



This newsletter is published semiannually and introduces major news and decisions of the Constitutional Court of Korea. For further information, please visit the court's official website (english.ccourt.go.kr).

NEWS

AACC Secretariat for Research and Development Holds the 3rd Research Conference Online

June 17, 2022

AACC Secretariat for Research and Development, run by the Constitutional Court of Korea, held the 3rd Research Conference online on the 15th and 16th of June.

Under the title of “Right to Life,” the Conference brought together 42 participants from constitutional adjudicatory bodies in 18 Asian countries, and special guests from the European Court of Human Rights and the University of Tsukuba, Japan. They discussed how the right to life is ensured through the Constitution and the constitutional adjudication and shared each of their insights and experience on their national obligation of life protection.

“There has been a growing need for a deep discussion on the national obligation of life protection as the whole world has gone through the Covid-19 pandemic,” said Yoo Namseok, President of the Constitutional Court of Korea in his congratulatory remarks. He also added that the meeting would “present us with an opportunity to share our detailed thoughts and perspectives on diverse issues related to “life” in the realm of constitutional justice.”



President Yoo attended the International Conference on the Occasion of the 60th Anniversary of the Constitutional Court of the Republic of Türkiye

April 26, 2022

President Yoo Namseok of the Constitutional Court of Korea attended the International Conference on the Occasion of the 60th Anniversary of the Constitutional Court of the Republic of Türkiye, at the invitation of his counterpart President Zühtü Arslan.



President Yoo shared various opinions with the heads of constitutional adjudicatory bodies from other countries, and in a bilateral meeting with President Arslan, expressed his congratulations on the 60th Anniversary of the Constitutional Court of the Republic of Türkiye and discussed ways to expand exchanges and cooperation between the two Courts.

Also, in the International Conference, Justice Lee Jongseok gave a presentation on “Constitutional Interpretation in the Republic of Korea’s Constitutional Adjudication,” sharing his experience as a Justice of the Korean Constitutional Court with the participants from other countries.

Operation of “Hunjae Talk”, a Chatbot for Public Inquiry Service

April 12, 2022

On April 12, the Constitutional Court of Korea initiated the automated public inquiry service called “Hunjae Talk,” a chatbot on the website(www.ccourt.go.kr). “Hunjae Talk” serves as an AI chatting robot that answers an inquiry 24/7 about the constitutional adjudication procedure, information on filing a case, and more; this service is also available on mobile.

The users of this service can write questions on it just like sending a text message on the mobile phone and can also get an answer right away by clicking suggested items on the screen such as “Adjudication on Constitutional Complaint.” When they click on the “recommended keyword” or “recommended question,” it guides them to more detailed information as well.



Attendance at the New Year Greeting Event hosted by the President of the Republic of Korea

January 4, 2022

Yoo Namseok, President of the Constitutional Court of Korea, attended the 2022 New Year Greeting Event hosted by the President of the Republic of Korea online on the 3rd of January at the online conference room in the Constitutional Court of Korea.



“As our people have always done, we will comfort each other and heal each of our wounds, and through warm affection and solidarity, we shall wisely overcome this unprecedented challenge and difficulties ahead of us, thereby building an evermore gracious society,” said President Yoo in his speech at the event.

He also said, “To achieve that goal, the Constitutional Court of Korea will be fully committed to embodying the constitutional spirit, which sets forth human dignity as the prime value, and doing our best in our roles and duties in ensuring basic human rights.”

The New Year Greeting Event was held online, the same as the last year, and was attended by 46 participants including major government officials and the representatives of citizens.

MAJOR DECISIONS

1. **Case on Korean Bar Association’s “Regulation on Attorney Advertising” Governing Content, Method, Etc. of Attorney Advertising [2021Hun-Ma619 (May 26, 2022)] - unconstitutional, rejected**

On May 26, 2022, the Court issued decisions regarding the Korean Bar Association’s Regulation on Attorney Advertising (wholly amended on May 3, 2021), which governs, *inter alia*, the content and method of attorney advertising.

1. In a unanimous decision, it held unconstitutional both the part “an advertisement including content that is contrary to the authoritative interpretation of the Association” of Article 4 Item 14 of the Regulation and the part “where its purpose or means is an act that is in violation of the authoritative interpretation of the Association” of Article 8 Section 2 Item 4 of the Regulation. (Unconstitutional)

Justices Yoo Namseok, Lee Suk-tae, Lee Youngjin, and Lee Mison filed a concurring opinion to state an additional reason for this holding.

2. In a 6-to-3 decision, the Court ruled unconstitutional the part “advertises, publicizes, or introduces an Attorney” of Article 5 Section 2 Item 1 of the Regulation. (Unconstitutional)

Justices Lee Seon-ae, Lee Eunae, and Lee Jongseok filed a dissenting opinion that this part does not violate the Constitution.

3. The claims against the other provisions were rejected. (Rejected)

2. **Case on Interference with Business by Force [2012Hun-Ba66 (May 26, 2022)] - constitutional**

On May 26, 2022, the Court held, in a 4-to-5 decision, that the clause “A person who interferes with the business of another by force” of Article 314 Section 1 of the Criminal Act (amended by Act No. 5057 on December 29, 1995) does not violate the Constitution. (Constitutional)

Justices Yoo Namseok, Lee Suk-tae, Kim Kiyong, Moon Hyungbae, and Lee Mison filed an opinion for partial unconstitutionality. They noted that the right to collective action is infringed by the part of the above clause concerning a simple strike—an industrial action for enhancing working conditions that takes the form of collective refusal, unaccompanied by any affirmative act, to provide labor.

3. **Case on Prohibiting Non-Medical Personnel from Performing Tattooing Procedures [2017Hun-Ma1343 and five other cases (consolidated) (Mar 31, 2022)] - rejected, dismissed**

On March 31, 2022, the Court, in a 5-to-4 decision, (1) rejected Complainants’ arguments regarding the first clause of the main sentence of Article 27 Section 1 of the Medical Service Act (wholly amended by Act No. 8366 on April 11, 2007) and the part of Article 5 Item 1 of the Act on Special Measures for the Control of Public Health Crimes (amended by Act No. 10579 on April 12, 2011) concerning the above Medical Service Act clause, and (2) dismissed Complainants’ arguments regarding the legislative omission to prescribe by statute the qualifications and requirements for the professional practice of tattooing procedures by non-medical personnel. (Rejected, Dismissed)

Justices Lee Suk-tae, Lee Youngjin, Kim Kiyong, and Lee Mison filed a dissenting opinion that the above provisions infringe the freedom of occupational choice.

4. Case on Failure of Criminal Compensation Act to Provide Criminal Compensation for Excessive Confinement [2018Hun-Ma998, 2019Hun-Ka16, 2021Hun-Ba167 (consolidated) (Feb 24, 2022)] - nonconformity

On February 24, 2022, the Court, in a 6-to-3 opinion, rendered a decision of nonconformity to the Constitution on Article 26 Section 1 of the Act on Criminal Compensation and Restoration of Impaired Reputation, which by no means provides any prerequisite to compensation for execution of confinement that exceeds the sentence pronounced in the judgment in the retrial proceeding—in which the defendant is not found not guilty but, as a result of an amendment to the bill of indictment which changes the applicable provision in this indictment from an aggravated penalty clause held unconstitutional to a penalty clause providing for a punishment lighter than that prescribed by the aggravated penalty clause, is given the judgment of final conviction imposing a sentence lighter than that imposed by the judgment in the original trial—initiated due to a decision of unconstitutionality rendered by the Court against the aggravated penalty clause serving as the basis for the judgment in the original trial: the Court declared unconstitutional Article 26 Section 1 of the Act on Criminal Compensation and Restoration of Impaired Reputation, reasoning that it infringes the right to equality of Complainants and Movant by violating the principle of equality, but issued the constitutional nonconformity decision ordering it be applied continuously until the legislature amends it by no later than December 31, 2023. (Nonconforming to the Constitution)

Justices Lee Seon-ae, Lee Eunae, and Lee Jongseok filed a dissenting opinion that the above provision is not in violation of the Constitution. Justice Lee Mison filed a concurring opinion regarding an amendment to a bill of indictment in general criminal proceedings.

5. Case on Real Name Financial Transactions Act Clauses That Prohibit Any Person from Requesting Person Working for Financial Company, Etc. to Provide Transaction Information, Etc. and That Criminally Punish Violation of Such Prohibition [2020Hun-Ka5 (Feb 24, 2022)] – unconstitutional

On February 24, 2022, the Court, in an 8-to-1 decision, held unconstitutional the following clauses that prohibit requesting a person working for a financial company, etc. to provide transaction information, etc., and that criminally punish violation of such prohibition: (1) the part “no person may request a person working for a financial company, etc. to provide transaction information, etc.” in the main text of Article 4 Section 1 of former versions of the Act on Real Name Financial Transactions and Confidentiality; (2) the relevant portions of Article 6 Section 1 of those versions; (3) the part “no person may request a person working for a financial company, etc. to provide transaction information, etc.” in the main text of Article 4 Section 1 of the current version of the Act on Real Name Financial Transactions and Confidentiality; and (4) the relevant portions of Article 6 Section 1 of that version. (Unconstitutional)

Justice Lee Seon-ae filed a dissenting opinion that the above clauses do not violate the general right to freedom of action.

6. Case on National Assembly Act Provision Providing for Closed Meetings of Intelligence Committee [2018Hun-Ma1162, 2020Hun-Ba428 (consolidated) (Jan 27, 2022)] - unconstitutional, dismissed

On January 27, 2022, the Court dismissed, in a unanimous decision, Complainants' argument against the National Assembly Intelligence Committee Chairman's denial of their application to attend and observe a meeting of the bill review subcommittee of the National Assembly Intelligence Committee, and held, in a 7-to-2 decision, unconstitutional the main text of Article 54-2 Section 1 of the National Assembly Act (amended by Act No. 15620 on April 17, 2018), which prescribes that the meetings of the Intelligence Committee shall not be open to the public. (Dismissed, Unconstitutional)

Justices Lee Eunae and Lee Youngjin filed a dissenting opinion that the above provision is not in conflict with the principle of open legislative meetings and the rule against excessive restriction and thus does not violate the Constitution.

7. Case on Measure of Completely Shutting Down Kaesong Industrial Complex [2016Hun-Ma364 (Jan 27, 2022)] - rejected, dismissed

On January 27, 2022, in a unanimous decision, the Court rejected the complaint of some Complainants, which are enterprises that invested in the Kaesong Industrial Complex, against a series of acts that composed the measure of completely shutting down the operation of the industrial complex—namely against Respondent President of Korea's decision to completely shut down its operation and Respondent Minister of the Ministry of Unification's formulation of a plan for withdrawal from the industrial complex and his notification to the relevant businesspersons, release of a statement declaring a complete shutdown of the industrial complex, and enforcement of such shutdown—and dismissed the complaint of the other Complainants. (Rejected, Dismissed)

8. Case on Special Provision on Admissibility of Video Recorded Statement Made by Sexual Crime Victim under Age of 19 [2018Hun-Ba524 (Dec 23, 2021)] - unconstitutional

On December 23, 2021, in a 6-to-3 decision, the Court held unconstitutional the part relating to a "sexual crime victim under the age of 19" of the portion "A victim's statement in a video recording that was made under Section (1) may be admitted as evidence if, during a preparatory hearing or a hearing, that statement is authenticated by a statement of a trusted person or intermediary who sat with the victim during the investigative interview process" of Article 30 Section 6 of the Act on Special Cases concerning the Punishment of Sexual Crimes (wholly amended by Act No. 11556 on December 18, 2012), which prescribes that a video recording of a statement made by a sexual crime victim under the age of 19 during an investigative interview process may be admitted as evidence if that statement is authenticated by a trusted person or intermediary who sat with the victim during that interview process. (Unconstitutional)

Justices Lee Seon-ae, Lee Youngjin, and Lee Mison filed a dissenting opinion that the above provision is not contrary to the rule against excessive restriction and thus does not violate the Constitution.

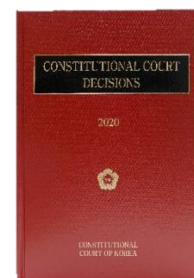
For details, please visit

<http://english.court.go.kr/site/eng/ex/bbs/List.do?cbIdx=1143>

PUBLICATIONS

Constitutional Court Decisions (2020)

This book contains the summary of major decisions made by the Constitutional Court of Korea in 2020.



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