made great impacts on the politics of Korea. It cannot be denied that the political groups were not satisfied with the rulings of the Court which interrupted or frustrated their political plans. However, by judging all political issues only on the Constitution and Justices' own conscience without regard to any political concern, the Court has got more trust and credibility from the people than any other state organ, the result of which obliges all the state agencies, including the Executive, the Legislative, the Judiciary, and the local governments of Korea to observe the guideline stipulated by the Court.

Consequently, the Constitutional Court of Korea has played a role as safeguarding the constitutional values, controlling political powers, protecting fundamental rights of people, as well as preserving political peace by absorbing political conflicts into the field of constitutional adjudication.

#### **V. Conclusion**

In that the goals of politicians are not always in accordance with constitutional values, it might be inevitable that there may happen the conflicts between politics and legal justices. Thus, the Constitutional Court has the grave responsibility to lead politics to harmonize with constitutional justices by applying judicial standard to political area.

In that sense, I am confident that the Constitutional Court of Korea will continue to perform its duty in the future as successfully as before.

In closing, let me again express my sincere gratitude to all the distinguished participants here, and my celebration to the Constitutional Court of Hungary on the 20th anniversary of its foundation.

Thank you for your attention.