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**THE INFLUENCE OF FOREIGN AND INTERNATIONAL CONSTITUTIONAL
LAW ON THE KOREAN CONSTITUTIONAL JURISPRUDENCE**

REPORT

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1. Korea introduced a constitutional litigation system in its 1987 Constitution. Since the inception in 1988, the Korean Constitutional Court has accumulated a considerable amount of jurisprudence including approximately 270 cases where the issued norms or governmental acts were declared unconstitutional. Now every year more than 1,200 cases are filed before the Court.

2. The Korean constitutional litigation system is generally based on the German system with two significant differences.

First, Korea has two highest courts, as the Constitutional Court is the one, and the Supreme Court is the other. Under the present Constitution, the Supreme Court is not a subordinate institution of the Constitutional Court. They coexist while presiding over separate jurisdictions. Accordingly, the judgments of ordinary courts cannot be challenged at the Constitutional Court. It is different from the German system where judgments of ordinary courts can also be subject to constitutional complaint (Verfassungsbeschwerde). In order to resolve theoretical problems arising from the different approaches, The Korean Constitutional Court paid close attention, at the beginning of establishing its current constitutional system, to the Austrian constitutional court model not allowing the constitutional court to intervene in ordinary court's decisions.

The other distinctive feature of the Korean constitutional litigation system concerns the subject matter of constitutional review being concrete. Korea has adopted only the concrete control of norms (konkrete Normkontrolle) as opposed to the abstract control of norms (abstrakte Normkontrolle). While the Korean Constitutional Court has jurisdiction over constitutional review of statutes, constitutional complaints, competence disputes between governmental entities, impeachment of high government officials, and dissolution of political parties, there should always be real controversies to be resolved by the Court. In this sense, our system is somewhat close to that of the United States. Considering that most countries with the European model allow the abstract control of norms along with the concrete control of norms, the competence of the Korean Constitutional Court is relatively restrained. Apart from these two exceptions, its constitutional litigation system is similar to that of Germany and significantly influenced by the German constitutional litigation theory especially with respect to the legal prerequisites of constitutional review of statute and constitutional complaint.

3. The assistance of foreign experiences to Korean system is further evidently demonstrated in several important cases, such as the 18. May 1980 Coup Case¹, the Impeachment of the President Case², and the Capital Relocation Case³. In the first Case the philosophical and abstruse legal issue of the constitutionality of military coup was dealt, and here a few precedents of courts of British Commonwealth countries concerning legal review on the revolutions (coups) were found and served as quite helpful references in resolving our own case⁴. In deliberating the case of the presidential impeachment, the Korean Constitutional Court researched the

¹ The summary of this Case is contained in the publication of the Constitutional Court of Korea ; The First 10 years of the Korean Constitutional Court, Seoul, 2001, pp.164-168.

² Decision on 14.05.2004 ; 93 KCCG (Korean Constitutional Court Gazette) p. 574. The Korean Constitutional Court sent the summary of the decision to the Commission, as material for the coming Bulletin.

³ Decision on 21.10.2004 ; 98 KCCG (Korean Constitutional Court Gazette) p. 1095. The Korean Constitutional Court sent also the summary of this decision to the Commission, as material for the coming Bulletin.

⁴ In this regard, such text as 'J. M. Eekelaar, Principles of Revolutionary Legality, Oxford, 1973' was especially helpful to contrive the standard of review.

impeachment system of almost every country in the world in order to establish our own frame of constitutional interpretation on impeachment. In addition, in the Capital Relocation Case where customary constitutional law was disputed, the experiences of France, specifically those of the third Republic and the regime of General de Gaulle, were especially valuable⁵. As demonstrated above, it is Korean Constitutional Court's general practice not only basing research on domestic academic achievements but also referring to foreign theories and case-laws in order to more effectively tackle our own problems. Obviously, The Korean Constitutional Court does not just follow foreign law or experiences, but tries to learn from the insightful experiences of others and find out universal norms and values as constitutional principles.

In concrete cases it is very common to refer to constitutional theories and cases of Germany and the U.S., but the Court also researches the British and French experiences depending on particular aspects of each case. Even though it hardly refers to Japanese constitutional case law since cases of Japanese Supreme Court seriously dealing with constitutional issues are extremely rare, admittedly it is meaningful to search for the numerous fine academic works of Japanese constitutional scholars.

4. The Korean Constitutional Court is supported by the constitutional research department consisting of 50 members. Each member(constitutional research officer) is either judge (9), prosecutor (5), or constitutional expert (36) having studied overseas. According to direction of the Rapporteur-Justice, constitutional research officers submit reports concerning each case before the meeting of Justices Council. They clarify constitutional issues of each case, research those issues, and recommend probable outcomes. In their memos, it is very common to research and explain legal institutions and practices in the U.S., Germany, France, or Japan concerning the issues at hand. The research and analysis of foreign practices help Justices in making their decisions with more balanced and open-minded perspectives

Therefore, the Korean Constitutional Court puts high emphasis on the ability of constitutional research department in analyzing various foreign constitutional theories and case laws. In order to enhance their knowledge and research skills on foreign law, the Korean Constitutional Court runs the U.S. and German constitutional law seminars periodically. It also provides each constitutional research officer with opportunity to study abroad for one or two years.

As far as foreign law research methods are concerned, the Korean Constitutional Court utilizes the internet search including the use of Westlaw database for Anglo-American materials. For German and French materials, books and law journals collected in the Court's library are mainly used. In addition, the CODICES database becomes an important source of our foreign law research. It has a broader amount of updated case laws in the field of constitutional law than any other legal database has ever had. It is also particularly useful when we refer to other constitutions and laws on the courts in order to have a better understanding of other constitutional adjudication systems. Constitutional research officers who have more knowledge of the Venice Commission tend to use CODICES more frequently. The Korean Constitutional Court will keep encouraging research officers to take more advantage of the CODICES database.

⁵ Such articles as 'René Capitant, la coutume constitutionnelle, *Revue du droit public*, 1979, pp. 959 et s. ; Jacques Chevallier, La coutume et le droit constitutionnel français, *Revue du droit public*, 1970, pp. 1375 et s. ; Jean-Claude Maestre, A propos des coutume et des pratique constitutionnelle, *Revue du droit public*, 1971, p.1275 et s.' were researched in this regard.

5. In summary, The Korean Constitutional Court generally researches foreign constitutional theories and case laws related with issues in its own cases. These foreign materials are not decisive, but depending on cases, they become very persuasive and influential sources of its decisions.