

Listing Order of Candidate's Name on Ballot Paper

[19–2 KCCR 412, 2006 Hun–Ma 364 et al., Oct. 4, 2007]

In this case, the Constitutional Court declared constitutional the Article 150 Section 4 of Public Official Election Act putting the listing order of candidates on the ballot paper; the candidate from majority party as of the voting day first, the candidate from minority party later, and the independent candidate latest. The Court also declared constitutional the latter sentence of Article 150 Section 5 of Public Official Election Act putting the listing order of candidates on the ballot paper alphabetically who run for the municipal election nominated by same political party.

Background of the Case

The complainants ran for the fourth nationwide municipal election on May 31, 2006 nominated by Uri Party and failed in the election. They had been assigned the sign "1–Na" or in non-partisanship according to the latter sentence of Article 150 Section 5 of Public Official Election Act and were assigned the sign "7" according to Article 150 Section 4 of Public Official Election Act. The complainants brought constitutional complaint claiming that the latter sentence of Article 150 Section 5 of Public Official Election Act was unconstitutional because it discriminated against the candidates based on the family name, an accidental factor inherited from their parents, and that Article 150 Section 4 of Public Official Election Act was unconstitutional because it discriminated against nonpartisan candidate and intruded upon the Petitioners' rights such as right to equality and the right to hold public office.

Summary of the Opinion

The Constitutional Court unanimously ruled that Article 150 Section 4 and the latter sentence of Section 5 did not intrude upon the complainants' rights and the reasons are as follows.

1. Sign Assignment based on the number of the Representatives belonging to the Political Party (Article 150 Section 4)

On this part, the Court has already decided in 96 Hun–Ma 9 (8–1 KCCR 289, Mar. 28, 1996), 96 Hun–Ma 94 (9–2 KCCR 523, Oct. 30, 1997) and 2003 Hun–Ma 601 (16–1 KCCR 337, Feb. 26, 2004), that the system did not intrude upon the right to equality considering the purport to protect political party system in the Constitution although discriminating against the candidates from minority party and non-partisan candidates. In this case, we follow the precedents because they seem neither to have any important errors in principles of law nor to have any changes in situation to justify to overrule them.

2. Sign Assignment in alphabetical order of the candidates' names when a political party nominates more than one candidate in the same electoral district (Latter Sentence of Article 150 Section 5)

A. Latter Sentence of Article 150 Section 5 gives advantages to the candidates with earlier number in sign order and discriminates against the candidates with latter number concerned with the preparation of election campaign and the effect of propaganda. However, assigning the sign alphabetically according to the family name of candidates when a political party nominates more than one candidate is to set standards for the sign assignment and to strive for smooth management of election. Hence, its legislative purpose is legitimate and the means to achieve the legislative purpose is proper compared with drawing lots for turns and having voting competition in the party. For this reason, the provision above does not intrude upon the right to equality of the complainants.

B. In addition, the provision above is just about the method to decide the listing order on the ballot paper of the candidates who registered in the same electoral district nominated by same political party. It does neither limit the range of choice among candidates nor block the winning chance of a candidate with the family name of latter order. Hence, it does not excessively limit the right to hold public office of the complainants and the right to name because it does not intervene with and deprive of the name of the candidates.