

## 4. A Constitutional Review Model: The Case of Korea \*

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### *Abstract*

Since the establishment of the Constitution in 1948, the Republic of Korea had gone through various constitutional adjudication systems. However, Korea had failed to run these systems efficiently and normatively as the right means of protecting the Constitutional order.

Then the current Constitution, revised in 1987, introduced the Constitutional Court. The Constitutional Court is currently recognized as an indispensable component to protect people's basic rights and to realize 'rule of law' and constitutionalism. The Constitutional Court has jurisdictions regarding constitutional review such as the adjudication on constitutionality of statutes, on impeachment, on dissolution of a political party, on competence dispute between government institutions or local and federal organs, and on constitutional complaint.

This constitutional adjudication system has developed its own distinct characteristics which differ from that of Germany and the United States, namely the two prominent models of constitutional adjudication. From its birth until now, the Constitutional Court has judged around 37,080 cases and 1,709 cases (4.6%) among these were decided to be unconstitutional. Most of the cases are either on the constitutionality of statutes or on the constitutional complaints. Meanwhile, the two most important and unprecedented cases of the Constitutional Court would be the dissolution of the Unified Progressive Party in 2014 and the impeachment of the incumbent President in 2017.

Despite aforementioned attainments, the Constitutional Court of Korea has further tasks to fulfill. The Constitutional Court needs to practice its authorities within the limits of the Constitution, respect diversity, strengthen its independence, protect democratic legitimacy and harmonize its decisions with the Supreme Court.

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## **INTRODUCTION**

The Korean Constitution sets forth the basic values and order of the state nation. To be specific, it defines the governing organization in one part and guarantees the basic rights in the other. Since the Constitution is the supreme legal norm of the society, no governmental authority shall violate the Constitution. The phrase ‘governmental authority’ or ‘governmental power’ in this context includes the three of the legislative power, the administrative power and the judicial power.

By protecting the basic rights from the abuse of governmental power, mandating the government to practice its power within the limit of the Constitution, the Constitutional Court protects the constitutional order. Especially, by subjecting governmental power to the basic rights and securing procedural legitimacy in practice of governmental power, the Constitutional Court also realizes the substantial principle of ‘rule of law’. This function of the Constitutional Court is realized through the constitutional adjudication system, in which the Court makes a final and ultimate decision on various constitutional matters based on the constitutional principles.

This is the reason why the Constitutional Court is recognized as an indispensable component of national governance in Korea, along with the representative system, the separation of powers, the election system and the local-governing system. The important role the Korean Constitutional Court and its constitutional adjudication system share in Korean society is also an interesting example for scholars and lawyers of international society.

### **I. CONSTITUTIONAL ADJUDICATION: ITS HISTORICAL DEVELOPMENT AND THE CURRENT SYSTEM**

The Constitutional Court of Korea has developed a distinctive constitutional adjudication system which clearly differs from both the German system and the U.S. system. Examining its historical development and reviewing the current system would be necessary to understand Korean constitutional adjudication thoroughly.

#### **1. Historical Development**

The first Constitution which was enacted in 1948 established two different organs to deal with constitutional matters: the Constitutional Committee to decide on the constitutionality of statutes and the Court of Impeachment to decide on the impeachment cases. Ten Justices composed the Constitutional Committee – five of the Justices were Supreme Court Justices and the other five were members of the National Assembly – and the Vice President was the Chairman of the Committee. The Committee existed for 10 years but dealt with only six cases during the period. Two cases of statutes were decided to be unconstitutional – Article 18(1) and 24(1) of the Agricultural Land Reform Act and Article 9(1) of the Special Measure Decree on Punishment of Crimes Under National Emergency.

In this case, above three provisions were decided to be unconstitutional because they infringed the right to trial to the Supreme Court.

In 1960, the fourth Constitution stated that the Constitutional Court shall be established. However, the May 16 Military Coup D'état took place only one month after the enactment of the Constitutional Court Act and the Constitutional Court was never built in reality.

The Constitution of 1962 abolished the Constitutional Court and mandated constitutional adjudication to the Supreme Court. Within 10 years thereafter, only two cases of statutes were decided unconstitutional by the Supreme Court. In the first case, Article 2(1) of the National Compensation Act was decided unconstitutional since it infringed the right to claim for damages and the right to equality. In the second case, Article 59(1) of the Court Organization Act was decided unconstitutional as it violated the jurisdiction of the Supreme Court over adjudication on constitutionality of statutes. Another important decision in this period would be the case on the criminal law clause on rape. The clause which limited the object of 'rape' to 'women' and thus concluded that not any male person could become a victim of the rape crime was decided to be constitutional. Also, according to the decision of the Supreme Court, the capital punishment in criminal law shall be constitutional.

Finally in 1972, the Supreme Court lost its authority for constitutional adjudication and the eighth Constitution reintroduced the Constitutional Committee. This constitutional adjudication system gave the Constitutional Court the authority to decide on the three sorts – the constitutionality of statutes(at the request of the Supreme Court), the impeachments and the dissolution of political parties. This system existed without any change under the ninth Constitution, but not any decisions were made in the period of the eighth and ninth Constitution. Namely, the Constitutional Court had its power only in name.

## **2. Current System**

The current Constitutional Court was introduced in 1987 by the tenth Constitution. The tenth Constitution which is the current Constitution bestowed upon the Constitutional Court five sorts of constitutional review – the adjudication on constitutionality of statutes, the impeachment, the dissolution of political parties, the competence dispute between government institutions or local and federal organs, and the constitutional complaint.

The Constitutional Court decided on a total of around 37,080 cases from its establishment in 1988 until July 2019. Among them, 1,709 cases were decided to be unconstitutional, which is around 4.6% of the whole decisions. In detail, there were 929 cases on constitutionality of statutes of which 388 cases were decided to be unconstitutional, 2 cases on impeachment of which 1 case was upholding, 2 cases on dissolution of a political party of which 1 case was upholding,<sup>1</sup> 107 cases on competence

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<sup>1</sup> The second one was a retrial in which the subject matter was the very same with the first trial.

dispute of which 19 cases were decided unconstitutional, and 28,765 cases on constitutional complaint of which 1,300 cases were decided to be unconstitutional.<sup>2</sup>

The Constitutional Court is recognized as an indispensable component to protect the people's basic rights from abusive practice of public power and to realize constitutionalism and rule of law substantially. In particular, the introduction of the constitutional complaint is assumed to be an important event in the history of Korean constitutionalism. Through this system, individuals can file a case by him or herself directly without prior procedure going through other governmental organs.

## **II. ORGANIZATION OF THE CONSTITUTIONAL COURT**

Korean constitutional adjudication system is based on the German model and has adapted some factors from the system of the United States. This results a distinct system of Korean Constitutional Court and one of the most characteristic point is that constitutional review is assigned to a separate court of the Constitutional Court. The function of the Constitutional Court and the Supreme Court may collide with each other in some case.

### **1. Justices and the Chief Justice**

The Constitutional Court is composed of nine Justices who shall be qualified to be court judges are appointed by the President. Among the nine, three are selected by the National Assembly and the other three are selected by the Chief Justice of the Supreme Court. As a result, though the President appoints the nine Justices, only three of them are selected by the President him/herself. The term of Justices in offices is six years and can be renewed, though there has not been any Justice in the history to be re-appointed. The retirement age of a Justice is 70.

The Chief Justice of the Constitutional Court is appointed by the President among the Justices, but with the consent of the National Assembly. The Chief Justice represents the Constitutional Court and takes charge of the affairs of the court. Being the chairman of the Council of Justices, the Chief Justice directs the Full Bench of the Court. The term of the Chief Justice in office is six years and the retirement age is 70. Other treatments and remuneration would be the same as the Chief Justice of the Supreme Court.

The status of the Justice is strictly protected and guaranteed for the independence of the Constitutional Court. Justices rule independently following their conscience and in conformity with the Constitution and relevant Acts. 'Conscience' in this context shall not be understood as a personal or subjective one, but rather a professional and objective one. Additionally, Justices are not removed from office except when in case of impeachment against him/herself or a being sentenced of

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<sup>2</sup> <http://www.ccourt.go.kr/cckhome/kor/info/selectEventGeneralStats.do>

imprisonment without prison labor or heavier. Not any Justice would be suspended from office or have his/her salary reduced or suffer any other unfavorable treatment except by disciplinary action. These institutions are all to protect the Justices from external power that force them to decide against their professional conscience.

## **2. Procedure of Judgement**

The process of a constitutional adjudication begins when a petition is filed to the Constitutional Court by submitting a written request, either in person, by post or via online and mobile phone. In the Full Bench consisting of all nine Justices, the presence of seven or more Justices is required to hear a case, and it takes a majority vote for a decision. However, six or more Justices' agreeing votes are required in cases falling under any of the followings: deciding a statute unconstitutional, impeaching the impeached, dissolving a political party, upholding a constitutional complaint and overruling the precedent of the Constitutional Court on interpretation and application of the Constitution or laws.

There are both oral and written arguments. In the adjudication of impeachment, dissolution of a political party and competence dispute, arguments are conducted orally. On the other hand, in the adjudication on the constitutionality of statutes and constitutional complaint, arguments are conducted through papers. Additionally, the Constitutional Court can examine evidence or demand for submission of relevant materials if necessary.

When the Full Bench concludes a hearing, the Justices involved prepare and sign a written decision. In this process, all Justices shall express their opinions on the written decision. The Constitutional Court shall pronounce the final decision within 180 days after receiving the case for adjudication. However, the time limit is non-compulsory and exceeding the period does not infringe the right to trial in conformity with the Constitutional Court Act. The expenses for adjudication by the Constitutional Court shall be borne by the state.

The Constitutional Court adopts the principle of compulsory attorney representation. Thus claimants or respondents must have an attorney as his or her counsel and have the attorney to pursue the proceeding. In case an individual has no financial ability to retain an attorney, he or she can be provided assistance from a court-appointed counsel.

## **III. ADJUDICATION ON CONSTITUTIONALITY OF STATUTES**

The adjudication on constitutionality of statutes is frequently filed and discussed. The diverse ways of a case of the constitutionality of a certain statute being raised toward the Constitutional Court and diverse sorts of decisions made by the Court are very important in understating Korean constitutional adjudication system.

## **1. Jurisdiction**

The Constitutional Court can nullify a statute by deciding it unconstitutional. Through this system, the work of legislative branch is examined and the checks-and-balances mechanism is realized.

The Constitutional Court has its authority on concrete normative control, rather than an abstract normative control. This means that the Constitutional Court can decide on the constitutionality of a statute only when the constitutionality of the statute is relevant to the judgement of a judicial case which is ongoing in ordinary courts such as the Supreme Court<sup>3</sup>. Additionally, only a statute that is already enacted and has gone into effect can be an object of the adjudication. Thus an adjudication on constitutionality of statutes is not an ex ante constitutional review, but an ex post one.

There are three ways a case of the constitutionality of statutes could be filed to the Constitutional Court. Firstly, an ordinary court can request the Constitutional Court directly and by its own decision for adjudication in case the ordinary court regards a statute or any provision of the statute unconstitutional.

Next, the ordinary court can answer the call of the party when it decides the call is persuasive. In this case, the party cannot request for constitutional adjudication by himself or herself and the request should be done only through the ordinary court.

Finally, when the ordinary court does not find the call of the party persuasive and reject the call, the individual party may file a constitutional complaint directly. The filing is available only when the ordinary court has already rejected the call and this complaint is filed not against the court's judgement but only against the statute itself.

## **2. Characteristics**

In terms of the adjudication on constitutionality of statutes, the jurisdiction differs in accordance with the legal status of the statute to be examined. When the statute is an Act or laws enacted by the National Assembly, the jurisdiction belongs to the Constitutional Court. When administrative decrees or regulations or actions created by the administrative branch are to be examined, the jurisdiction belongs to the Supreme Court. However in both cases, the statutes can be on adjudication only when the constitutionality of statutes is at issue in a trial.<sup>4</sup>

Additionally, any statute or provision thereof decided as unconstitutional shall be ineffective from the day in which the decision is made. Only when the statute or provision is related to criminal punishment, the statute or provision shall be ineffective retroactively. The statute or provision decided

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<sup>3</sup> In this paper, civil, criminal, administrative, family courts, namely all the courts other than the Constitutional Court would be called 'ordinary' in comparison with the Constitutional Court,

<sup>4</sup> Article 107 (2) of the Constitution; Article 41 (1) of the Constitutional Court Act.

as unconstitutional cannot be applied to a trial it is concerned.<sup>5</sup> The Court's decision of unconstitutionality shall bind the ordinary courts, other state agencies and local governments.<sup>6</sup>

Lastly, the Constitutional Court does not decide its judgement in only two sorts of 'constitutional' or 'unconstitutional'. Instead, the Court can conclude that the statute is 'partially constitutional and partially unconstitutional', or 'not conforming to the Constitution'. The specific type of a decision depends on the purpose and necessity to transform the decision upon consideration of the contents of the statutes. To prevent confusion caused by the absence of law caused due to the unconstitutionality decision and to maintain legal stability, the Constitutional Court may refrain itself from deciding a statute unconstitutional and instead decide that the statute does not conform to the Constitution.

#### **IV. ADJUDICATION ON IMPEACHMENT**

The impeachment has reinforced the function of Constitutional Court in Korean society in recent years. Not many Constitutional Courts around the world are assigned of the authority to impeach high ranking governmental officials and this system along with the dissolution of a political party enhances the influence of the Constitutional Court in Korea.

##### **1. Jurisdiction**

If the high-ranking public officials including the President of Korea violate the Constitution or other laws in the performance of their official duties, the National Assembly may pass a motion for their impeachment. The Constitutional Court has exclusive jurisdiction over impeachment proceedings brought against certain high-ranking public officials. The subjects of impeachment are as the followings: the President of Korea, the Prime Minister, members of the State Council, Executive Ministers, Justices of the Constitutional Courts, 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.<sup>7</sup>

Any person whom a motion for impeachment has been passed shall be suspended from exercising his or her power until the Constitutional Court makes a final decision on the impeachment case. When a request for impeachment has reasons for upholding, the Constitutional Court shall pronounce a decision that the accused person be removed from public office and the impeached person cannot become a public official for five years.<sup>8</sup> Additionally, the decision of impeachment does not exempt the person from civil or criminal responsibility.

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<sup>5</sup> Article 47 (2) of the Constitutional Court Act.

<sup>6</sup> Article 47 (1) of the Constitutional Court Act.

<sup>7</sup> Article 65 (1) of the Constitution.

<sup>8</sup> Article 54 (1), (2) of the Constitutional Court Act.

## 2. Major Cases

There were two cases of adjudication on impeachment in Korean history. Both of them were against the incumbent Presidents and in one of the two cases the President was impeached.

In the first case which was filed in 2004, the Constitutional Court decided to reject the impeachment of President Noh Moo-hyun from office. The Court reviewed that he had violated the obligation of political neutrality of public officials which was written in the Act on the Election of Public Officials the Prevention of Election Malpractices and some other constitutional obligations.

However, the Court decided that “the act of violation of law by the President cannot be deemed to be an evidence of the betrayal of public trust in the President to the extent that the public trust vested in the President should be deprived of prior to the completion of the remaining presidential term, there is no valid ground justifying the removal of the President from office”,<sup>9</sup> which means that such violations were not sufficient enough to justify the removal of the President from office.

In 2017, the Constitutional Court decided to uphold the impeachment of President Park Geun-hye from office. She had violated the Constitution and law in the performance of duties, and the subject matter in this case was whether to concede ‘the existence of a valid ground’ or not. The Constitutional Court regarded that ‘the existence of a valid ground’ meant that the violation of the Constitution and law was grave enough to justify the removal of the President from office.

The Constitutional Court stated “the President’s acts of violating the Constitution and the law are a betrayal of the people’s confidence, and should be deemed to be grave violations of the law unpardonable from the perspective of protecting the Constitution. Since the negative impact and influence on the constitutional order brought about by the President’s violations of the law are serious, we believe that the benefits of protecting the Constitution by removing the respondent from office overwhelmingly outweigh the national loss that would be incurred by the removal of the President”<sup>10</sup> which means that the violation were grave.

## V. ADJUDICATION ON DISSOLUTION OF A POLITICAL PARTY

The Dissolution of a Political Party which was long considered to be a dead or nullified system had its first case in 2013. Through this one case, complicated legal principles and precedent logics were introduced, such as the meaning of freedom of political party, the protection of the basic democratic order, and the status of the members of the dissolved party.

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<sup>9</sup> 2004. 5. 14. 2004 Hun-Na 1. In this case, 9 Justices, all of the registered members rejected the petition for the impeachment.

<sup>10</sup> 2017. 3. 10. 2016 Hun-Na 1. In this case, 8 Justices, all of the registered members upheld the petition for impeachment adjudication. At that time, 1 Justice was on the occurrence of a vacancy.



## **1. Jurisdiction**

If the objectives or activities of a political party do not accord with the basic democratic order, the Government may request adjudication of dissolution of the political party to the Constitutional Court. This jurisdiction is assigned to the Constitutional Court to protect the Constitution from the destruction of.

In one side, the Constitutional Court protects democracy from abusive freedom of political party. The Constitution guarantees the existence and activities of all political parties, and protects their rights to the utmost extent. However, at the same time, the Constitution has established a constitutional limitation on the freedom of activities of political parties so that they do not jeopardize the basic democratic order.

On the other hand, through this system of Constitutional Court deciding the dissolution, political parties might be protected from arbitrary decisions of the Government. That is, a political party can be dissolved only in certain situations as mentioned above and through this system the Constitutional Court can double-checking the governmental request whether the government has decided reasonably or not.

The Ministry of Justice, on behalf of the Executive, files for dissolution of a political party. The Constitutional Court goes through oral proceedings on adjudication of dissolution of a political party. It is required that six or more Justices agree for the dissolution in order for the Court to make a decision.<sup>11</sup>

Regarding two effects of judgements – the confirming effect and the formative effect - the decision of dissolution of a political party has formative force. When the decision of dissolution of a political party is pronounced, the party loses its status as a political party and its privileges. The assets of the dissolved political party are reverted to the National Treasury.<sup>12</sup> Meanwhile, it is prohibited to form a new party that has similar principles to the dissolved party or a substitute party and not any other party is permitted to use the name of the dissolved party.<sup>13</sup>

## **2. Major Case**

In 2013, after deliberation by the State Council, the Government filed a petition to request dissolution of the Unified Progressive Party to the Constitutional Court. Related to this part, the Constitution provided “if the objectives or activities of a political party are against the basic democratic order, the government may bring an action against it in the Constitutional Court”.<sup>14</sup>

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<sup>11</sup> Article 113 (1) of the Constitution ; Article 30 (1) of the Constitutional Court Act.

<sup>12</sup> Article 59 of the Constitutional Court Act ; 48 (2) of Political Party Act.

<sup>13</sup> Article 41 (2) of Political Party Act.

<sup>14</sup> Article 8 (4) of the Constitution.

The subject matters of review in this case were firstly, whether the party's objectives and activities violated the basic democratic order, secondly, whether the party should be dissolved, and finally, whether the lawmakers affiliated with the party should be stripped of their seats when dissolution of the party. Deciding that the Party's objectives and activities violated the basic democratic order, the Constitutional Court decided to dissolve the Unified Progressive Party in 2014.<sup>15</sup>

The Constitutional Court affirmed that the objectives or activities of the party had generated a concrete risk of causing substantial harm to the basic democratic order of our society, and thus were in violation of the basic democratic order. Also the Court added that the decision to dissolve the party was an inevitable solution to effectively remove the risk posed to the basic democratic order, and therefore was not in violation of the principle of proportionality.<sup>16</sup> About the third point, the Constitutional Court stated that the members of the National Assembly belonging to the party are forfeited of their seats in the National Assembly regardless of how they were elected, which means it did not matter whether they were elected as majority representation or as proportional representation.

## **VI. ADJUDICATION ON COMPETENCE DISPUTE**

The Constitution announces the separation of powers. In order to distribute public powers to the right organ and to have different branches to watch over each other, the resolution of conflicts between state agencies and local governments about authorities and duties is an important constitutional matter. Additionally, this principle of checks and balances between public powers is also a coordinating mechanism to protect the basic rights.

### **1. Jurisdiction**

There are three kinds of adjudications in competence disputes. Firstly, there would be the competence dispute between state agencies such as the National Assembly, the Executive, and ordinary courts. The second would be the competence dispute between a state agency and a local government. Finally solving the conflict between local governments such as Metropolitan City, Province, City, Self-governing District is also a competence dispute.<sup>17</sup>

The claimant may request adjudication on competence dispute if the respondent's action and inaction infringes or is clearly in danger of infringing the competence conferred to the claimant by the Constitution or Acts. The Constitution has endowed the Constitutional Court with the jurisdiction on the adjudication on competence disputes to realize the separation of powers and local self-governing system.

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<sup>15</sup> 2014. 12. 19. 2013 Hun-Da 1. In this case, 8 Justices upheld the petition and 1 Justice expressed a dissenting opinion.

<sup>16</sup> The Unified Party applied for a retrial, but the Constitutional Court rejected in 2016(2016. 5. 26. 2015 Hun-A 20).

<sup>17</sup> Article 62 (1) of the Constitutional Court Act.

## **2. Characteristics**

Adjudication on competence dispute resolves disputes regarding existence or scope of the competence of state agencies or local governments. The Constitutional Court proceeds an adjudication in a neutral status according to the Constitution and related laws. Adjudication system on competence dispute has the following characteristics.

Firstly, the decision on competence dispute shall be made in accordance with majority of nine Justices. This means with only five Justices agreeing on one conclusion is enough to write a judgement, unlike in other constitutional reviews. As mentioned above, at least six Justices need to agree on the unconstitutionality of statutes or impeachment or dissolving or accept constitutional complaints.<sup>18</sup>

Then, when the respondent's action violates the claimant's competence seriously and clearly, the Constitution Court may confirm the invalidity of the action which caused the competence dispute. However, if the action has defects that are not serious and clear, the Constitutional Court may annul the action. Thus, although the respondent's action is not just, it may still be in effect.

Finally, the decision on competence dispute by the Constitutional Court shall bind all state agencies and local governments. However, the decision to nullify an action shall not alter the effect of already made actions,<sup>19</sup> since legal stability should be protected and legal confusion should be prevented.

## **VII. CONSTITUTIONAL COMPLAINT**

Any individual whose basic rights are guaranteed by the Constitution can file a constitutional complaint to the Constitutional Court when his or her right has been infringed by public powers. In constitutional complaint case, an individual becomes the claimant which is different from other constitutional reviews. The introduction of constitutional complaint system has contributed to the revitalization of constitutional adjudication system in Korea.

### **1. Jurisdiction**

The subject of constitutional complaint is very broad and comprehensive. It is defined that 'exercises or non-exercises of all kind of public powers' can be the subject of constitutional complaint and this also includes the legislation of the National Assembly. Here, even the neglects of legislation are included. That is, in case the National Assembly is mandated to legislate an Act about certain matter but do not legislate any legal statute, the basic rights are infringed and an individual can file a

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<sup>18</sup> Article 113 (1) of the Constitution.

<sup>19</sup> Article 67 (2) of the Constitutional Court Act.

constitutional complaint to the Constitutional Court.

## **2. Characteristics**

In principle, a decision of an ordinary court is excluded from constitutional complaint by the Constitutional Court Act.<sup>20</sup> That is, judicial decision is not included in ‘exercises or non-exercises of all kind of public powers’. One exemption would be when the ordinary court applies statutes that are already nullified by the Constitutional Court. In this case, the Constitutional Court can adjudicate a judgment of the ordinary court. This allegedly aims to guarantee the independence of the judiciary and resolve legal disputes quickly, but many scholars insist that the judgment of ordinary court be included in adjudication of constitutional complaint to protect basic right being infringed by ordinary courts.

If any other law offers any other means of relief, not any individual may file a constitutional complaint without having exhausted all such processes.<sup>21</sup> This is called the principle of subsidiarity. This is important because most of actions made by administrative agencies are subjects of administrative litigation in ordinary court. Since the claimant has to file an administrative litigation in advance and the decisions of ordinary courts are excluded from adjudication on constitutional complaint, many actions of administrative agencies are in fact excluded from constitutional review.

When a constitutional complaint is filed a panel which consists of three Justices conducts a prior review. The panel screens legal requirements for constitutional complaint. When the panel does not reach an unanimous decision of dismissal, it decides to refer the motion to the Full Bench. When a dismissal is not decided within 30 days after request of adjudication on constitutional complaint, it shall be deemed that a decision to transfer it to the Full Bench is made.<sup>22</sup>

## **CONCLUSION**

The Constitutional Court in Korea has allegedly functioned as an organ protecting basic rights and safeguarding justice since its establishment in 1988. The Constitutional Court has following tasks to solve to accomplish its role in a stable and complete way.

The qualification for Justices of the Constitutional Court should be broaden to non-legal scholars and professionals who have insight into humanities, social community and state. The Constitutional Court Act stipulates that only those who are qualified as judges are eligible for Justices. The Constitutional Court plays a key role to embody the constitutional value and to realize justice and national integration. Thus the Constitutional Court Act should be revised to open the door to non-legal professionals.

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<sup>20</sup> Article 68 (1) of the Constitutional Court Act.

<sup>21</sup> Article 68 (1), (2) of the Constitutional Court Act.

<sup>22</sup> Article 72 (4) of the Constitutional Court Act.

It is desirable that all Justices are selected by the National Assembly in order to strengthen democratic legitimacy of the Constitutional Court. The current system gives the President of Korea excessive authority in appointing the Justices. Considering the fact that the President appoints the Chief Justice of the Supreme Court, six Justices and the Chief Justice of the Constitutional Court are selected under the influence of the President.

The Constitutional Court shall exercise its authorities in harmony with the Supreme Court. In the Constitution, the status and power of the Constitutional Court is defined in Chapter 6 of the Constitution and the status and power of the Judiciary is defined in Chapter 5 of the Constitution. This means that the Constitutional Court is a separate and independent branch from the judiciary. The Constitutional Court shares the authority to interpret the Constitution and laws with the Supreme Court in equal status or level. Both constitutional institutions should cooperate and collaborate in exercising their authorities respectively for coherency.

The Constitutional Court shall make greater efforts to sustain its judicial independence, especially from political influences and populism. Even if the Constitutional Court functions as political-judicial authority, it shall exercise jurisdiction according to 'rule of law' and constitutionalism and not merely confirm political majority opinions.

Above four tasks are to be improved for the Constitutional Court to carry out its role of protecting constitutionalism stably and actively. With strong effort of related social sectors and positive interests of all the members of our society, constitutional adjudication system of Korea would develop further to protect basic rights and realize social justice.