

Restrictions on Candidate Qualification to be Invited to Election Broadcasting Debate

[2010Hun-Ma451, May 26, 2011]

In a vote of 7 (constitutional) to 2 (unconstitutional), the Constitutional Court held that the part of 'election of local constituency member of the National Assembly ' of Article 82-2, Section 4, Item 3 ("the Instant Provision") of the Public Official Election Act ("POEA"), which sets forth certain restrictions on the candidate qualification to be invited to an election broadcasting debate supervised by the National Election Broadcasting Debate Commission when the candidate runs for the National Assembly of local constituency, is not incompatible with the Constitution.

Background of the Case

Complainant, who had run for reelection of local constituency member of the National Assembly, was excluded from the list of candidates to participate in election broadcasting debate for the reason of not meeting the qualifications which the Instant Provision set forth. In response, the complainant filed this case with the Court

arguing that his right to equality was infringed and the Instant Provision is unconstitutional.

Provision at Issue

POEA (revised by the Act No. 9974 on January 25, 2010)

Article 82-2 (Interviews or Debates Supervised by the National Election Broadcasting Debate Commission)

(4) When the National Election Broadcasting Debate Commission of each level holds interviews or debates referred to in paragraphs (1) through (3), it shall hold them by inviting the candidates falling under any one of the following sub-paragraphs. In such cases, candidates who are invited by the Election Broadcasting Debate Committee of each level to the interviews and debates shall participate therein unless justifiable grounds exist that make it impossible for them to do so.

1. The presidential election:

(a) Candidates recommended by the political parties having five or more National Assembly members belonging thereto;

(b) Candidates recommended by the political parties that have obtained 3/100 or more votes of the total number of nationwide valid ballots in the immediately preceding presidential election, the election of the proportional representative City/Do council members or the election of proportional representative autonomous Gu/Si/Gun council members; and

(c) Candidates who occupy 5/100 or more support ratios averaging the results of public opinion poll conducted and publicized by the press under the conditions as set by the National Election Commission Regulations during the period from 30 days before the beginning date of election to one day before the beginning date of election.

3. The election of National Assembly members of local constituency and the election of the head of local governments:

(a) Candidates recommended by the political parties falling under subparagraph 1(a) or (b);

(b) Candidates who have obtained 10/100 or more votes of the total number of valid ballots by running for a presidential election, the election for National Assembly members of local constituency or the election for the heads of local governments conducted within 4 years (including cases where the district of constituency was altered and the altered district overlaps with the district of immediately preceding election); and

(c) Candidates whose support ratio averaging the results of public opinion poll referred to in subparagraph 1(c) is 5/100 or more.

Summary of the Decision

1. Majority Opinion of Seven Justices

In case where no restriction on candidates' qualification to be invited to election broadcasting interviews or debates, such interviews or debates can be degraded to only the hustings rather than effective interviews or debates and comparison of the candidates in terms of their qualifications or political capabilities could be probably impossible, not to mention resource limitation on the transmission. Therefore, a certain restriction on the candidates to be invited to that interviews or debates is based on the legislature's reasonable considerations mentioned above.

However, in order to allow only qualified candidates to be invited considering chances of winning the election and popularity with the public, the terms and conditions for candidates to be invited to election broadcasting debate should be set out to make the interviews and debates to be effective and constructive. The Instant Provision, which allows the candidates falling under any of the followings to be invited to the debate, can not be regarded to be particularly arbitrary or excessively strict : candidates recommended by the political parties having five or more National Assembly members belonging thereto, considering the limitation on the following candidates to be invited to the election broadcasting debate in accordance to the parts of the provision; candidates recommended by the political parties that have obtained 3/100 or more votes of

the total number of nationwide valid ballots in the immediately preceding election; candidates who have obtained 10/100 or more votes of the total number of valid ballots by running for elections within 4 years; or candidates who occupy 5/100 or more support ratios averaging the results of public opinion poll conducted and publicized by the press during the period from 30 days before the beginning date of election to one day before the beginning date of election. Furthermore, the National Election Broadcasting Debate Commission may hold the interviews or debates for candidates who are not subject to the invitation in order to give them a chance of election campaign under Article 5 of the POEA.

For the foregoing reasons, the Instant Provision should be considered to be reasonable since it strikes a balance between the conflicting interests, the public interest in boosting election interviews or debates and the private interest in guaranteeing equal opportunity to election campaign. Therefore, the different treatment of candidates under the Instant Provision is not an arbitrary discrimination and does not infringe on their right to equality.

2. Dissenting Opinion of Two Justices

The National Election Broadcasting Debate Commission as a governmental institution is in charge of election administration such as the Election Administration Commission and takes responsibility to ensure equal

opportunities for conducting election campaigning to candidates under Article 116, Section 1 of the Constitution. Election campaigning on broadcasting can be one of the most effective means of election campaign from the point of view of a candidate, while it can play a major role in helping voters to recognize and compare the candidates' positions and policies all at once. Besides, election broadcasting interviews or debates supervised by the National Election Broadcasting Debate Commission are forming a great part of campaigning since other speeches are prohibited under the POEA.

The Instant Provision, on the contrary, imposes restrictions on the candidates qualification to be invited to that debates, resulting in directly incompatible with the purpose of Article 116, Section 1 of the Constitution. The provision of the POEA stating that a separate interview or debate can be hold for the candidates uninvited can not alleviate the unconstitutionality of the Instant Provision as such provision for a separate interview or debate is to be only another discriminatory action to maintain the original discrimination by the Instant Provision. Furthermore, not allowing some candidates to participate in the election campaigning on broadcasting can lead to a critical impact on election results as the voters can be influenced in their views on candidates, leading to such voters' discriminatory evaluation of candidates uninvited. In this case, it is difficult for the candidates uninvited to the election broadcasting debate to find ways to remove that

discriminatory effect.

For the reasons stated above, the Instant Provision did not give the complainant, who was not invited to the election broadcasting debate, equal opportunities to election campaign, violating Article 116, Section 1 of the Constitution.