Electoral District Tables for Municipal and Provincial Assembly Election

Held, among the relevant electoral district tables for municipal and provincial assembly election of the Public Official Election Act, the parts for Gyeonggi-Do and Jeollabuk-Do are not in conformity to the Constitution on the ground that they cause inequality in the value of each vote because they transgress the constitutionally permissible maximum deviation of population in an electoral district, that is the ceiling and floor of 60% from average population of electoral districts. Also, Article 22 Section 1 of the Public Official Election Act, which uniformly allocate two provincial assemblymen for each basic local government unit, Gu·Si·Gun based not upon the population proportions but upon the administrative districts, thereby causing the disparity of inequality in the value of each vote, is not in conformity to the Constitution for the reason that the relevant provision violates the right to equality as well as the right to vote.

Background of the Case

The complainants, residents of Yongin-Si, Gyeonggi-Do as well as Gunsan-Si, Jeollabuk-Do, were about to exercise their rights to vote for the election scheduled on May 31, 2006. They filed this Constitutional Complaint, claiming that among the relevant electoral district tables for municipal and provincial assembly election of the Public Official Election Act, the parts for Gyeonggi-Do and Jeollabuk-Do cause inequality in the value of each vote because inequality in the value of each vote originated from population disparity is too great compared with average population of other districts within Gyeonggi-Do and Jeollabuk-Do, and thereby violating their right to equality and right to vote.

Summary of the Opinions

The Constitutional Court has held, in a seven-to-two decision, that among the relevant electoral district tables for municipal and provincial assembly election (hereinafter referred to as 'the electoral district table at issue in this case') of the Article 26 Section 1 of the Public Official Election Act, the parts for Gyeonggi-Do and Jeollabuk-Do districts and Article 22 Section 1 of the same Act, which uniformly allocate two provincial assemblymen for each basic local government unit, Gu·Si·Gun, are both not in conformity with the Constitution. The summary of the grounds for the Court's decision is stated in the following paragraphs.

1. Summary of Majority Opinion of Six Justices

A. In drawing electoral districts for municipal and provincial assemblies, besides population, other factors such as administrative districting, geographical aspects, transportation should be considered. The constitutional standard for the electoral district drawing should be decided by considering the following three factors : (1) the principle of population proportionality as the most significant factor, (2) the representativeness of a member of municipal or provincial assembly, and (3) the excessive disparity in terms of population between the urban and the rural areas due to population concentration towards the urban areas, the latter two factors being the unique situations of

Korea. At the point of present time, setting the constitutionally permissible maximum deviation of population in an electoral district from average population of electoral districts at 60% (equivalent to setting the permissible maximum ration between the most populous district and the least at 4:1) is mostly appropriate for the election for municipal and provincial assembly.

In case of the first, third, fourth electoral district of Yongin-Si and the first electoral district of Gunsan-Si, Jeollabuk-Do, it passes over the constitutionally permissible maximum deviation of population, which is 60%. Such inequality in the value of each vote originated from population disparity in electoral districts cannot be justified with any reasonable grounds. Therefore, among the electoral district tables at issue in this case, "the first, third, fourth electoral district of Yongin-Si, Gyeonggi-Do" and "the first electoral district of Gunsan-Si, Jeollabuk-Do" are the deviation from constitutionally allowed legislative discretion, thereby violate the right to vote as well as the right to equality of the complainants residing such districts.

B. The electoral district tables corresponding to each Si and Do (municipality and province) are inseparably related to each other. Therefore, in case there is one unconstitutional element in the system of electoral district tables, the system is constitutionally flawed in entirety. Also, if drawing one particular electoral district is found to be unconstitutional because of its redundant population, it could make more unfair result for other electoral districts where the inequality in the value of the vote is greater because the current system is being applied. Thus, if parts of electoral district tables are found to be unconstitutional, declaring the entire electoral district tables unconstitutional would be proper. For this reason, among the electoral district tables at issue in this case, it is proper to declare unconstitutional the entire Gyeonggi-Do districts and the entire Jeollabuk-Do districts.

C. Inequality in the value of each vote originated from population disparity exists in drawing the first, third, fourth electoral district of Yongin-Si and the first district of Gunsan-Si, Jeollabuk-Do. Furthermore, such inequality was originated from the Article 22 Section 1 of the Act which uniformly allocate two provincial assemblymen for each basic local government unit, Gu·Si·Gun based not upon the population proportions but upon the administrative districts. Therefore, the above provision results in violating the constitutionally guaranteed right to vote and the right to equality.

D. Since the matters of allocating the full numbers of municipal or provincial assemblymen and of deciding the electoral district tables can be affected by the size of different counties, municipality, and other factors such as administrative districting, geographical aspects, transportation, the excessive disparity in terms of population between the urban and the rural areas as well as the imbalance in terms of development among different regions, it is extremely hard for the Court to suggest a way for the newly improved legislation. Considering all the factors above, the Court declares that the Article 22 Section 1 of the Act and the pertinent electoral districts among the electoral district tables at issue in this case are unconstitutional.

E. The fact that municipal and provincial assembly election has occurred pursuant to the electoral district tables at issue in this case of the Act should be taken into account. Also, rendering a decision of simple unconstitutionality will not fasten the legislative amendment process thereby causing a legal vacuum in case reelection or by-election becomes reality. In addition, considering conducting reelection or by-election pursuant to the provisions above as well as the electoral district tables at issue in this case would be proper for the purposes of both preventing any confusion any change could generate and maintaining the uniformity of municipal and provincial assemblies. Given all of the above, we hereby issue a decision of nonconformity to the Constitution, to the effect that the legislators shall be obligated hereby to affirmatively complement the current system by at the latest December 31, 2008. Therefore, the above provision at Issue and the electoral district tables at issue in this case shall continue to apply on a temporary basis.

2. Summary of Separate Concurring Opinion of One Justice

In drawing electoral districts, the key component is by all means the principle where the electoral constituencies are to be equal in population. Other non-population factors such as administrative districting, geographical aspects, transportation, the difference between urban and rural areas, and other additional policy factors are only for the secondary consideration. The permissible maximum ratio between the most populous district and the least is 2:1 because the ratio beyond 2:1 will cause conspicuous inequality due to the fact that one person of the least populous district will be able to exercise more than two votes of the most populous district. Therefore, the ratio 2:1 is the logical and mathematical limitation in restricting the right to vote.

3. Summary of Dissenting Opinion of Two Justices

Article 118 Section 2 of the Constitution provides that "the organization and powers of local councils, and the election of members; election procedures for heads of local governments shall be determined by statute." Also, the Public Official Election Act provides that the population of each election district should be considered when council members of foundational local governments are voted for. Meanwhile, the Act provides that no such consideration needs to be taken into consideration when council members of wide area local governments are elected. It simply provides that two members will be elected regardless the size of population of each electoral district of foundational local governments. Such distinction is a reflection of the duplex structure and the different functions of basic local governments and wide-area local governments, which has certain reasonable ground as a choice of scheme, thereby not unconstitutional. Therefore, in the current system where electing two members of council members for the wide-area local governments, as a norm for deciding one person one vote principle the proportionality of population between the same basic local governments should be considered, not the proportionality of population between the two different basic local governments.