

Case on Prohibition of Succeeding Local Council Seats Reserved for Proportional Representation in the Event of Vacancies Occurring from Election Crimes

[2007Hun-Ma40, June 25, 2008]

In this case, concerning a provision of the Public Official Election Act providing that vacancies in the office of a proportional representative local council member, in principle, should be filled by the next eligible candidate on the relevant party list except for ones arising from invalidation of election due to election crimes, the Constitutional Court held the provision unconstitutional by arguing that it infringes on the right of the next eligible candidate to hold public office and therefore violates the Constitution.

Background of the Case

The complainant is one of the candidates registered on the list of former People First Party's proportional representative members of Nonsan City Council at the time of local council member elections held on May 31, 2006. As the member-elect lost his post for committing an election crime, the complainant was entitled to succeed the vacant seat. However, he was not allowed to take over the seat because the vacancy fell under the stipulated exceptions to succession (proviso of Article 200 Section 2, Public Official Election Act, hereinafter the "Provision"). In response, the complainant filed a constitutional complaint in this case on January 12, 2007, arguing that the Provision violated his right to hold public office, etc. The Provision under

review is as follows:

Article 200 (Special Election)

(2) If the office of a proportional representative National Assembly member or a proportional representative local council member becomes vacant, the constituency election commission shall decide the person to succeed to the seat of the vacant member in the order of the roll of candidates for the proportional representative National Assembly members and for the proportional representative local members of the political party to which the vacant member belonged at the time of his election, within 10 days after it receives the notification of such vacancy: Provided, That where his election becomes invalidated as provided in Article 264, the political party to which he belongs is dissolved or a vacant member accrues within 180 days before the date on which his term of office expires, the same shall not apply.

Summary of Decision

In an opinion of 8 (concurring) to 1 (dissenting), the Constitutional Court decided that the Provision violates the Constitution according to the following reasons.

I. Majority Opinion of 8 Justices

A. Under the current proportional representation election system, voters' expression of political will directly determines the number of seats of

proportional representative local council members allocated to a political party, instead of which candidate becomes the proportional representative local council member. However, the Provision not only deprives the accountable member-elect of his/her office for committing an election crime, but also denies the succession of the vacant seat by the next eligible candidate of the same political party as the member-elect, resulting in disregarding and distorting voters' political will to allocate a seat of a proportional representative local council member to the said party. Also, since only one proportional representative local council member is designated for 117 local councils of Gus (districts), Sis (cities), and Guns (counties), the denial of seat succession may, in the extreme, lead to an absence of a proportional representative local council member in many of the Gus, Sis, and Guns. There is a possibility that such a consequence may also undermine the significance of proportional representation elections. In addition, it is hardly reasonable to address the invalidation of the member-elect's election for reasons of committing an election crime differently from general cases of vacancies, such as those occurring from resignation or retirement. Therefore, the Provision is not compatible with the principles of representative democracy in that it may result in disregarding and distorting the intention of voters.

B. The exception to succession by the next qualified candidate for the proportional representative local council member on the roll of the political party concerned as provided for in the Provision is not admitted due to responsible acts of the consequently disadvantaged political party or the next eligible candidate on the party list, but because of the election crime committed by the member-elect whose election has been invalidated. Yet, the Provision does not even accuse the party concerned or the next eligible candidate on the party list of any of their intervention or involvement in the

election crime. Whether the election crime was intended to and actually did affect the voting result is not taken into account, either. Given the current political party system, in which constituency party chapters and the elements constituting an election crime that causes invalidation of elections have been removed and the statutory number of City/Do parties is defined as five or more, it does not seem that our society is yet equipped with the conditions to prevent candidates from committing election crimes nor to supervise or control the candidates substantially. All considered, the Provision, by providing a disadvantage against the political party to which the member-elect belongs or the next eligible candidate of the party, arguably violates the liability rule defining that one is liable only for one's own act.

C. Instead of help serving the specific legislative purpose to correct voters' distorted will and ensure fair elections, the Provision, drawn by the abstract and vague slogan to create fair environment for elections solely through strict punishment of election crimes, nothing but leads to disregard and distort voters' political will expressed in the proportional representative local member election. Therefore, the Provision hardly fulfills the requirement for suitability of means. Additionally, the legislative purpose to achieve fair elections through prevention of election crimes can be served to a certain extent just through various penal provisions specifying election crimes and by invalidating the election of the member-elect who is guilty of an election crime. At the same time, the legislative purpose can be also served by a less restrictive alternative while reflecting voters' will to the utmost. In that sense, the Provision provides an overly excessive regulation that is more than necessary. Therefore, the provision under review contradicts the prohibition against excessive restriction and thereby infringes on the complainant's right to hold public office.

II. Dissenting Opinion of 1 Justice

A. As a measure to correct voters' will distorted by an election crime committed by the member-elect, the Provision is not against the principles of representative democracy. In particular, in proportional representative local council member elections where, unlike in proportional representative National Assembly member elections, relatively a small number of members are elected at the level of the relevant Si/Do and autonomous Gu/Si/Gun, it is more likely that voters' will can be distorted by the member-elect's involvement in an election crime. This means the need for prevention thereof is even stronger. Furthermore, when considering the directive, comprehensive role and function of political parties, indispensable relationship between political parties and candidates, etc. in elections for proportional representative local council members, the Provision bases itself on the legislative discretion to help prevent unfair elections by stressing the responsibility of political parties over the overall process of election campaigns, including the recommendation and registration of candidates. In this case, the underlying rationale is neither wrong nor unfair. Therefore, the Provision does not violate the rule that one is liable only for one's own act.

B. The Provision, by defining exceptions to the automatic succession, aims to impose responsibilities on political parties more strictly for the purpose of preventing election crimes, so it can serve as a suitable means to fulfill the legislative purpose to establish clean and fair climate for elections. Moreover, given the directive and comprehensive role of political parties in the election

of proportional representative local council members, it would be hardly viewed that legislators' decision was distinctly in the wrong or greatly unfair when they transferred the responsibility of the member-elect's election crime to the political parties to which the member-elect belongs in order to prevent unfair elections. In this sense, it is hardly the case that the Provision imposes overly excessive regulations, and it is not easy to find a less restrictive means to serve the legislative purpose, either. Because the exception to succession is only limited to cases of invalidation of member-elects' election in the event of their involvement in election crimes, the extent to which fundamental rights are restricted is not larger than the public interest intended to be served by the Provision. Therefore, the Provision does not involve distinct transgression of the scope of legislative discretion and therefore does not infringe on the complainant's right to hold public office.