

## **Reimbursement of Election Expense**

### **Based on the Number of Votes Obtained by a Candidate Case**

<2008Hun-Ma491, May 27, 2010>

In this case, the Constitutional Court held constitutional the part of “the election of National Assembly members of local constituency” in Article 122-2 Section 1 Item 1 of the Public Officials Election Act which stipulates that the whole amount of election expenses incurred in the conduct of election should be reimbursed when the number of votes obtained by a candidate has been 15/100 or more of the total number of valid ballots and amounts equivalent to 50/100 of election expenses paid by a candidate should be reimbursed when the number of votes obtained by a candidate has been not less than 10/100 but less than 15/100 of the total number of valid ballots.

#### **【Background of the Case】**

Complainant ran for the 18<sup>th</sup> Election for Members of the National Assembly in his constituency, Sangdang-Gu, Cheongju City, held on April 9, 2008 but lose the election in third position winning 9.8% of votes of the total number of valid ballots in the polling. As Article 122-2 Section 1 Item 1 of the Public Officials Election Act(hereinafter, the “Instant Provision”) stipulates that only those candidates who obtained more than 10/100 of the total number of valid ballots can get reimbursement of the election expenses incurred in the conduct of election, the complainant filed this

constitutional complaint arguing that the Instant Provision violates the Constitution.

**【Provisions at Issue】**

Public Officials Election Act (Amended by Act No. 7681, August 4, 2005)

Article 122-2 (Reimbursement, etc. of Election Expenses)

(1) The constituency election commission shall, after the election day, replenish under the provisions of each of the following subparagraphs the election expenses (referring to the election expenses deemed to have been lawfully paid, which are staged in the accounting report that is submitted pursuant to Article 40 of the Political Funds Act) paid by the candidate (referring to the political party that recommends its candidate in the presidential election, in the election of the proportional representative National Assembly members and in the election of the proportional representative local council members; hereinafter the same shall apply in this Article) for the election campaign under this Act, at the expenses of the State and at the expenses of relevant local governments in the election of local council members and the heads of local governments, within the limit of expenses publicly notified under Article 122:

1. Presidential election, the election of National Assembly members of local constituency, the election of the local council member of local constituency and the election of the heads of local governments:

(a) Cases where a candidate has been elected or deceased, or where the number of votes obtained by a candidate has been

15/100 or more of the total number of valid ballots:

Whole amount of election expenses paid by a candidate; and

(b) Cases where the number of votes obtained by a candidate has been not less than 10/100 but less than 15/100 of the total number of valid ballots:

Amounts equivalent to 50/100 of election expenses paid by a candidate

### **【Summary of the Decision】**

In an opinion of 7(constitutional):2(unconstitutional), the Constitutional Court held that the part of “the election of National Assembly members of local constituency” in Article 122-2 Section 1 Item 1 of the Public Officials Election Act does not violate the Constitution for the following reasons:

#### 1. Majority Opinion of Seven Justices

The Instant Provision in this case concretizes public management of election by stipulating that the whole amount of election expenses incurred in the conduct of election should be reimbursed when the number of votes obtained by a candidate has been 15/100 or more of the total number of valid ballots and amounts equivalent to 50/100 of election expenses paid by a candidate should be reimbursed when the number of votes obtained by a candidate has been not less than 10/100 but less than 15/100 of the total number of valid ballots.

As the cost for maintaining the public management of election is covered by tax from the people, it should be managed properly: since the conduct of election requires great amount of money,

necessary and proper steps should be taken to prevent national budget from being imprudently wasted, considering the nation's current political situation and election culture as well as its economic and financial status. If the state covers all the election expense, however, anybody can run for election without any burden or responsibility, which enables those who have no serious intention to take public office or try to use an election for personal benefit to run for election, making an election flooded with candidates and thereby putting enormous financial burden on the state. Therefore, in the course of developing the public management of election system, it is legitimate for a state to come up with measures to effectively execute national budget and to prevent aforementioned side effects. Also, considering that if it is decided that the election expenses of some candidates are not reimbursed, reimbursement based on the total number of valid ballots, which reflects the intention of voters, seems the most reasonable method; that a candidate who failed to earn more than 10/100 or 15/100 of the total number of valid ballots has few possibility to be elected; that almost half of candidates (49.4%) in the last 18<sup>th</sup> Election for Members of the National Assembly were reimbursed for their election expenses; and that not only candidates themselves personally cover election expenses but the state also bears considerable amount of financial burden to conduct an election, the standards set by the Instant Provision seem neither arbitrarily high nor violative of the purpose of the public management of election. Therefore, the Instant Provision does not infringe the complainant's right to equality going beyond the limit of legislative discretion.

## 2. Dissenting Opinion of Two Justices

Article 116 Section 2 of the Constitution provides for the principle of public management of election and the principle of public funding of election. Therefore, when a statutory provision imposes financial burden for the conduct of election on candidates or political parties, there should be legitimate and sufficient reasons for any exception to the principle of public funding of election

The election expense subject to be reimbursed under the Instant Provision is confined to that is legitimate and necessary for the conduct of election, which is indispensable for electing a representative of the people, and must be paid for proliferation of democracy. Therefore, in light of the principle of public funding of election under Article 116 Section 2 of the Constitution, such expense should be covered by the state or local governments.

However, as 55.1% of candidates who ranked third in the 18<sup>th</sup> Election for Local Constituency Members of the National Assembly could not be reimbursed for their election expenses due to the Instant Provision, the Instant Provision's preventing any candidate who failed to obtain less than 10% of the total number of valid ballots from being reimbursed for his/her election expenses incurred in the conduct of election seems excessive in terms of allowing exceptions to the principle of public funding of election, going beyond the scope of legitimate and sufficient reasons to the principle. Also, such excessive exception to the principle of public funding of election may bring negative influence on development of democratic politics by making it difficult for anyone who cannot afford to election expenses to run for an election as a candidate endorsed by a small, minor political party or as an independent candidate, which is totally in violation of the purpose of Article 116 Section 2 of the Constitution.

Moreover, candidates who failed to earn less than 10% of the total valid ballots should not be considered not worthy of expressing their political opinions or being the one that should be blamed. Also, even with other efficient devices such as candidate recommendation system or candidate deposit system, it seems redundant to provide another system for the same purpose. Further, for those who are wealthy or try to take advantage of election for personal purposes by simply registering as a candidate and carrying out election campaign itself, the Instant Provision does not have any effect to prevent such people from recklessly running for election but effective only for those who are not wealthy, which is in violation of the spirit of principle of public management of election. Also, as the Instant Provision exacerbates structural unfairness between major political parties and minor political parties, it is in violation of the principle of equal opportunity in election as the core spirit of the public management of election. Therefore, the unequal treatment resulted by the Instant Provision violates the Constitution as it lacks legitimate reasons.