

## **Restriction on Contribution of Political Funds related to Organization**

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In an opinion of 5(constitutional):3(incompatible with the Constitution):1(unconstitutional), the Constitutional Court held constitutional Article 12 Section 2 of the former Political Fund Act which prevents anyone from contributing political funds related to any corporation or organization and Article 30 of the same Act which imposes criminal sanction on violation of Article 12 Section 2, on the grounds that the aforementioned provisions (hereinafter, the Instant Provisions) neither violate the rule of clarity under the principle of *nulla poena sine lege* nor infringe the freedom of political activity in violation of the principle against excessive restriction.

### **【Background of the Case】**

Petitioners were indicted for contributing illegal political funds, collected from the members of the National Union of Mediaworkers under the name of supporting general election, to a candidate for election to the National Assembly in violation of Article 12 Section 2 of the former Political Fund Act. While the litigation was pending, the petitioners filed a motion to request for a constitutional review of the Instant Provisions but the court denied the motion. Upon this, the petitioners subsequently filed this constitutional complaint.

### **【Provisions at Issue】**

Former Political Fund Act (Amended by Act No. 7191, March 12, 2004 but before wholly amended by Act No. 7682, August 4, 2005)

Article 12 (Restriction on Contributions) ②No one shall contribute any political fund related to any corporation or any organization both at home and abroad.

Article 30 (Offenses of Giving and Receiving Political Funds) ② Anyone falling under any of the following subparagraphs shall be punished by imprisonment for not more than five years or by a fine not exceeding ten million won:

5. One who has contributed or received political funds in violation of the provisions of Article 12 (Restriction on Contribution) or Article 13 (Restrictions on Contributions Related to Specific Acts)

### **【Summary of the Decision】**

#### 1. Opinion of Constitutionality

(1) Considering the legislative purposes, historical backdrop and structure of related provisions, the Instant Provisions do not fall into the category of repetitious legislation of the provision ‘prohibiting political contribution from labor organizations’ against which the Constitutional Court held unconstitutional in 1999, because the Instant Provisions do not have any intention at all to place discriminatory restriction on labor organizations.

(2) ‘Organization’ in the Instant Provisions means ‘a social unit of

people gathering on a continuous basis with collective goals or common interests in which a systematic formation of opinion and decision making is possible,' and 'fund related to organization' means a fund that can be contributed in the name of an organization according to the decision of the organization, and also includes a fund that is collected and formed through an organization's own initiative under its name, as well as assets as a basis of an organization's existence and activity. Therefore, it is hard to state that the meanings of the words are vague.

(3) The Instant Provisions are legislated in order to prevent distortion of democratic formation of opinions or infringement on freedom of political speech of members of organization, which can be caused by donating political fund from organization, and the Instant Provisions can be considered as appropriate means to achieve the legitimate legislative purpose. Meanwhile, as the Instant Provisions do not prevent an organization from expressing its political opinion itself, but simply control the way of using 'fund' which can be unbalancedly given from an individual to an individual, they neither infringe the core of freedom of political expression nor violate the principle of least restrictive means. Further, while the extent of limitation imposed on the freedom of political expression of a person or an organization does not exceed the acceptable scope, the public interests to be achieved, such as prevention of plutocracy and breaking the chain of collusive ties between politics and business, are very important and huge, and therefore, the Instant Provisions do not fail to strike balance between legal interests. Consequently, the Instant Provisions cannot be considered as infringing upon the freedom of political activity and the freedom of political expression in

violation of the rule against excessive restriction.

## 2. Concurring Opinion of One Justice

Although the Instant Provisions are repetitive legislation of the provision prohibiting contribution of political funds by a labor organization which had been declared unconstitutional(95Hun-Ma 154) in terms of their infringement on the freedom of political expression, etc. of a labor organization, they do not conflict with the binding force of the decision of unconstitutionality because there exist special reasons for justifying the exclusion of the binding force, in that the Instant Provisions were legislated according to the changes in people's legal confidence and the public outcry for the need of strong legislative measures to root out the practice of giving illegal political funds in the Presidential elections held after the decision of unconstitutionality was rendered.

## 3. Opinion of Incompatibility with the Constitution by Three Justices

The Instant Provisions also apply to a political organization whose purpose of association is to conduct political activity, which is a fundamental infringement on political organization's freedom of political activity and association. Further, although it is possible that contribution of political funds by non-political organizations could distort the process of democratic formation of opinions or tarnish fairness in election, uniformly prohibiting contribution of political funds without providing any institutional measure to prevent such side effects, even in the case where such

contribution is necessary to achieve an organization's purpose, cannot be regarded as appropriate means. Also, overall restriction on contribution of political funds by an organization, in the fear of the possibility that donation of political funds by an organization can be done against the will of members of the organization, cannot be considered as appropriate means to achieve the legislative purposes because in some sense, contribution of political fund by an organization should be considered as having gone through its inner process of democratic formation of opinions. However, as the Instant Provisions contain both constitutional and unconstitutional parts, and distinguishing the two is a task of the National Assembly, it would be appropriate to declare that the Instant Provisions are not compatible with the Constitution and urge legislative revision.

#### 4. Opinion of Unconstitutionality

The concept of "organization" in the Instant Provisions fails to concretize the general understanding of the word, which is 'gathering of multiple people on a continuous basis.' Moreover, the meaning of 'fund related to organization' is also hard to be clearly determined, and the Instant Provisions do not provide any concrete and practical standard against which funds related to organization and those not related to it can be distinguished. Therefore, the Instant Provisions run afoul of the Constitution, in violation of the rule of clarity under the principle of *nulla poena sine lege*.