

International Conference (16 May 2017)

The Doctrine and Practice of the Impeachment of President

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1. It is my great pleasure to be here with you at this meaningful international conference, where we can share our experiences and views on each other's Constitutional Justice. I would like to express my special appreciation to the President Valery Zorkin and the officials of the Constitutional Court of the Russian Federation for organizing this international conference.

For the past 26 years, the Constitutional Court of Russia has successfully protected the fundamental rights of the Russian people and the Constitution, and contributed to the advancement of Constitutional Justice in Asia and the foundation of the Association of Asian Constitutional Court (AACC) in collaboration with the Constitutional Court of Korea.

Today, I would like to make a presentation on the recent impeachment case of the President and the decision of the Constitutional Court of Korea. This case was the impeachment procedure of the President of Republic of Korea who was elected by the people through the election, and it was an inevitable decision in order to integrate public opinions and retrieve people's sovereignty. In this regard, I believe that it is suitable to the main theme of the conference: "Constitutional Justice: Doctrine and Practice."

Throughout the 60 years of modern constitutional history of Korea, there have been only 2 petitions for the impeachment of the President, as requested by the National Assembly. They were the 2004 and 2016 impeachment cases of the Constitutional Court of Korea. The former petition was rejected in May 2004, but the latter one was accepted in March 2017. As a result of the latter decision, the President had been removed from public office immediately, and the new President took office through an election on 9 May 2017.

On 9 December 2016, the National Assembly approved the motion for impeachment of the President with a concurrence of 234 members in the 300-seat National Assembly. The impeachment adjudication started following the Constitutional Court's receipt of the petition for impeachment. While the power of the President being suspended by the motion for impeachment, all the Justices made the best effort to resolve the case fairly and swiftly to normalize the function of the nation. First of all, we suspended all the other cases so that the Full Bench can solely concentrate on the impeachment case. We held 3 preparatory sessions and 17 pleading sessions, intensively examined 26 witnesses, and carefully took into account the pleadings from both sides. During the process, the Full Bench examined approximately 64,000 pages of documents. After 92 days of such efforts, the Court could finally reach the decision of impeachment on 10 March 2017.

2. (1) Before discussing these cases in detail, let me briefly explain the basic structure of an impeachment adjudication, that is stipulated in the Constitution and the Constitutional Court Act of Korea.

Article 65 of the Constitution prescribes the impeachment of President & other senior officials such as the Prime Minister, Ministers of the cabinet and Judges. In the case where the President or senior official violates the Constitution or other Acts while performing official duties, the National Assembly may approve motion for their impeachment. The motion for the impeachment of the President shall be approved by at least two thirds of the total members of the National Assembly. When the motion for the impeachment is approved, the power of the President shall be suspended until the decision of the Constitutional Court is pronounced. The Constitutional Court shall review the petition for the impeachment, and if the Court rejects the petition the respondent shall regain his or her power, but if the Court accepts the petition the respondent shall be removed from public office immediately. The Constitutional Court of Korea is composed of 9 Justices, and requires a concurrence of 6 Justices or more to accept the petition for impeachment (Article 111, Article 113 Section 1).

Article 48 to 54 of the Constitutional Court Act prescribe the procedure & effect of impeachment. When the petition for impeachment is well-grounded, the Constitutional Court shall pronounce a decision to remove the respondent from the public office. The decision of impeachment shall not exempt the respondent from any civil or criminal liabilities, and any person who is removed by the decision of impeachment cannot become a public official within the next five years.

(2) The respondent of the impeachment case in 2004 was the former President Roh, and the major grounds for the impeachment petition were ① violation of the Public Officials Election Act, ② receipt of illegal political funds, and ③ political incompetence.

The alleged ground for impeachment concerning the 'illegal political funds' was based on what had taken place before the respondent took office and had no relevance to the respondent's performance of his official duties as President. And the alleged ground for impeachment concerning the 'political incompetence' was irrelevant to the violation of the Constitution or Acts. So the Court ruled that, they cannot by themselves constitute grounds for the impeachment adjudication.

The Constitutional Court acknowledged that 'the respondent's public statements in support of a particular political party at press conferences in the imminence of the general election, and questioning the legitimacy of the current Public Officials Election Act in response to the National Election Commission's warning for the statements' constitute a violation of the obligation of political neutrality and protection of the Constitution.

The Constitution stipulates a 'violation of the Constitution or other Acts' as a ground for impeachment, and the Constitutional Court Act prescribes that the Constitutional Court shall pronounce a decision that accept the petition 'when the petition for impeachment is well-grounded'. So it can be literally construed that whenever there is a violation of a Constitution or any other Acts, the Constitutional Court must pronounce a decision that the President shall be removed from public office. However, a decision to remove the President from public office during the term in office would deprive the democratic legitimacy delegated to the President through an election, and it may lead to political vacuum & chaos. Therefore the Constitutional Court restrictively construed that, considering the principle of proportionality, there must be a 'grave' violation of law sufficient enough to justify the removal of the President from public office. And the Court defined the grave violation of law as a situation in which 'the maintenance of the presidential office can no longer be permitted from the standpoint of protecting the Constitution, or the President has lost the eligibility to perform state affairs by betraying the trust of the people'.

Based on such interpretation, the Court finally concluded as follows: The President violated Article 9 of the Public Officials Election Act and Article 72 of the Constitution. But taken into account the specific circumstances of the violations, no active intention to stand against the Constitution was found. And such violations cannot be deemed to possess a significant meaning in the standpoint of protecting the Constitution or as a betrayal of the trust of the people to the extent that they would require the deprivation of presidency. As there is no grave ground sufficient enough to justify a decision to remove the President from office, the Court rejected the petition for impeachment. [2004Hun-Na1, 14 May 2004]

(3) The respondent of the impeachment case in 2016 was the former President Park, and the major grounds for the impeachment petition were ① allowing a group of unofficial aides to

illegally intervene in state affairs and abusing the power in pursuit of their private interest, ② abusing the power to appoint and dismiss public officials, ③ infringing on the freedom of the press, and ④ violating the duty to protect the right to life.

Reviewing legal prerequisites, there were procedural issues on the motion for impeachment in the National Assembly and the adjudication for impeachment in the Constitutional Court. Firstly, the attorney-at-law for the respondent argued that the petition for impeachment was unconstitutional, because the National Assembly had approved the multiple grounds for impeachment together in a single motion, when it should have executed separate procedure for each ground for the impeachment. However, there is no specific regulation for the method of the approval in the Constitution or the National Assembly Act. So the Court ruled that it was not a violation of the Constitution, for whether to approve each ground for impeachment separately or to approve all grounds in a single motion is at the discretion of the National Assembly.

Secondly, the term of one of the Justices expired during the adjudication on 31 January 2017. So the attorney-at-law for the respondent argued that the adjudication must be suspended otherwise it would be unconstitutional. As a rule, the constitutional adjudication is assigned to the Full Bench consisting of 9 Justices, but in practice, some of the Justices may be unable to participate in certain adjudication inevitably. In preparation for such situation, Article 113 Section 1 of the Constitution stipulates that 6 Justices are required to accept the petition, and Article 23 Section 1 of the Constitutional Court Act stipulates that 7 Justices are required to try a case in the Full Bench. Considering these sections, the Court ruled that it was not the violation of the Constitution or the Constitutional Court Act that 8 Justices reviewed and decided on the impeachment adjudication.

Reviewing on merits, the Constitutional Court did not acknowledge the alleged grounds of ‘abusing the power to appoint and dismiss public officials, infringing on the freedom of the press, violating the duty to protect the right to life’ for lack of evidence.

Article 7 Section 1 of the Constitution is based on the principle of people’s sovereignty and representative democracy, and it clarifies the public officials including the President shall be ‘servants of the entire people’. So the President of Republic of Korea, who is elected by the people, is obliged to perform his or her power fairly and equitably for all Korean people, being independent from the private interests of a certain political party, social class, or acquaintance. Such President’s obligation to serve public interest is further specified in Article 59 of the State Public Officials Act and so on.

Nevertheless, the President divulged classified state information to her acquaintance Ms.

Choi who had never been elected or appointed to be a public official by the people, so as to let her intervene in state affairs. The President also appointed a number of people that Ms. Choi recommended to public officials, helping Ms. Choi pursue her private interest. The President, in person or through the Senior Secretary of Economic Affairs, demanded executives of major Korean companies to make contributions by using the position and power as President. As a result, major companies contributed of 77 billion won (around 67 million dollars) to the foundations which were practically established for Ms. Choi's private gain. These actions of the President were substantiated with evidence. Through such actions, the President abused her presidential power for the benefits of Ms. Choi. So the Court acknowledged that there were violations of the Constitution, the State Public Officials Act and so on.

The President's actions of such violations continued for over 3 years. By doing so, she misused her position as President and mobilized state agencies, while denying and condemning all relevant suspicions rather than acknowledging and correcting the actions. These actions led to a failure of checks and balances system by the National Assembly or the press, undermined the principle of representative democracy and the spirit of the rule of law. This caused a grave violation of the President's obligation to serve public interest.

In conclusion, the President's violations of the Constitution & other Acts are a betrayal of the people's confidence, and such grave violations of the law are unpardonable from the perspective of protecting the Constitution. Thus the Court accepted the petition for impeachment unanimously. [2016Hun-Na1, 10 March 2017]

3. In Korea, a President is the head of State and Executive Branch, with the highest democratic legitimacy delegated by the people through a direct election. The presidential term is set for 5 years by the Constitution in order to ensure stable administration of the state affairs and integration of public opinions. As the Constitutional Court is a judicial institution which only has the limited authority & function, the Court shall respect and protect the term of the President when the motion for impeachment from the Nation Assembly is unreasonable. But if the President gravely violates the Constitution and betrays the trust of people, the Court is obliged to make a decision of impeachment so as to settle the 'division & chaos' and restore the 'democracy & people's sovereignty' as a guardian of the Constitution.

The recent case of impeachment may have been an agony for the Korean people. But I hope this can also serve as a momentum, so that the future Presidents of Korea will make more effort not to misuse their power and to perform state affairs for the public interest and the people's rights.

Thank you for your attention.