

# The Constitutional Court System of Korea: The New Road for Constitutional Adjudication

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## **Abstract**

*Over the course of its relatively short history, the Republic of Korea's Constitutional Court has broken the mold of its precursory bodies and has enlarged its role and significance in the country's system of judicial review. The success of the Court's progressive activity and efforts of its surrounding environment to remove the obstacles hindering its rightful function has brought about the just scrutiny of public power by independent constitutional authority. Its fourteen years of recorded achievement have become one of the most important sources of scholarship and teaching in the discipline of law. It has injected the necessary doses of reality often absent in the application of Korean legal dogma. As an introduction to the articles that follow, this article provides a general overview of the encouraging example the Constitutional Court system has set in Korea: from the background of its precursory bodies, implementation, structure, and jurisdiction to its impact and significant activity since its implementation.*

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## I. Introduction

One of the most remarkable developments in Korean Constitutional history since 1987 has been the significant activity of the Constitutional Court. In spite of its relatively short period of operation, its influence has been far-reaching. It has altered public attitudes toward the constitution and law in general, and toward constitutional discipline as well.<sup>1)</sup> As the reform and democratization process has accelerated since the inauguration of the new civilian government in 1987, its activities have been pronounced. Simply, the statistics discussed below signify its active role in invigorating constitutionalism.

Throughout the history of Korean constitutional change, the judicial review system has never been the center of controversy. Since each constitutional amendment has primarily concentrated on the term of the presidency, the method of presidential election or the executive branch's relationship to the legislative, the judicial review system has not received the full attention it deserves. In practice, the courts have not been active in judicial review.<sup>2)</sup>

The current 1987 Constitution adopted a new system of judicial review-the Constitutional Court system. Though the 1960 Constitution, drafted just after the student revolution of April 1960, provided a continental European type of Constitutional Court, it never had the opportunity to function because of the ensuing May 1961 military coup. Thus its precedent has more theoretical than practical relevance.<sup>3)</sup>

A series of articles on the current Constitutional Court in this issue will review its activities and issues, such as the jurisdictional conflict between the Constitutional Court and the Supreme Court, the modes and effect of judgments, the scope of constitutional petition, the general trends of Constitutional Court decisions, the analyses of particular cases and so on. This article hopes to provide a general

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1) The author wrote an article with another jurist on this issue ten years ago when its activities were still in the incipient stage. See James West and Dae-Kyu Yoon, *The Constitutional Court of the Republic of Korea: Transforming the Jurisprudence of the Vortex?*, 40 *The American Journal of Comparative Law*, 73-119(1992).

2) Dae-Kyu Yoon, *Law and Political Authority in South Korea 150-199*(Seoul: Westview Press & Kyungnam University Press, 1990).

3) However, the jurisdiction of the constitutional petition devoid of the 1960 Constitution was created in the 1987 Constitution. West and Yoon, *supra* note 1, at 77.

introduction and overview of the Constitutional Court system, so one may better understand the discourse that follows.

Before introducing the current system, a summary of previous judicial review systems is needed to understand the historical development of the Korean judicial review system.

## II. Historical Overview

A constitution provides several different ways to protect its constitutional order. One of the most important parts is the review of the constitutionality of laws. However, such an authority has been given to various organs according to place and time. Except during the Third Republic (1962-1972) when the Supreme Court exercised the authority to review the constitutionality of legislation, since the inauguration of the first constitution in 1948, Korea has maintained a continental European type of judicial review system in one form or another.

Since the inauguration of the first constitution, one distinctive aspect of the Korean judicial review system has been the division of labor according to subject matters. Although the review on the constitutionality of a legislation [Beomnyul],<sup>4)</sup> that is, a law which has been duly passed by the legislature, has been at issue as is introduced below, lower laws other than legislation have consistently been reviewed by the ordinary courts. In the latter case, the Supreme Court has exercised the final authority in deciding their constitutionality.<sup>5)</sup> Therefore, in this article, a “law” which is discussed in connection with judicial review means a “legislation” or “statute” enacted through due process by the National Assembly.

In the past, the activities of the judicial review organs have been significantly influenced by the political atmosphere of the time. Insignificant or dormant activities of previous organs aptly reflect the nature of respective political powers.<sup>6)</sup>

The first constitution of the First Republic of Korea (1948-1960) gave the authority to review the constitutionality of legislation to the Constitutional Committee, a practice that reflects a combination of German and French practices. The Committee was

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4) The 1987 Constitution, Art. 53.

5) The current constitution is not an exception. *See* Art. 107(2).

6) For the details on the Korean judicial review systems, *see* Yoon, *supra* note 2, at 151-170.

composed of a Vice President who was *ex officio* chairman, five Justices of the Supreme Court, and five members of the legislature. This composition was occasioned by the prevailing view that judicial review involved the courts and the legislature with only minimal executive participation and thus would ensure fairness and impartiality of constitutional adjudication. In its eleven-year history, the Constitutional Committee reviewed only seven cases altogether, among which only two laws were decided unconstitutional.

The Second Republic (1960-1962) adopted the Constitutional Court system in place of the Constitutional Committee, a decision influenced by the successful history of the then West German Constitutional Court. As mentioned above, it never had an opportunity to function because of the military coup of May 1961. The same system was ultimately incorporated in the current constitution of the Sixth Republic (1987-present) and has produced remarkable outcomes.

The Third Republic (1962-1972) adopted the American style of judicial review system as the Supreme Court was designated as the main protector of the constitution. Judicial review by the courts, encouraged by the successful record in the United States, was launched with the expectation that certain politicized issues would be subject to litigation. The courts had many opportunities to review the constitutionality of laws, but were reluctant to declare a law unconstitutional. Although the lower courts occasionally made daring holdings of unconstitutionality, in fear of politicizing the judiciary, the Supreme Court maintained a principle of self-restraint by reversing all except one of the lower courts' holdings of unconstitutionality.<sup>7)</sup>

Under the Fourth (1972-1980) and Fifth(1980-1987) Republics, the Constitutional Committee was reinstated for the review of the constitutionality of legislation that was never actively discussed as intended during the period of authoritarian political power. The Committee reviewed no legislation during its existence. Unlike the previous Constitutional Committee of the First Republic, its jurisdiction was extended to impeachment and dissolution of political parties. In addition to lawyers, high officials and law professors with more than 20 years professional experience in legal matters were eligible for membership on the committee. Remarkably, the Constitutional Committee remained completely inactive throughout its existence.

The latest constitution of the Sixth Republic (1987-present) adopted the

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7) For the decisions of constitutionality, *see id.* at 171-194.

Constitutional Court system. As we shall see later, the Constitutional Court has been very active in exercising its authority to review the constitutionality of state actions including state legislation. In addition to judicial review power, the Court has vast authority to secure the constitutional system.

Apart from the successful experience in Europe, the adoption of the Constitutional Court system in Korea was not based on theoretical ground but was a result of a compromise between political parties in existence at the time the constitution was being drafted.<sup>8)</sup> The inoperation of the Constitutional Committee between 1972-87 and the disinclination of the Supreme Court to take a leading role in defining the content of “constitutionalism” may account for this compromise.<sup>9)</sup> Those involved in the drafting of the constitution may have thought that the future activity of the Constitutional Court would follow that of its ineffective predecessors and hardly imagined the actual results its inauguration would bring.

### **III. Jurisdiction and Organization**

The newly created Constitutional Court not only enjoys a broad jurisdiction but is also in a better position to exercise its authority since obstacles residing in the process of previous systems have been removed. Three articles of the constitution are devoted to the Constitutional Court. The details were materialized by implementing legislation—the Constitutional Court Act (CCA).<sup>10)</sup>

The jurisdiction of the Court is defined in Article 111 of the Constitution as follows:

1. Questions of the constitutionality of laws upon request of the courts
2. Impeachment
3. Dissolution of political parties
4. Competence disputes between state organs; and
5. Constitutional petitions.

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8) The Constitutional Court, The Ten-Year History of the Constitutional Court [Heonbeop Jaepanso 10 nyeonsa] 72-73(Seoul, 1998).

9) West and Yoon, *supra* note 1, at 77.

10) Law No. 4017 of August 5, 1988, entered into force September 1, 1988. It was amended as Law No. 4408 of November 30, 1991.

Article 111 also provides the procedure to appoint nine Justices of the Court and defines their necessary qualifications. Nominations are limited to persons qualified as judges, having successfully passed the state judicial (bar) examination.<sup>11)</sup> Three Justices are nominated by the President, three by the National Assembly, and three by the Chief Justice of the Supreme Court. The Presiding Justice of the Court is designated by the President with the consent of the National Assembly.

Article 112 fixes the tenure of the Justices at six years with the possibility of reappointment. The same article provides that Justices may not engage in partisan political activities, and that they may be removed from office during their terms only by impeachment or conviction for a serious criminal offense.

Article 113, the final article concerning the Constitutional Court lays down the principle that at least six of the nine Justices must concur on Constitutional Court decisions, except in cases presenting intragovernmental jurisdictional dispute, in which case a simple majority is sufficient. This article further states that the specifics of the organization of the Court are to be determined by implementing legislation and that subject to such legislation the Court is authorized to establish procedural and internal administrative regulations.

The current Constitutional Court system has been improved by removing the important legal obstacles residing in the previous systems. Constitutional petition was created in its jurisdiction to protect fundamental rights when existing laws do not afford remedies through ordinary court processes for unconstitutional state action.<sup>12)</sup>

A more important improvement concerns the process of reviewing the constitutionality of legislation. Under the Constitutional Committee system of the

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11) Justices are appointed from among eligible persons who are forty or more years of age and have been in any of the following position for fifteen or more years: (1) Judge, public prosecutor, or attorney; or (2) A person who is qualified as an attorney and has been engaged in legal affairs for or on behalf of a governmental agency, a national or public enterprise, a government-invested institution or other corporation; or (3) A person who is qualified as an attorney and has been in a position higher than assistant professor of jurisprudence in a recognized college or university. CCA, Art. 5(1). The same qualification is required for the Justice of the Supreme Court. Court Organization Act (Law No. 3992 of December 4, 1987, lastly amended on January 29, 2001, as Law No. 6408), Art. 42.

12) Article 68(1) of CCA provides: Any person who alleges that his fundamental rights guaranteed by the Constitution have been infringed upon through the exercise or nonexercise of public power may petition for relief or remedy to the Constitutional Court through the procedure of Constitutional Petition, excluding the judgement of the ordinary court. However, if any relevant procedures for relief are provided by other laws, no Constitutional Petition request shall be made without first using such procedures.

previous constitutions of 1972 and 1980, the Committee could not exercise its reviewing authority unless an ordinary court requested *ex officio* or upon the parties' motion to review. Therefore, the ordinary courts had the authority to initiate a reviewing process. If the ordinary courts did not make this request, the Committee had no chance to review at all. In fact, this was the case under the Constitutional Committee system during the fifteen year period in which no requests were forwarded to the Committee, hence no reviews were made by the Committee.<sup>13)</sup>

Under the current Constitutional Court system, however, the ordinary courts' authority to request constitutional review is no longer an obstacle since the parties concerned can file a petition directly to the Constitutional Court when an ordinary court has rejected their request for review.<sup>14)</sup> The passive or reluctant attitude of ordinary courts cannot be an obstacle to the Constitutional Court to exercise its reviewing authority anymore. As we will see later, the Court is very active in exercising its authority in its newly democratized environment.

The Constitutional Court Act created two classes of Justices without any textual basis in the Constitution: six of the nine are "standing Justices" while the remaining three are "non-standing Justices." The standing Justices serve full-time and are entitled to the same "remuneration and privileges and rights" enjoyed by the Justices of the Supreme Court. The non-standing Justices have an "honorary" status and receive no salary for their service, although they are entitled to an allowance for expenses connected with their work.

At the time the Act was passed, the introduction of the distinction between standing and non-standing Justices seems to have lacked any rationale beyond the expectation that the number of cases referred to the Constitutional Court would not be so large as to require the full-time service of all nine Justices in consideration of the passivity and dormancy of previous organs. To the contrary, however, since its beginning, a substantial number of cases have been docketed in the Constitutional Court. Commentators called for the Act to be amended to provide all nine Justices with the same full-time status, and such an amendment eliminating the "non-standing" status

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13) Yoon, *supra* note 2, at 164-68.

14) Article 68(2) of CCA is provided for this occasion, by saying that "Any party to a court proceeding whose request for referral to the Constitutional Court for judgment on the constitutionality of a law was rejected by the court of original jurisdiction may have recourse to the Constitutional Court to obtain a final and proper judgment."

was finally adopted by the National Assembly in November 1991.<sup>15)</sup>

Although the Constitutional Court has administrative apparatus and a secretariat to carry out its role,<sup>16)</sup> the assistance of professional jurists is widely utilized. Therefore, the Constitutional Court has “constitutional research officers” as staff to assist the Justices.<sup>17)</sup> In addition, the Court can request other state institutes to second their staff to that of the Constitutional Court research officers.<sup>18)</sup> In fact, the Court gets assistance from judges, prosecutors and law professors temporarily seconded, for two years, from the courts, prosecutor’s offices and universities. While, in the early stage after its inauguration, the Court has relied mainly on those lawyers seconded to it, as time passed, it successfully recruited its own permanent staff and continues to do so. For example, as of mid-1991 the Court had two permanent research officers but five judges, three prosecutors and one academic as seconded researchers. However, in early 2001, full-time research officers of its own rose to nineteen while thirteen temporarily seconded researchers serve to assist the Justices.<sup>19)</sup> The unprecedentedly active role and prestige of the Court has brought about the increase of researchers and expedites the successful recruitment of competent jurists.

#### **IV. Activities of the Constitutional Court**

As an organ for constitutional review, the Constitutional Court is more active than any system that Korea has employed so far. Many decisions on the constitutionality of laws highlight its activities.<sup>20)</sup> Statistics provide a general picture of its activities thus far.

Since the Constitutional Court started on September 19, 1988, it has received 6,499 cases and disposed of 5,980 of them, with 293 being withdrawn by the parties concerned and 519 pending, as of February 28, 2001. Among 5,980 disposed cases, the Court decided 2,720 cases on their merits, dismissing 2,964 cases in the screening process without reviewing their merits. The Court’s activities are primarily concerned

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15) Amended on November 30, 1991 as Law No. 4408. This amendment also reinforces research staff. *See* CCA, Art. 19.

16) CCA, Arts. 17-21.

17) CCA, Art. 19.

18) CCA, Art. 18(4).

19) Among the thirteen seconded researchers, eight are judges while five are prosecutors.

20) *See* West and Yoon, *supra* note 1, at 104-113.

with the review of the constitutionality of legislation and constitutional petition which occupies the bulk of them as shown below. To date, only 15 cases on competence dispute have existed, with none on impeachment or the dissolution of political parties.

*A. Judicial Review of Legislation, 1988-2001*

As of February 28, 2001 since its inauguration on September 19, 1988, excluding 121 cases withdrawn by the parties, the Constitutional Court disposed 1,094 cases among the total 1,245 cases received concerning judicial review of legislation. The courts referred 393 cases to the Constitutional Court *ex officio* or upon the requests of the parties concerned, among which the Court disposed 374 cases. The remaining 852 cases were referred to the Court in the form of constitutional petitions by the parties concerned as provided by Article 68(2) of CCA, upon rejection by the courts to refer matters to the Constitutional Court even though the parties requested constitutional review. In this occasion, the Court disposed 720 cases. The dispositions on the constitutional review of legislation are tabulated as follows:

**Dispositions of Review on Legislations**

	Total	Withdrawn	Dismissed in Screening	Unconstitutional*	Constitutional
Total	1,094	121	148	284	540
Referred by courts	374	97	17	102	158
Petition form upon courts' rejection to request	720**	24	131	182	382

\* The category of “unconstitutional” disposition includes all modes of unconstitutionality, such as “inconsistent with the constitution,” “partly unconstitutional,” “constitutional on condition of proper interpretation,” as well as plain unconstitutional. The number of plain unconstitutional decisions is 182 among 284.

\*\* One case which cannot be classified under the above categories is added.

Excluding 269 withdrawn and dismissed cases, the court rendered 825 judgments on their merits in cases challenging the constitutionality of legislation, among which 284 faced unconstitutionality one way or another. The proportion of judgments with

review on their merits resulting in the invalidation or partial repudiation of legislation is very high, at about 34 percent.

One thing we have to pay attention to, is the statistics on the petition form of request through Article 68(2) of CCA which is used as way to the Court when the court at hand rejected to refer. The rate of unconstitutionality is still very high. Even though the courts rejected appeals to refer cases to the Constitutional Court against the party's request, the parties concerned received a high rate of unconstitutionality judgment after directly petitioning the Court themselves.

This strongly suggests that the ordinary courts at hand do not like to refer cases to the Constitutional Court in spite of the parties' requests unless the court has a strong conviction concerning the unconstitutionality of the law at issue. The courts should refer as many as possible if they have any reservation about constitutionality and help provide the Court with the opportunity to review the constitutionality of laws. They should not burden the parties by forcing them to go through the petition process a second time.

The highlight of the activities of the Constitutional Court is the judgment of legislation as unconstitutional. The Court has been very active in supporting private economic rights overridden by the government or public institutions, and invalidating legal provisions bestowing discriminatory privileges on public institutions. In the area of civil rights, the Court has been more discreet though it sometimes invalidated restrictive provisions on private citizens in the criminal process. Some of important decisions were introduced in a previous paper by the author.<sup>21)</sup> More analytical review on the Court's attitude toward its decisions is made by another author in this issue.

### *B. Constitutional Petitions, 1988-2001*

Constitutional petition is quite a new system in Korea. A considerable number of petitions have been filed. Concerning the number of cases, four times as many petitions than judicial reviews of legislation have been filed.

Petitions fall into two categories. First, Article 68(1) of CCA provides that petition jurisdiction is available in situations where existing laws do not afford remedies through ordinary court processes for unconstitutional state action. It should be noticed that the decisions of ordinary courts are not eligible for the petition.<sup>22)</sup> A petition of this

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21)*Id.*

22)*See* CCA, Art. 68(1), *supra* note 12.

type may be filed only if all available administrative and judicial remedies have been exhausted. If no ordinary judicial review is available, then a direct petition is possible. An example is a challenge to a prosecutorial decision not to indict an accused criminal, for in such cases the ordinary courts have no jurisdiction over the matter.

Second, a party who requests that a court refer question of the constitutionality of legislation to the Constitutional Court and has been refused may renew the claim of unconstitutionality by immediate petition to the Constitutional Court under Article 68(2) of the Act. If the claim alleges a constitutional defect in a law and is disallowed by the court, then an ordinary appeal is not the sole recourse and an Article 68(2) petition may be immediately filed in the Constitutional Court to obtain a definitive ruling on the constitutionality of the law in question as explained above.<sup>23)</sup>

Thus, the two kinds of petition are quite distinct. An Article 68(1) petition, if granted, vindicates individual rights infringed upon by the state and involves fact-finding by the Constitutional Court itself. An Article 68(2) petition, if granted, stays ongoing litigation pending the Constitutional Court's judgment on the validity of a legislative act, but the finding of facts and the final disposition are made by the court of original jurisdiction, subject to the guidance of the Constitutional Court on the constitutional question.<sup>24)</sup> An Article 68(2) petition is the alternative way to approach the Constitutional Court for the judicial review of legislation in cases where an ordinary court refuse to help and parties concerned are, otherwise, about to lose an opportunity to challenge the constitutionality of legislation at issue. Therefore, Article 68(2) petition has to be dealt with under the tabulation of judicial review of legislation.

The scope of subject-matter reviewable through the Korean petition procedure is considerably narrower than under the German system because the German system does not exclude regular court decisions from the scope of state action which may be the subject-matter of petitions for Constitutional Court review. Under these circumstances, the constitutional petition procedure, thus far, has been invoked most often in circumstances where ordinary judicial review has been unavailable.

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23) There is a very short time limit for this type of petition. A petitioner should file to the Constitutional Court within fourteen days reckoned from the day a request for a referral to the Constitutional Court was rejected by an ordinary court. CCA, Art. 69(2). A petition based on Article 68(1) must be filed within sixty days reckoned from the day the cause of the petition was known or within one hundred and eighty days reckoned from the day the cause occurred. CCA, Art. 69(1).

24) West and Yoon, *supra* note 1, at 92-93.

However, as aforementioned, the Constitutional Court has broadened the scope of remedy by accepting exhaustion exceptions. For example, when the ordinary judicial process places an unreasonable burden on a petitioner without adequate relief, or when it is almost impossible for a petitioner's claim to be accepted in an ordinary court due to firmly established precedents, a petitioner can be immune from exhaustion requirement.<sup>25)</sup>

As of February 28, 2001, a total of 5,239 petitions were filed to the Constitutional Court under Article 68(1) and 4,875 were disposed. Excluding 171 petitions withdrawn by the parties concerned, and 2,811 dismissed in the screening process,<sup>26)</sup> the court reviewed 1,893 petitions on their merits. In 153 petitions,<sup>27)</sup> the Court found state actions unconstitutional. That is, about 8 percent of petitions were acknowledged unconstitutional. From the commencement of operations of the Court to February 28, 2001, the cumulative record is tabled below.

### Dispositions of Constitutional Petitions

	Total	(in Screening) Withdrawn	(in Screening) Rejected	Denied	Granted*	Unconstitutional**
Total	4,870	171	2,811	1,735	125	28
Against legislative act	626	41	445	115	1	24
Against executive act	3,723	118	1,864	1,615	124	2
Against judicial act	394	5	382	5		2
Others	127	7	120			

\* "Granted" disposition means that a state act is revoked as unconstitutional. Therefore, it accords to an "unconstitutional" decision.

\*\* 21 state acts were pronounced plainly "unconstitutional." Here among 28 decisions are included two decisions of "inconsistent with the constitution" and another five "conditionally unconstitutional."

25) *Seesupra* note 8, at 166-172.

26) Article 72 of CCA provided a procedure for the review of petitions by a petit bench of the Constitutional Court composed of three Justices. If a petit bench fails to dismiss a petition within thirty days, it automatically passes to the grand bench for disposition. Among 1,070 dismissed petitions, 839 were taken care of by a petit bench in screening procedure.

27) This number consists of 125 granted and 28 unconstitutional decisions.

Among petitions disposed, about 75 percent are raised against the executive acts, among which about three-quarters are petitions contesting decisions by public prosecutors not to institute (or to suspend) criminal indictments. In other words, from the total number of petitions under Article 68(1), almost three-fifths are against the public prosecutors' decisions.

Another distinctive aspect is the high rate of dismissal in the screening process. More than half of the cases disposed by the Constitutional Court were rejected the opportunity to be reviewed on the merit. The grounds for dismissing a petition in the course of prior examination include failure to exhaust other available remedies, failure to satisfy the time limits for filing a petition<sup>28)</sup> and failure to submit the petition through a licensed attorney.<sup>29)</sup> The high rate of dismissal in the screening process can be attributed to these grounds as well as to the ignorance of the parties concerned (ignorance concerning the exclusion of an ordinary court's decision, the short time limit, prohibition of *pro se* submission, etc.).

The above statistics of the number of cases handled by the Constitutional Court and high rate of unconstitutionality of legislation and state actions suffice to show the active operation of the Court. Our question is what contributed to enable the Court to exercise its full capacity provided by the laws.

As explained above, the current Constitutional Court system was improved by removing significant obstacles that resided in the previous system<sup>30)</sup> and was given broader jurisdiction.<sup>31)</sup> In addition to the significant improvement of legal limitations, what should be emphasized most is the new political environment since democratization of 1987 that has enabled the Constitutional Court to carry out its full-fledged role and allowed its Justices to commit themselves to the Court's positive role and high vision without intimidation from outside. The high rate of unconstitutionality of laws demonstrates, in part, the poor job of the legislature and the emphasis of administrative expedience under the authoritarian regimes to the detriment of citizens'

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28) CCA, Art.69. *Seesupra* note 23.

29) The Constitutional Court procedure adopts the principle of mandatory attorney representation. If a private person has no financial resources to appoint an attorney, he may request the Court to appoint a Court-designated attorney. CCA, Arts. 25(3) · 70 · 72(3).

30) *For example*, CCA, Art. 68(2) was created to prevent the courts from ignoring parties' request for constitutional review.

31) The constitutional petition of CCA, Art. 68(1) is a new part of jurisdiction.

interest. In particular, political crises due to military coups or other such factors brought about dissolution of the legislature and created ad hoc bodies. Such bodies rushed through many bills without proper deliberation at the expense of citizens' rights and interests in favor of political purpose and administrative convenience.<sup>32)</sup> Now those laws have faced scrutiny by the Constitutional Court and many of them have been determined unconstitutional.

## V. Concluding Remarks

The Constitutional Court system has greatly contributed to changing public and bureaucratic attitudes toward the constitution and public power. Public power is finally scrutinized based on the constitution. As the constitutional expression is abstract and generally simple, the job to interpret the constitution and to realize the spirit of the constitution is upon the judicial review agencies. This means that the activation of the Constitutional Court contributes to lessening the gap between theory and reality. The constitutional decisions fill the gap and materialize the spirit of the constitution. The constitution is neither a political manifesto, nor a legal justification for political power. However, this is not because the current constitution employed the Constitutional Court system, but because the political environment has removed many obstacles that block the satisfactory function of the system.

The active role of the Constitutional Court means the expansion of constitutionalism. Active discussions on constitutional questions have brought new vigor to the public law discipline. Authoritarian politics and the lack of constitutional decisions forced constitutional scholarship to resort to dogmatics. Constitutional decisions have become one of the most important sources of law. Dogmatics can no longer exist alone, but should be imbued with reality. Thus, the Constitutional Court system's active role has brought about a new chapter in public law scholarship and teaching in Korea.

Constitutional review is, in general, designed to resolve social conflicts in terms of law. That is, it is a judicialization of the political process on the condition that politics is under the law. When politics is not under legal control, constitutional review becomes no more than a meaningless means to justify wishes of political powers. Therefore, the independent exercise of authority from political powers is the *raison*

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32) See Yoon, *supra* note 2, at 95-96.

*d'etre* of the constitutional review system. The current Constitutional Court system of Korea is an encouraging example of constitutional review concerning how and under what condition a system is successfully rooted in a society. So far, the Korean choice can be said to be a great success and is unlikely to be regarded otherwise in the near future.