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NEWS

Delegation from the Constitutional Court of Indonesia visits the Constitutional Court of Korea

Dec 21, 2021

The delegation headed by Justice Manahan M. P. Sitompul and Justice Enny Nurbaningsih from the Constitutional Court of the Republic of Indonesia visited the Constitutional Court of Korea (CCK) and the AACC Secretariat for Research and Development (SRD) on 21 December.

During the meeting at the CCK, President Yoo Namseok sent his best wishes for a successful organization of the 5th Congress of the World Conference on Constitutional Justice (WCCJ) in this coming October in Bali, Indonesia and shared the Court's experience in hosting the 3rd Congress of the WCCJ in 2014. At the AACC SRD, Secretary General Park Jongmun of the CCK and the AACC SRD welcomed the Indonesian delegation and expressed his hopes that the delegation's visit will help invigorate the bilateral interaction between the AACC SRD and the AACC Secretariat for Planning and Coordination (SPC).



<Opening Remarks by Yoo Namseok,
President of the Constitutional Court of Korea>

Constitutional Court of Korea held the 3rd International Symposium from November 10 to 11

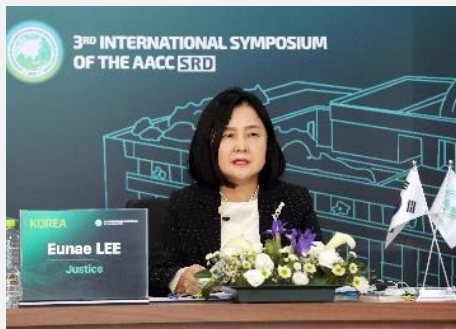
Nov 10, 2021

The AACC SRD run by the Constitutional Court of Korea held the 3rd International Symposium from November 10 to 11 in the Conference Room of the annex building of the Court.

This year's conference, which was being held online to prevent the spread of COVID-19, discussed the theme of "Constitutional Rights and AACC Members"



<Kim Kiyong, Justice of the Constitutional Court of Korea as Session 1 Chair>



<Lee Eunae, Justice of the Constitutional Court of Korea as Presenter for Session 2>



<Lee Jongseok, Justice of the Constitutional Court of Korea as Presenter for Session 3>



<Closing Remarks by Park Jongmun, Secretary General of the Constitutional Court of Korea and AACC SRD>

and was joined by a total of 40 participants including the President of the Venice Commission and Justices from constitutional review bodies of 16 AACC member countries.

This Symposium featured three sessions, focusing on Common Values and Diverse Aspects of Constitutional Rights in Asia (Session 1), Constitutional Rights: New Challenges (Session 2), and Constitutional Adjudication and the Universality of Human Rights (Session 3). Participants were invited to give presentations and engage in panel discussions to introduce their constitutional review systems and practices.

Three Justices of the Constitutional Court of Korea attended this year's Symposium. Justice Kim Kiyong chaired the first session. Justice Lee Eunae delivered a presentation on "Expansion of Constitutional Rights through Constitutional Adjudication" in the second session and Justice Lee Jongseok gave a presentation on "Constitutional Status of International Human Rights Instruments" in the third session.

During the opening remarks at the International Symposium, President Yoo Namseok of the Constitutional Court of Korea said, "this conference will allow us to look at various aspects of fundamental rights and common values protected by constitutions and constitutional adjudication, explore how constitutional review bodies as the ultimate guardian of fundamental rights can effectively respond to new challenges posed by the global changes in modern society, and engage in an in-depth discussion on how the relationship between international human rights norms and constitutional rights is interpreted in constitutional proceedings."

The Symposium concluded with the closing remarks from Park Jongmun, Secretary General of Constitutional Court of Korea and the AACC SRD, mentioning that the Symposium was very productive time learning from the AACC members about the role of international human rights norms, as well as constitutions in constitutional adjudication where constitutional rights are actually realized.

The Constitutional Court of Korea, through the operation of the AACC SRD, is leading the discussion for promotion of democracy, the rule of law and human rights in Asia by holding annual international conferences joined by constitutional review bodies in Asia and is introducing the Court's 30-year experiences and practices as a leading constitutional adjudicatory body.

Participation in the AACC Meetings

Aug 26, 2021

President Yoo Namseok of the Constitutional Court of Korea attended the Board Members Meeting of the AACC and the International Symposium dedicated to the 30th anniversary of independence of the Republic of Kazakhstan, held online by the Constitutional Council of Kazakhstan from August 26 to 27, 2021.



<President Yoo Namseok and Secretary General Park Jongmun Participating the Board Members Meeting of the AACC>

President Yoo Namseok attended the Board Members Meeting of the AACC composed of the heads of constitutional adjudication bodies from 19 Asian countries to discuss issues such as the cooperation with the Conference of European Constitutional Courts and the Associations' participation in the 5th Congress of the World Conference on Constitutional Justice.

The Board Members Meeting of the AACC was also joined by Secretary General Park Jongmun of the Constitutional Court of Korea to deliver a detailed report on the AACC Secretariat for Research and Development's activities and progress.

Justice Kim Kiyong participated in the International Symposium and gave a presentation on "The Recent Jurisprudence of the Constitutional Court of Korea in the Area of the Protection of Fundamental Rights on the Internet."

Constitutional Research Institute hosts the 10th International Symposium

June 25, 2021



<Opening Remarks by Park Jong-Bo, President of the Constitutional Research Institute>

On 25 June, the Constitutional Research Institute hosted the 10th International Symposium under the theme of "Constitutional Adjudication: Past, Present and Future." The symposium was held online to prevent the spread of the COVID-19 and was streamed live on the Constitutional Court of Korea's YouTube channel.

In his congratulatory remarks at the symposium, President Yoo Namseok of the Constitutional Court of Korea commented that "new changes and challenges are calling for further studies and answers for newly emerging constitutional issues," and "the theme of this symposium – Constitutional Adjudication: Past, Present and Future – is all the more a timely topic that holds a great significance."

Former President Park Han-chul of the Constitutional Court of Korea delivered his keynote speech for the symposium. Professor Richard Albert at the University of Texas at Austin and Professor Angelika Nußberger at the University of Cologne gave an in-depth presentation on the present status and future challenges of constitutional adjudication in comparative perspective.

* The Constitutional Research Institute was established in 2011 and marked its 10th anniversary this year. The institute organizes an international symposium annually to bolster cooperation and deepen the understanding of theoretical and practical implications of constitution and constitutional adjudication at the international level.

MAJOR DECISIONS

1. **Case on Aggravated Punishment for Repeat Driving While Intoxicated [2019Hun-Ba446, 2020Hun-Ka17, 2021Hun-Ba77(consolidated)(Nov 25, 2021)] - unconstitutional**

On November 25, 2021, in a 7-to-2 decision, the Court held unconstitutional the part of Article 148-2 Section 1 of the former Road Traffic Act concerning “Any person who violates Article 44 Section 1 at least two times,” which provides that any person who violates at least two times a prohibition on driving while intoxicated shall be punished by imprisonment with labor for not less than 2 years but not more than 5 years or by a fine not less than 10 million won but not exceeding 20 million won. (Unconstitutional)

Justices Lee Seon-ae and Moon Hyungbae filed a dissenting opinion that the above provision is constitutional because it does not breach either the principle of proportionality between liability and punishment or the principle of equality.

2. **Case on Sentenced Inmate Visitation Restrictions Imposed on Attorney Retained as Representative in Litigation Case [2018Hun-Ma60(Oct 28, 2021)] - unconstitutional**

On October 28, 2021, in an 8-to-1 decision, the Court held unconstitutional the part of Article 29-2 Section 1 Item 2 of the Enforcement Rules of the Act on Execution of Sentence and Treatment of Inmates concerning “sentenced inmate visitation”—which requires that if an attorney at law retained as a representative in a litigation case wishes to visit a sentenced inmate, the attorney at law should submit materials substantiating the fact that the litigation is pending—on the ground that such part of the provision infringes the freedom of Complainant, who is an attorney at law, to pursue his occupation. (Unconstitutional)

Justice Lee Jongseok filed a dissenting opinion that the above clause does not violate Complainant’s freedom to pursue his occupation and thus is not unconstitutional.

3. **Case on Opening and Reading of Letters Sent to Inmate [2019Hun-Ma919(Sep 30, 2021)] - rejected**

On September 30, 2021, the Court held in a unanimous decision that the following acts do not infringe Complainant’s freedom of communications: (1) the opening by Respondent, warden of a correctional institution, of seven letters sent from the Korea Legal Aid Corporation to Complainant and one letter sent from the National Human Rights Commission of Korea to Complainant; and (2) Respondent’s reading of five documents delivered to the correctional institution, including a Notice to Disclose Information issued by the Suwon District Prosecutor’s Office and a judgment rendered by the Suwon District Court. (Rejected)

4. **Case on Property Required to Be Registered by Married Female Liable for Registration [2019Hun-Ka3(Sep 30, 2021)] - unconstitutional**

On September 30, 2021, the Court held in a unanimous decision that Article 2 of the Public Service Ethics Act addendum (February 3, 2009, Act No. 9402)—which requires that only a married female person liable for registration who already registered the property of her spouse’s lineal ascendants and descendants in accordance with a provision of the Public Service Ethics Act before amendment should continue to register

such property, even though the Public Service Ethics Act after amendment mandates all married persons liable for registration to register the property of their lineal ascendants and descendants, not the property of those of their spouses—is unconstitutional as being violative of the principle of equality. (Unconstitutional)

5. Case on Prohibition of and Punishment for Interference with Broadcast Programming [2019Hun-Ba439(Aug 31, 2021)] - constitutional

On August 31, 2021, the Court held in a unanimous decision that (1) the part of Article 4 Section 2 of the current Broadcasting Act concerning “interference,” which prohibits interference with broadcast programming, and (2) the part of Article 105 Item 1 of the former Broadcasting Act relating to “interference” in Article 4 Section 2, which punished violators of the above prohibition, are not unconstitutional. (Constitutional)

6. Case on Former Certified Tax Accountant Act Provision and Others [2018Hun-Ma279-344, 2020Hun-Ma961 (consolidated) (Jul 15, 2021)] - rejected

On July 15, 2021, the Court held that the following provisions do not violate the Constitution: (1) Article 3 of the former Certified Tax Accountant Act (amended by Act No. 15288 on December 26, 2017, and before amendment by Act No. 17339 on June 9, 2020) (the “Provision”), which no longer provided that an attorney-at-law shall be automatically qualified as a certified tax accountant; and (2) the part of Article 1 of the Certified Tax Accountant Act addendum (December 26, 2017, Act No. 15288) concerning Article 3 of the above Certified Tax Accountant Act, and Article 2 of this addendum (collectively, “Addendum Provisions”), which provide, respectively, for the enforcement date of the Provision and for the transitional measure relating to the qualification of an attorney-at-law as a certified tax accountant. (Rejected)

The table below shows the details on the opinions issued by Justices.

Subject Matter	Court opinion or opinion for rejection	Dissenting opinion or opinion for nonconformity to the Constitution
Provision	Court opinion of Justices Yoo Namseok, Lee Suk-tae, Kim Kiyoung, Moon Hyungbae, and Lee Mison (five Justices)	Dissenting opinion of Justices Lee Seon-ae, Lee Eunae, Lee Jongseok, and Lee Youngjin (four Justices)
Addendum Provisions	Opinion for rejection of Justices Yoo Namseok, Lee Suk-tae, Moon Hyungbae, and Lee Mison (four Justices)	Opinion for nonconformity to the Constitution of Justices Lee Seon-ae, Lee Eunae, Lee Jongseok, Lee Youngjin, and Kim Kiyoung (five Justices)

7. Case on “Act on the Lapse of Criminal Sentences” Provisions Not Providing for Keeping Period and Deletion of Criminal Investigation Data Regarding Juveniles Whose Court Cases Ended Without Conviction [2018Hun-Ka2(Jun 24, 2021)] - nonconformity

On June 24, 2021, the Court held in a unanimous decision that Article 8-2 Sections 1 and 3 of the former and current Acts on the Lapse of Criminal Sentences, which fail to provide for the keeping period and deletion of criminal investigation data regarding juveniles whose cases were transferred to a juvenile court and ended without conviction, violate the rule against excessive restriction and thus infringe their right to informational self-determination. (Nonconforming to the Constitution)

8. Case on Imposition of Reporting Obligations on Persons Subject to Post-Release Supervision [2017Hun-Ba479(Jun 24, 2021)] - *nonconformity, constitutional*

On June 24, 2021, the Court issued the following decisions on the provisions of the Post-Release Supervision Act imposing reporting obligations on a person subject to post-release supervision (“person”):

1. It held in a 5 (constitutional) to 4 (unconstitutional) decision that (1) the part concerning the post-release reporting obligation of the first sentence of Article 6 Section 1 of the former Post-Release Supervision Act (“PRSA”), which imposes an obligation on the person to report within seven days after his or her release from a correctional institution or other place of confinement the fact of such release, and (2) the part concerning “the post-release reporting obligation of the first sentence of Article 6 Section 1 of the former PRSA” of Article 27 Section 2 of the current PRSA, which provides punishment for a violation of the post-release reporting obligation, do not violate the Constitution. (Constitutional)

Justices Lee Suk-tae, Kim Kiyong, Moon Hyungbae, and Lee Mison filed a dissenting opinion that the above provisions are unconstitutional.

2. It also ruled in a 4 (unconstitutional) to 2 (nonconforming to the Constitution) to 3 (constitutional) decision that (1) the first sentence of Article 6 Section 2 of the current PRSA, which imposes an obligation on the person to report after his or her release from a correctional institution or other place of confinement any changes to the information reported under Article 6 Section 1 of the PRSA, including a change to his or her intended place of residence, within seven days from the date of such changes and (2) the part concerning “the first sentence of Article 6 Section 2 of the current PRSA” of Article 27 Section 2 of the current PRSA, which provides punishment for a violation of the change reporting obligation, do not conform to the Constitution. (Nonconforming to the Constitution)

Justices Lee Seon-ae, Lee Jongseok, and Lee Youngjin filed a dissenting opinion that the above provisions are constitutional.

For details, please visit

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

PUBLICATIONS

Constitutional Rights and AACC Members

AACC SRD Research

Constitutional Rights and AACC Members



This book provides an overview of constitutional rights from the perspective of AACC member institutions.

The introductory chapter (Part A.) presents highlights from the book chapters. Comparative tables (Part B.) familiarize readers with a selection of key issues and legal norms. The main part of the book (Part C.) consists of chapters submitted by AACC member institutions.

These focus on various aspects of constitutional rights, such as rights provisions in the constitutional text, relevant historical background, legitimate limitation of rights, unenumerated constitutional rights, impact of international human rights treaties, rights in the diverse Asian context, and current issues and challenges.

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Constitutional Court of Korea

15, Bukchon-ro, Jongno-gu, Seoul 03060, Korea
T +82 2 708 3456 F +82 2 708 3566
www.ccourt.go.kr interdiv@ccourt.go.kr