

CONSTITUTIONAL COURT
DECISIONS

2010



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

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I. Full Opinions

1. *Capital Punishment*

[22-1(A) KCCR 36, 2008Hun-Ka23, February 25, 2010]

Questions Presented

1. Denial of constitutional review on one of the provisions at issue because the requesting court's legal opinion that the constitutionality of the provision is a precondition for adjudication of the underlying case has no persuasive value

2. The scope of review on constitutionality of capital punishment

3. Constitutional grounds for capital punishment

4. Whether the right to life may be restricted under Article 37 Section 2 of the Constitution (positive) and the restriction on the right to life infringes the essential aspect of that right (negative).

5. Whether the imposition of the death penalty violates Article 37 Section 2 and thereby infringes on the right to life (negative).

6. Whether capital punishment violates human dignity and worth articulated in Article 10 of the Constitution (negative).

7. Whether the current law of life imprisonment, which prescribes only 'nonabsolute life sentence', meaning life sentence with possibility of mitigation or parole, rather than 'absolute life sentence,' meaning a life sentence without possibility of parole, is in violation of the right to equality or the principle of proportionate responsibility (negative).

8. Whether the part stating "the death penalty or life imprisonment shall be imposed" in Article 250 Section 1 of the Criminal Act is incompatible with the principle of proportionality or the principle of equality (negative).

9. Whether the part stating "the death penalty or life imprisonment shall be imposed" of Article 10 Section 1 of the former Act on the Punishment of Sexual Crimes and Protection of Victims Thereof (revised by Act No. 5343 on August 22, 1997, before revised by Act No. 9110 on June 13, 2008, hereinafter "SCPVA") is in violation of