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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**Recent constitutional developments  
in  
the Republic of Korea**

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**Paper presented to the Venice Commission**

**by**

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Mr. President Gianni Buquicchio,

Honourable members of the Venice Commission,  
Distinguished guests,

It is a great honour to be here to speak at the plenary session. Thank you for having me on this important occasion of the Venice Commission today. The Constitutional Court of Korea has actively supported the Commission, a leading institution for promoting democracy, protecting human rights, and securing the rule of law. As a new member of the Constitutional Court myself, I'd like to share some notable changes that have taken place in Court this year, and the latest significant decisions so far.

In June 2018, the Constitutional Court of Korea upheld the freedom of conscience of conscientious objectors to military service, quite contrary to two former decisions in the past. The Court thereby demonstrated its important role in protecting minority rights. The Military Service Act does not provide any alternative military service and the Court therefore declared the relevant legislative section as constitutionally unconfirmable. This decision has now paved the way for alternatives. No longer do people have to go to jail for refusing to hold weapons against their conscience.

In August 2018, two important decisions were made by the Court to provide remedies against past governments' wrongdoings. Korea's history has been grim: Not only was there the Korean War of the early 1950s, but also the military regimes of the 1970s and 80s. Before democratisation of 1987 came, there were executions carried out without due process by government, and citizens' freedom of speech were oppressed by illegal layoffs, criminal punishments without due process or fair trial. Only quite recently the government acknowledged it was based on unconstitutional presidential decree, and it has violated the rights of the citizens. That is why the two decisions by the Constitutional Court in August 2018 on legal remedies against past government wrongdoing are so significant.

In the first decision, the Court decided to eliminate one of the two time limits for civil remedy claims in specific types of cases. The victims were not fully compensated due to the passing of the time limit for claiming their remedy. The Constitutional Court therefore struck down the relevant section of the civil code. This is because civil claims in such contexts should be clearly differentiated from ordinary civil cases. So the time limit of five years starting from the day damages took place are no longer applied to such cases. Instead, the time limit is three years from the day the State has acknowledged its wrongdoing or retrials have been concluded in favour of citizens. This therefore greatly improves the ability of victims to successfully claim state compensation.

In the second case, the Court confirmed that under current legislative provisions, the victims had not received full compensation for past government wrongdoing. Citizens who took part in democracy movements and as a consequence suffered from government repression were entitled to compensation under a special law. However, this special law only covered physical damages, and did not provide any compensation for mental damages. In August 2018 the Court held as unconstitutional the law which didn't give the victims state compensation for their mental suffering.

Based on these two decisions, retrials in ordinary courts for further compensation claims are expected to take place. Keeping up these great legacies made by former honourable justices including Justice Ilwon-Kang present here, I and my new fellow justices will strive and do our utmost to follow these great footsteps.

Lastly, I'd like to share with you some notable points when forming the new Court in September 2018, after the retirement of five justices. Significantly, the appointment process

provided new channels to receive external opinions and to build a more diverse composition of justices. For the first time, the general public could submit recommendations for candidates thus strengthening influence of democratic legitimacy, and their opinions were considered before the Chief Justice of Supreme Court nominated two new Justices. So one female judge from ordinary court and my-self, a lawyer without prior experience as judge were appointed as justice by this way, and the other three Justices who served as judges in ordinary court were appointed through Parliament's nomination and approval. As a result, we added 1 more woman to the bench of justices. So currently and for the first time, two out of nine justices are women, achieving more gender balance.

With a newly formed Court including newly appointed President of the Court Namseok Yoo, I and my fellow justices will step up our efforts to ensure that gender equality and minority rights are guaranteed in real life. We will also correspond to newest developments of constitutional justice at a global level. In that matter the Constitutional Court of Korea is keen to continue active participation in the Venice Commission with its impressive and rich accumulation of expertise, fostering exchange of information and ideas between member states.

Thank you for your attention.