

## *Registration Requirement of Political Parties*

[18-1(A) KCCR 402, 2004Hun-Ma246, March 30, 2006]

In this case, the Constitutional Court rejected a constitutional complaint alleging that Articles 25 and 27 of the former Political Parties Act (revised on March 12, 2004 through Act No. 7190 but prior to amendment on August 4, 2005 through Act No. 7683) requiring for registration all political parties to have at least five city or provincial (do) parties, each having at least 1,000 party members, infringes upon the Petitioner Socialist Party's freedom of party formation.

### Background of the Case

Article 25 of the Political Parties Act requires as a prerequisite for registration all political parties to have at least five city or provincial branches and Article 27 requires that each city or provincial branch shall have at least 1,000 party members. According to Articles 2 and 3 of Addenda of the aforementioned Act, the parties registered pursuant to the old provisions before the enactment of the Instant Provisions, if they do not meet the requirements on the number of city or provincial branches and the number of party members set forth in the newly enacted Articles 25 and 27, must cure the non-compliance within 180 days of the enactment of the Instant Provisions. If non-compliance is not cured, registration of the non-complying party is cancelled by the National Election Commission pursuant to Article 4 of the Addenda. Petitioner Socialist Party filed this constitutional complaint pursuant to Article 68 Paragraph 1 of the Constitutional Court Act arguing that the Socialist Party, a minor party, cannot meet the requirements under the present Political Parties Act and therefore that the Instant Provisions violate the freedom of party formation under Article 8 Paragraph 1 of the Constitution.

### Summary of the Decision

The Constitutional Court announces a unanimous decision rejecting the Petitioners' claim of unconstitutionality for the following reasons:

A. Article 25 of the Instant Provisions aims to exclude 'regional parties' and Article 27 aims to exclude 'minor parties.' Exclusion of minor parties is a legitimate legislative purpose because proper functioning of representative democracy under our Constitution requires a stable majority within the legislature. Also, exclusion of regional parties representing the political wills of only certain regions cannot be said to be an illegitimate purpose under the Constitution when party politics depending excessively on regional affiliation has become problematic in our political reality. Therefore, the Instant Provisions have a requisite legitimate purpose.

B. The Instant Provisions require for party registration two constants, namely, 5 or more city or provincial branches and each city or provincial branch having more than 1,000 party members, for the purpose of excluding regional parties and minor parties. These regulations prevent the parties from being organized only from certain areas, and require city and provincial organizations in at least five cities or provinces, in each of which at least a certain number of members are active. Therefore, these regulations are appropriate means to suppress election-related entities and minor regional political organizations from indiscriminately participating in party politics. The Instant Provisions also concretize the requirement in Article 8 Paragraph 2 of the Constitution concerning "the organization necessary for

participating in people's political will-formation" in the form of the minimum 5 city or provincial branches and the minimum 1,000 members for each of the branches. The legislator's decision that at least 5 city or provincial branches are required for fulfilling faithfully the functions and position of a national party is not irrational. Also, the requirement of at least 1,000 members for each city or provincial branch is not excessive even for minor or newly formed parties such as Petitioners in light of the size of the populations of the cities and provinces of our country.

C. The Instant Provisions do restrict people's freedom of party formation with the requirements of 5 or more city or provincial branches and 1,000 or more party members for each of the branches. However, these restrictions are reasonable restrictions materializing the constitutional concept of a political party through which people shall participate in political will-formation 'for a substantial time' 'in substantial areas.' These restrictions are constitutionally justified.

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# Party

## Petitioners

Socialist Party

Representative: Sin ○ Jun

Petitioner's Counsel: Gang ○ Dae

## Holding

Petitioner's claims are denied.

## Reasoning

### 1. Introduction of the Case and Subject Matters of Review

#### A. Introduction of the Case

On March 9, 2004, the Plenary Session of the National Assembly passed the Political Parties Act, the Act on the Election of Public Officials and the Prevention of Election Malpractices, and the Political Fund Act, the so-called political relations laws, and all these laws became effective on March 12, 2004. Article 25 of the Political Parties Act revised through the Act No. 7190 provides, "a political party shall have five or more city or provincial branches", and Article 27 provides, "each city or provincial branch party shall have one thousand or more party members." According to Articles 2 and 3 of Addenda of the aforementioned Act, the parties registered pursuant to the old provisions before the enactment of the Instant Provisions, if they do not meet the requirements on the number of city or provincial branches and the number of party members set forth in the newly enacted Articles 25 and 27, must cure the non-compliance within 180 days of the enactment of the Instant Provisions. If non-compliance is not cured, registration of the non-complying party is cancelled by the Election Management Committee pursuant to Article 4 of the Addenda.

Petitioner Socialist Party filed this constitutional complaint on March 26, 2004 pursuant to Article 68 Paragraph 1 of the Constitutional Court Act arguing that the Socialist Party, a minor party, cannot meet the requirements under the present Political Parties Act and that Articles 25 and 27 of the Political Parties Act violate the freedom of party formation under Article 8 Paragraph 1 of the Constitution, the Article 11 right to equality, and the Article 21 Paragraph 1 freedom of association.

#### B. Subject Matter of Review

The subject matter of this case is constitutionality of Articles 25 and 27 of (hereinafter referred to as the "Instant Provisions") the former Political Parties Act (revised on March 12, 2004 through Act No. 7190 but prior to amendment on August 4, 2005 through Act No. 7683) and the relevant provisions are as follows:

##### (1) Subject Matter of Review

The Political Parties Act (revised on March 12, 2004 through Act No. 7190 but prior to amendment on August 4, 2005 through Act No. 7683)

Article 25 (Statutory Number of City or Provincial Parties)

A political party shall have five or more city or provincial branches.

Article 27 (Number of Party Members of City or Provincial Parties)

Each city or provincial branch party shall have one thousand or more party members.

(2) Related Provisions

The Political Parties Act(revised on March 12, 2004 through Act No. 7190 but prior to amendment on August 4, 2005 through Act No. 7683) Article 4(Establishment)

(1) Political party shall come into existence when its central party is registered with the National Election Commission.

(2) Registration under Paragraph 1 shall satisfy the requirements of Articles 25 and 27.

Article 38(Revocation of Registration)

(1) When a political party falls under any of the following subparagraphs, the relevant election commission shall revoke its registration.

(i) When it becomes incapable of satisfying the requirements under Articles 25 and 27: Provided, that such revocation shall be postponed until after the election day when a failure to satisfy such requirements has occurred three months before the general election day, and in other cases until three months from the failure to satisfy such requirements

(ii) When failing to participate during the past four years in an election of National Assembly members due to an expiration of term of office or the election of the head of the local government due to the expiration of term of office or that of the members of City or Provincial council; and

(iii) When failing to obtain a seat in the National Assembly after participating in an election of National Assembly members, and failing to obtain more than 2/100 of total number of effective votes

Addenda

Article 1(Enforcement Date)

This Act shall become effective upon the date of enactment (the proviso omitted).

Article 2(Transitional Measures for Political Parties)

A political party registered pursuant to the previous provisions prior to the effective date of this Act, if it does not satisfy the statutory number of city or provincial branches pursuant to the newly revised Article 25, shall cure non-compliance within 180 days of the effective date of this Act.

Article 3(Transitional Measures for Party Branches)

A party branch registered in accordance with the provisions prior to the enforcement of this Act shall be deemed registered under the current provisions. Provided, such party shall cure non-compliance with the matters required by the current Article 13 and the statutory number of party members required by the current Article 27 within 180 days of the enforcement date.

Article 4(Cancellation of Registration)

In event that a party fails to cure non-compliance with respect to the statutory number of city or provincial branches, other matters claimed on registration application, and the statutory number of party members, the relevant Election

Commission shall cancel registration of that party.

## 2. Petitioners' Arguments and Interested Parties' Opinions

### A. Summary of Petitioners' Arguments

Article 4 of the Political Parties Act provides that a political party is established when its central office is registered with the National Election Commission and the registration shall meet the requirements of the Instant Provisions. The registration requirement of the Instant Provisions is excessively strict. A political party will need a national organization in order to prevail in the process of political will-formation. However, whether to have such organization should be decided by the political party itself after considering financial resources, local conditions, and other matters. The legislature should not predetermine that by imposing the requirement of a national scale or distribution of regional parties, suppressing or restricting the constitutionally guaranteed freedom of political formation.

The Instant Provisions impose excessively strict registration requirements on political parties and block minor parties and new parties from participating in party politics, thereby infringing upon the freedom of party formation under Article 8 Paragraph 1 of the Constitution, the Article 11 right to equality, and the Article 21 Paragraph 1 freedom of association.

### B. Opinions of the Ministry of Justice

#### (1) Preliminary Defenses

After Petitioner filed for this constitutional complaint, the 17th National Assembly General Election took place on April 15, 2004. Petitioner did not obtain any seat in that election and failed to receive 2/100 of the total number of effective votes. For that reason, on 20th of the same month, its party registration was revoked pursuant to Article 38 Paragraph 1 Subparagraph 3 of the Political Parties Act. Due to the revocation, Petitioner is not a political party under the Constitution and does not have a standing as a Petitioner. Furthermore, even if the Instant Provisions are declared unconstitutional, the Petitioner's revocation of registration is under Article 38 Paragraph 1 Subparagraph 3 of the Political Parties Act and therefore is not affected. Since Petitioner's subjective right cannot be relieved for, there is no interest to be protected. Therefore, this constitutional complaint should be dismissed as a legally insufficient one.

#### (2) Opinions of Review of Merits

A political party must participate in the process of political will-formation for a substantial period in a substantial area. Such concretization of the concept of a political party is in principle within the discretion of the legislator. The Instant Provisions aim at many election-bound organizations mushrooming around the election days and small regional political organizations built on parochial interests of certain regions, and prevent these organizations from indiscriminately obtaining the party statuses and the related privileges. This way, the Instant Provisions attempt to permit sound formation of political wills. Installing five city or provincial branches is not an excessive burden. A requirement of 1,000 members for each city or provincial branch can be satisfied by voluntary membership and therefore does not impose a financial burden on Petitioner. The Instant Provisions pursue important public interests in preventing an indiscriminate number of election-bound

organizations from obtaining party statuses and thereby ensuring materialization of sound party politics. The Instant Provisions apply equally to small parties, new parties, and established parties, and therefore do not irrationally discriminate against small parties and new parties in favor of established parties.

### 3. Review of Statutory Requirements

Petitioner, since revocation of registration on April 20, 2004, has continued its political activities under the same name 'Socialist Party', and has sustained a organizational structure, including a party constitution built on the premise that it will build a sufficient internal and external organization and it will participate in elections; a Party Congress as the highest internal decision-making body; a council of representatives; the Central Committee; and city and provincial committees serving as the regional arms(See [www.sp.or.kr](http://www.sp.or.kr)). Representative of the Socialist Party Sin ○ Jun (re-elected at the 7th Party Congress in April 2005) reported to the authorities formation of the Party Founding Committees under such names as 'Socialist 2004' and 'Socialist 2005' and yet failed to register as a political party before the Committees' periods of activities expired. In other words, the Socialist Party, after revocation of registration, has maintained its substance as a 'private organization without privileges' in lieu of that as a 'registered party'. Therefore, its standing as a Petitioner for this constitutional complaint is recognized. The party's standing does not arise out of its having obtained registration but out of its status as a private organization without privileges.

Freedom of party formation is not guaranteed just for registered political parties but also for political parties existing as private organizations without privileges. Even if an unconstitutionality decision on the Instant Provisions does not recover for Petitioner a registered party status, the very reasons for Sin ○ Jun's repeated failures to obtain the registered party status have been none other than the registration requirements set forth in the Instant Provisions or their successors, Articles 17 and 18 of the current Political Parties Act. The current Political Parties Act provisions of the same content as the Instant Provisions are likely to cause the same restrictions on the basic right in the future and therefore there is a justiciable interest.

### 4. Review on Merits

#### A. Infringement of Which Basic Rights is Contested

##### (1) Freedom of Party Formation and Freedom of Association

Freedom of party formation is set forth in the beginning part of Article 8 Paragraph 1 of the Constitution. Yet it is a 'basic right' of individual persons and parties on the basis of which a constitutional complaint can be surely filed. In this case, what is in controversy is infringement of freedom of party formation in the beginning part of Article 8 Paragraph 1, which is a special provision of freedom of association under Article 21 Paragraph 1 of the Constitution(11-2 KCCR 800, 810, 99Hun-Ma135, December 23, 1999).

##### (2) Right to Equality

The Instant Provisions set up the registration requirements for parties and apply equally to all people and parties without discrimination. Even if some people or parties find it hard to satisfy these requirements under the circumstances and fail to

register as parties or maintain party statuses, such hardship or failure is merely the result of application of the Instant Provisions. Therefore, where infringement on freedom of party formation is separately discussed, there is no independent issue of infringement on the right to equality.

### (3) Sub-conclusion

As reviewed above, the basic right possibly infringed by the Instant Provisions is freedom of party formation in the beginning part of Article 8 Paragraph 1

## B. Freedom of Party Formation and its Significance and Contents

(1) A political party is an intermediary between the state and people, acting as political conduit, which actively induces formation and convergence of the diverse political wills of people and thereby forms a political will at a magnitude sufficient to affect the national policy decision-making. A political party in today's populist democracy acts as the conductor and intermediary in the people's political will-formation and an indispensable element in democracy. Free formation and activities of political parties is a prerequisite for materialization of democracy(16-1 KCCR 422, 434, 2001Hun-Ma710, March 25, 2004).

Taking into account a party's significance and role in today's democracy, our Constitution has separated a political party from the purview of general freedom of association and regulated it separately in Article 8, thereby emphasizing the special status of a political party. Article 8 Paragraph 1 of the Constitution states "The establishment of political parties shall be free, and the plural party system shall be guaranteed.", thereby guaranteeing all people the right to form a political party in principle without the state's interference as a basic right, and institutionally guaranteeing a multi-party system, the obvious legal consequence of freedom of party formation(11-1 KCCR 800, 813, 99Hun-Ma135, December 23, 1999).

(2) Freedom of party formation in the beginning part of Article 8 Paragraph 1 guarantees not only freedom of party formation but also freedom of party activities. Article 8 Paragraph 1 of the Constitution not only specifically refers to freedom of party formation but also guarantees everyone's freedom of enrolling in and withdrawing from political parties without the state's interference. If only party formation is freely allowed while a party thus formed can be banned at any time and party activities can be restricted arbitrarily, freedom of party formation means nothing. Freedom of party formation shall guarantee maintenance of the parties and freedom of party activities.

Therefore, the agency enjoying freedom of parties shall be both individuals intending to form parties and the parties thus formed. Concretely, freedom of parties include individuals' freedom of party formation, freedom of joining parties, and freedom of the organizational or legal form. Freedom of party formation includes the corresponding freedom of dissolving parties and merging and dividing parties. Freedom of party formation includes individuals' negative freedom of not joining any party or any particular party and of withdrawing from the party that they have previously joined.

## C. Constitutionality of the Instant Provisions

### (1) Concept of a Political Party and Meaning of Party Registration

(A) The Constitution in its Article 8 Paragraph 2 states "Political parties ..... shall have the necessary organizational arrangements for the people to participate in the formation of the political will." Article 2 of the Political Parties Act states "For the purposes of this Act, the term 'political party' means a national voluntary organization that aims to promote responsible political arguments or policies and to take part in the formation of the nation's political wills in order to promote the national interests by endorsing or supporting candidates for public offices."

As set forth above, our Constitution and the Political Parties Act define a political party in terms of the following features: (1) affirm the state and free democracy or constitutional order; (2) endeavor to promote public interest; (3) participate in elections; (4) have party platforms or policies; (5) participate in people's political will-formation; (6) have continuing and stable organization; (7) specify the qualifications to become party members, and etc. In other words, political parties, other than the defining features set forth above, shall meet the requirement of participating in people's political will-formation 'for a substantial period or continuously' 'in a substantial area' as set forth in Article 2 of the Political Parties Act of Germany.

(B) Article 4 Paragraph 1 of the Political Parties Act states "Political party shall come into existence when its central party is registered with the National Election Commission.", thereby requiring party registration as the prerequisite to party formation. Therefore, if any political association aims to participate, as a political party, in people's political will-formation, it is not recognized as a political party under the Political Parties Act unless it is registered as a party.

Under the party registration system, an association claiming to be a party applies for registration with a competent administrative agency in accordance with certain statutory conditions, and if the conditions are met, the association is placed on the party roster and thereby recognized as a party. The party registration system facilitates confirmation of whether a political association is a party, and therefore permits relatively clear definitions of whether an association is entitled to the rights and duties of a political party. The party registration system contributes to legal stability and certainty.

### (2) Whether Freedom of Party Formation is Infringed

#### (A) Standard of Review

Expressing in the form of statutory provisions the definitional requirement of participating in people's political will-formation 'for a substantial period or continuously' 'in a substantial area' is in principle within the discretion of the legislature. In other words, the legislature must consider comprehensively our national history of party politics, the current conditions and regional uniqueness of party politics, people's value systems and senses of justice, the effects of the regulation, and etc., and thereby express in concrete terms the requirement of temporal continuity, organization, and regional breadth.

The standard of reviewing whether the Instant Provisions infringe on 'Petitioner's freedom of party formation shall deliberate on whether the legislative purpose is a legitimate purpose that can be constitutionally pursued by the legislature and whether the means adopted by the Instant Provisions abide by a reasonable relationship of proportionality in order to accomplish such legislative purpose.



## (B) Legitimacy of Purpose

The legislative purpose of the Instant Provisions is to exclude regional parties and minor parties. In other words, Article 25 demanding five or more city or provincial parties is aimed at excluding 'regional parties' which are established in reliance upon and conduct activities around affiliation with certain regions. Article 27 demanding 1,000 or more members from each city or provincial branch party is aimed at excluding 'minor parties' which have not recruited a sufficient number of members to win a certain level of people's support or represent people's interests.

Representative democracy under our Constitution, in order to function properly, requires a stable majority in the parliament. Therefore, there is a legitimate interest in exclusion of minor parties. One may contest the legitimacy of exclusion of regional parties. However, exclusion of regional parties representing the political wills of only certain regions cannot be said to be an illegitimate purpose under the Constitution when party politics depending excessively on regional affiliation has become problematic in our political reality. Therefore, the Instant Provisions have a requisite legitimate purpose.

## (C) Proportionality between Ends and Means

1) The Political Parties Act, first enacted on December 31, 1962 through Act No. 1246 under the 1962 Constitution and repeatedly revised since then, requires political parties to procure an organization sufficient to participate in people's political will-formation and guarantee the parties democratic organization and activities, thereby aiming to contribute to sound development of democratic politics.

Article 25 of the first Political Parties Act(Statutory Number of District Party Members) provides, "a political party shall have district parties equal to or more than one third of a total number of electoral districts under the National Assembly Election Act." Article 26(Distribution of Regional Parties) provides "district parties set forth in the preceding article shall be set up in at least five regions out of Seoul Metropolitan City, Busan City and other provinces. Article 27(Statutory Number of Party Members) provides a district party shall have fifty or more party members."

The law revised on January 23, 1969 through Act No. 2089 strengthened the requirement of the statutory number of district parties to one half of all electoral districts(Article 25), and required the district parties to have one hundred or more party members(Article 27). The law revised on November 25, 1980 through Act No. 3263 changed the required number of district parties to one fourth of all electoral districts(Article 25) and changed the required number of members for each district party to 30(Article 27). The law revised on March 25, 1989 through Act No. 4087 again changed the required number of district parties to one fifth of all electoral districts(Article 25) and the required number of party members for each district party to 30(Article 27). The law revised on December 27, 1993 through Act No. 4609 changed the required number of district parties to one tenth of all electoral districts(Article 25) and the required number of party members for each district party to 30(Article 27).

2) The Instant Provisions differ in form from the previous regulations which defined the statutorily required number of party members in terms of one variable and one constant - namely, a percentage of all electoral districts and the statutory minimum number of party members - in that the Instant Provisions define the same in terms of two constants - namely, five or more district parties and 1,000 or more party members for each district party - thereby requiring at least 5,000 party members for party registration.

However, as previously said, the above regulations aim to exclude 'regional

parties' and 'minor parties'. The regulations prevent the organization to be formed only in certain regions and require an organization in at least five cities or provinces and a certain number of party members in each organization, and therefore constitute appropriate means to prevent election-bound organizations and minor local political parties from indiscriminately obtaining party status.

On the other hand, the Instant Provisions, in concretizing Article 8 Paragraph 2 requirement of 'the organization necessary for participating in people's political will-formation', require five or more district parties and 1,000 or more party members for each district party. The legislator's decision that at least 5 city or provincial branches is required for fulfilling faithfully the functions and position of a national party is not irrational. Also, the requirement of at least 1,000 members for each city or provincial branch is not excessive even for minor or newly formed parties such as Petitioners in light of the size of the populations of the cities and provinces of our country.

Therefore, the Instant Provisions do restrict people's freedom of party formation with the requirements of 5 or more city or provincial branches and 1,000 or more party members for each of the branches. However, these restrictions are reasonable restrictions materializing the constitutional concept of a political party through which people shall participate in political will-formation 'for a substantial time' 'in substantial areas'. These restrictions are constitutionally justified.

## 5. Conclusion

As reviewed above, the claims in this case are without basis and therefore shall be rejected with a unanimous decision of all Justices as set forth in the Holding.

*Justices Yun Young-chul(Presiding Justice), Kwon Seong, Kim Hyo-jong, Kim Kyung-il, Song In-jun, Choo Sun-home(Assigned Justice), Jeon Hyo-sook, Lee Kong-hyun, Cho Dae-hyen*