

## ***Case on Prohibition of Multi-Party Membership***

[2020Hun-Ma1729, March 31, 2022]

\* First Draft

In this case, the Court held that Article 42 Section 2 of the Political Parties Act, which bans membership of two or more political parties, does not infringe on the freedom of joining political parties and of political activities.

### **Background of the Case**

Complainant “Transition Korea” (hereinafter referred to as “Complainant Party”) is a political party that completed the registration as the central party with the National Election Commission, and Complainant C.J. is a member and the representative of Complainant Party. The rest of the Complainants (hereinafter referred to as the “Rest of the Complainants”), excluding Complainant Party and Complainant C.J., are members of either Complainant Party or the Democratic Party of Korea.

Complainants, who wish to engage in political activities in the way that members of different political parties unite by joining the same political party, filed a constitutional complaint on December 29, 2020, arguing that Article 42 Section 2 of the Political Parties Act, which stipulates that “no one shall become a member of two or more political parties,” and Article 55 of the same act that punishes those in case of violation infringe on the freedom of joining political parties, etc. of Complainants.

### **Subject Matter of Review**

Though the Complainants requested an adjudication on Article 55 of the Political Parties Act on this case, they do not argue its own unconstitutionality by stating that the statutory sentence of the provision is against the systemic legitimacy or is excessive; the aforementioned provision is exempt from the adjudication. (Refer to the Constitutional Court of Korea’s rulings of 2013Hun-Ma450, October 27, 2016 and 2017Hun-Ma408, June 24, 2021.)

Therefore, the subject matter for review of this case is whether Article 42 Section 2 (hereinafter referred to as “Provision at Issue”) of the Political Parties Act (wholly amended by No.7683 on August 4, 2005) infringes on the fundamental rights of Complainants. The Provision at Issue is as follows:

## **Provision at Issue**

Political Parties Act (wholly amended by No.7683 on August 4, 2005)

Article 42 (Prohibition of Forced Membership, etc.) (2) No one shall become a party member of two or more political parties.

## **Summary of the Decision**

### **1. Whether the Request for Adjudication on Complainant Transition Korea and C.J. was Justiciable**

Due to the Provision at Issue, Complainant C.J. could not become a member of another political party as he was a member of Complainant Party. But according to records, it is confirmed that Complainant C.J., a co-representative of Complainant Party, left Complainant Party to be nominated as a member of another political party. If so, it is reasonable to believe that Complainant Party and Complainant C.J. have known the occurrence of the grounds for infringement of fundamental rights due to the Provision at Issue by April 3, 2020, when Complainant Party was converted to an emergency planning committee following the representative's defection of the political party, so the constitutional complaint filed 90 days later has elapsed the period of request and is thus nonjusticiable.

### **2. Whether the Rest of Complainants' Freedom of Joining Political Parties and of Political Activities was Infringed**

The Provision at Issue aims to preserve the identity of political parties and prevent illegitimate and unjust intervention between political parties so as to protect and foster party politics. These legislative purposes are just as they protect the constitutional function of the political party that greatly affects the formation of people's political opinions and the prohibition of multi-party membership serves as a suitable means to accomplish the legislative purpose.

If multi-party membership is permitted, there may be unjust interference between political parties or their identity may weaken. As a consequence, there is a concern that political parties will not be able to carry out the constitutional task of participating in

the formation of people's political opinions and preparing themselves to be the necessary organization. Though the Provision at Issue bans multi-party membership without exception, considering the facts that there is no restriction on joining, withdrawing, and rejoining the party under the Political Parties Act, no alternative to effectively prevent the expected side effects while allowing multi-party membership, and there are still diverse ways to express political opinions, such as running for publicly open election of another political party, the Provision at Issue is not against the rule of the least restrictive means.

Moreover, the restriction on Complainants' freedom of joining another political party and of political activities is not considered more important than the public interests to protect and foster party politics.

Hence, the Provision at Issue does not infringe on the rest of Complainants' freedom of joining political parties and of political activities.