Dissolution of the Unified Progressive Party Case in Korea: A Critical Review with Reference to the European Court of Human Rights Case Law

Jongcheol Kim

This article aims to introduce and critically analyze the jurisprudence and its application in the UPP case in South Korea with reference to the ECtHR case law. In this controversial case, the CCK decided to dissolve the UPP and, without any basis in positive law, disqualify five National Assembly members affiliated with it. It is argued that when the CCK attempted to articulate the principle of proportionality that the ECtHR case law has firmly developed in this field and to apply it to this case, standards governing the dissolution of political parties were distorted at least in two ways. First, it substituted ‘social need’ for “pressing social need.” Second, it deliberately omitted the requirement of ‘sufficient imminence.’ In addition, the reasoning of the majority of eight justices based upon the rule of evidence in civil proceedings can also be criticized for being too abrupt to be justified in this highly controversial case of constitutional importance.

* Professor at Yonsei University School of Law, Seoul, Korea. LL.B./LL.M. (Seoul Nat’l Univ.), Ph.D. in Law (LSE). ORCID: http://orcid.org/0000-0001-9731-5751. This article is a fully revised and updated version of the paper presented at the International Conference held at the University of Hong Kong Centre for Comparative and Public Law under the title of “Democratization and Constitutional Adjudication in Hong Kong and South Korea: Comparative Perspectives” on February 12, 2015. Some of main arguments raised in this paper were published in a paper written in Korean under the title of Is the Constitutional Court the Sovereign Institution? - Dissolution of the Unified Progressive Party and Constitutional Identity of the Republic of Korea [헌법재판소는 주권적 수임기관인가?: 대한민국의 헌법적 정체성과 통합진보당 해산결정] <available only in Korean> 151 JUSTICE 29-71(2015). This research was supported by the Ministry of Education and the National Research Foundation of Korea (NRF-2015S1A3A2046920). The author may be contacted at: jkim386@yonsei.ac.kr / Address: Yonsei University School of Law, 50 Yongseo, Seodaemungu, Seoul 03722 Korea.

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1. Introduction

On December 19, 2014, the Constitutional Court of Korea ("CCK") decided to dissolve the Unified Progressive Party ("UPP") and to disqualify the five National Assembly members affiliated with the UPP. It is the first case of this kind in Korean constitutional history after 1948.

The dissolution process was based upon Articles 8(4), 111(1), and 113(1) of the Constitution of the Republic of Korea ("ROK"), while the disqualification decision was made without any basis in written law. Article 8(4) endows the Executive with the power to bring before CCK an action that can dissolve a political party, which has the purposes or activities of violating the so-called “democratic basic order” (民主的 基本秩序). Also, Articles 111(1) and 113(1) presents that CCK may make a decision to dissolve a political party with the concurrence of at least six out of nine justices. The major legal issues at stake, in this case, are basically two-fold: first, what are the requirements for the dissolution of a political party? i.e., whether or not the party violated or abused the democratic basic order? second, how strict a standard might be applied to discover such an infringement? These two issues should be tackled best through considering the fundamental principles of why democracy pertaining to value relativism and plurality of political powers institutionalizes the mechanism of compulsory exclusion of a political party from the official political system.

The historical and constitutional ramification of the UPP case allow us to assess the present circumstances of Korean democracy and the role of constitutional adjudication in the democratic order in Korea.

The rudimentary objective of this research is to introduce the essential elements of CCK’s jurisprudence in this case and to dissect them critically with distinct references to the case law of the European Court of Human Rights ("ECtHR"). This paper is made out of five parts including a short Introduction and Conclusion. Part two will discuss the idea and ideology of modern constitutional democracy. Part three will break down the jurisprudence of CCK in the UPP dissolution case. Part four will criticize the reasoning of CCK in this case.