

# CONSTITUTIONAL COURT DECISIONS

2011



CONSTITUTIONAL  
COURT OF KOREA

## EXPLANATION OF ABBREVIATIONS & CODES

- KCCR : Korean Constitutional Court Report
- KCCG : Korean Constitutional Court Gazette
- Case Codes
  - Hun-Ka : constitutionality case referred by ordinary courts according to Article 41 of the Constitutional Court Act
  - Hun-Ba : constitutionality case filed by individual complainant(s) in the form of constitutional complaint according to Article 68 Section 2 of the Constitutional Court Act
  - Hun-Ma : constitutional complaint case filed by individual complainant(s) according to Article 68 Section 1 of the Constitutional Court Act
  - Hun-Na : impeachment case submitted by the National Assembly against certain high-ranking public officials according to Article 48 of the Constitutional Court Act
  - Hun-Ra : case involving dispute regarding the competence of governmental agencies filed according to Article 61 of the Constitutional Court Act
  - Hun-Sa : various motions (such as motion for appointment of state-appointed counsel, motion for preliminary injunction, motion for recusal, etc.)
  - Hun-A : various special cases (re-adjudication, etc.)

\* For example, "96Hun-Ka2" means the constitutionality case referred by an ordinary court, the docket number of which is No. 2 in the year 1996.



# TABLE OF CONTENTS

## I. Full Opinions

1. *Case on Prohibition of Filing a Complaint against Lineal Ascendants*  
[23-1(A) KCCR 12, 2008Hun-Ba56, February 24, 2011] ..... 1
2. *Confiscation of Property Awarded for Pro-Japanese Collaboration During Japanese Occupation Case*  
[23-1(A) KCCR 276, 2008Hun-Ba141, 2009Hun-Ba14·19·36·247·352, 2010Hun-Ba91(consolidated), March 31, 2011] ..... 17
3. *Constitutionality of the Police Action Blocking Passage to Seoul Plaza*  
[23-1(B) KCCR 457, 2009Hun-Ma406, June 30, 2011] ..... 77
4. *Case on the Disclosure of Others' Conversation Illegally Obtained Under the Protection of Communications Secrets Act*  
[23-2(A) KCCR 286, 2009Hun-Ba42, August 30, 2011] ..... 103
5. *Challenge against the Act of Omission Involving Article 3 of "Agreement on the Settlement of Problem concerning Property and Claims and the Economic Cooperation between the Republic of Korea and Japan"*  
[23-2(A) KCCR 366, 2006Hun-Ma788, August 30, 2011] ..... 121
6. *Case on Placing Limitation on Number of Transfer of Workplace by Foreign Workers*  
[23-2(A) KCCR 623, 2007Hun-Ma1083, 2009Hun-Ma230·352(consolidated), September 29, 2011] ..... 165

## II. Summaries of Opinions

1. *Case on Prohibition of Filing a Complaint against Lineal Ascendants*  
[23-1(A) KCCR 12, 2008Hun-Ba56, February 24, 2011] ..... 203
2. *Case on Imposing Obligation on Online Service Providers to Disable Unauthorized Transmitting of Original Works*  
[23-1(A) KCCR 53, 2009Hun-Ba13-52-110(consolidated), February 24, 2011] ..... 207
3. *Article 47 of the Former Military Criminal Act Case*  
[23-1(A) KCCR 200, 2009Hun-Ka12, March 31, 2011] ..... 212
4. *Case on Determination of Pro-Japanese and Anti-National Activities*  
[23-1(A) KCCR 258, 2008Hun-Ba111, March 31, 2011] ..... 215
5. *Confiscation of Property Awarded for Pro-Japanese Collaboration During Japanese Occupation Case*  
[23-1(A) KCCR 276, 2008Hun-Ba141, 2009Hun-Ba14-19-36-247-352, 2010Hun-Ba91(consolidated), March 31, 2011] ..... 218
6. *Case on Restoration of Returned Electoral Deposit and Campaign Expenses By Candidate Whose Election is Invalidated*  
[23-1(B) KCCR 62, 2010Hun-Ba232, April 28, 2011] ..... 225
7. *Suspension of Performing Duties of Head of Local Government During his Detention Prior to Final Judgment*  
[23-1(B) KCCR 126, 2010Hun-Ma474, April 28, 2011] ..... 230
8. *Case on Disallowance of Pre-conviction Detainee's Attorney Consultation on a Holiday*  
[23-1(B) KCCR 201, 2009Hun-Ma341, May 26, 2011] ..... 236
9. *Case on Restrictions on Invitation to Election Broadcasting Debate*  
[23-1(B) KCCR 237, 2010Hun-Ma451, May 26, 2011] ..... 239

<b>10. Constitutionality of the Police Action Blocking Passage to Seoul Plaza</b>	
[23-1(B) KCCR 457, 2009Hun-Ma406, June 30, 2011] .....	243
<b>11. Land Expropriation for Construction of Golf Course Case</b>	
[23-1(B) KCCR 288, 2008Hun-Ba166, 2011Hun-Ba35(consolidated), June 30, 2011] .....	248
<b>12. Case on Discriminatory Assistance for the Bereaved Family of Patient Suffering from Potential Aftereffects of Defoliants</b>	
[23-1(B) KCCR 430, 2008Hun-Ma715, 2009Hun-Ma39-87(consolidated), June 30, 2011] .....	254
<b>13. Case on Criminal Punishment of Those Who Issued a Check but Failed to Pay</b>	
[23-2(A) KCCR 65, 2009Hun-Ba267, July 28, 2011] .....	258
<b>14. Case on Prohibition of Transfer of Cash Cards etc. and Criminal Punishment of its Violation</b>	
[23-2(A) KCCR 95, 2010Hun-Ba115, July 28, 2011] .....	262
<b>15. Case on the Disclosure of Others' Conversation Illegally Obtained Under the Protection of Communications Secrets Act</b>	
[23-2 (A) KCCR 286, 2009Hun-Ba42, August 30, 2011] .....	266
<b>16. Challenge against the Act of Omission Involving Article 3 of "Agreement on the Settlement of Problem concerning Property and Claims and the Economic Cooperation between the Republic of Korea and Japan"</b>	
[23-2(A) KCCR 366, 2006Hun-Ma788, August 30, 2011] .....	270
<b>17. Conscientious Objector Case (Establishment of Homeland Reserve Forces Act)</b>	
[23-2(A) KCCR 132, 2007Hun-Ka12, 2009Hun-Ba103(consolidated), August 30, 2011] .....	275

<b>18. <i>Conscientious Objector Case (Military Service Act)</i></b>	
[23-2(A) KCCR 174, 2008Hun-Ka22, 2009Hun-Ka7·24, 2010Hun-Ka16·37, 2008Hun-Ba103, 2009Hun-Ba3, 2011Hun-Ba16(consolidated), August 30, 2011] .....	281
<b>19. <i>Competence Dispute Between the Speaker and Member of National Assembly regarding Opposition Debate Case</i></b>	
[23-2(A) KCCR 220, 2009Hun-Ra7, August 30, 2011] .....	287
<b>20. <i>Case on Placing Limitation on Number of Transfer of Workplace by Foreign Workers</i></b>	
[23-2(A) KCCR 623, 2007Hun-Ma1083, 2009Hun-Ma230·352(consolidated), September 29, 2011] .....	291
<b>21. <i>Invalidation of Election upon Conviction of Spouse Case</i></b>	
[23-2(A) KCCR 692, 2010Hun-Ma68, September 29, 2011] .....	297
<b>22. <i>Installation of CCTV at Solitary Confinement Cell in Detention Center Case</i></b>	
[23-2(A) KCCR 726, 2010Hun-Ma413, September 29, 2011] .....	301
<b>23. <i>Case on Joint Liability Imposed on De facto Representative of a Corporation</i></b>	
[23-2(A) KCCR 884, 2010Hun-Ba307, October 25, 2011] .....	303
<b>24. <i>Case on 'Important Meeting' of Residents Association for Housing Redevelopment and Reconstruction</i></b>	
[23-2(A) KCCR 744, 2010Hun-Ka29, October 25, 2011] .....	307
<b>25. <i>Case on Criminal Punishment on Those Who Violate Their Obligation Not to Operate a Motel</i></b>	
[23-2(B) KCCR 1, 2010Hun-Ba384, October 25, 2011] .....	310
<b>26. <i>Permission of Re-appeal against Court's Ruling on Petition for Adjudication Case</i></b>	
[23-2(B) KCCR 455, 2008Hun-Ma578, 2009Hun-Ma41·98(consolidated), November 24, 2011] .....	313

**27. *Prohibition of Internet Use for Political Expression and Election Campaign***

[23-2(B) KCCR 739, 2007Hun-Ma1001, 2010Hun-Ba88, 2010Hun-Ma173  
· 191(consolidated), December 29, 2011] ..... 318

**28. *Prohibition on Pre-trial Detainees' Attending Religious Ceremonies etc Case***

[23-2(B) KCCR 840, 2009Hun-Ma527, December 29, 2011] ..... 325