

Constitutional Court

decision

Case No. 2024 Heon-Na 8 Impeachment of President (Yoon Seok-yeol)

Cheongguin National Assembly

Chairman of the Legislation and Judiciary Committee of the National Assembly

The list of agents is as per [Appendix 1]

President Yoon Seok-yeol, the accused

The list of agents is as per [Appendix 2]

Date of sentencing: 2025. 4. 4. 11:22

order

The accused President Yoon Seok-yeol is dismissed.

reason

1. Summary of the case

A. Origin of the incident

The defendant declared martial law at around 22:27 on December 3, 2024 through a national address from the Office of the President (hereinafter referred to as the "martial law in this case"). The content of the national address was, "The Republic of Korea is in a state of paralysis due to the opposition party's impeachment, special investigation, and budget cuts, and we are declaring martial law to protect the free Republic of Korea from the threat of North Korean communist forces and to maintain constitutional order."

The first public address was to declare martial law (hereinafter referred to as the "First National Address"). The defendant appointed Army Chief of Staff Park An-soo (hereinafter referred to as the position at the time of each act) as martial law commander, and Park An-soo issued Martial Law Command Proclamation No. 1 (hereinafter referred to as the "Proclamation in this case") at approximately 23:23 on the same day.

At approximately 1:02 AM on December 4, 2024, at the 15th plenary session of the 418th National Assembly (regular session), a resolution requesting the lifting of martial law, proposed by 170 members including Rep. Park Chan-dae, was passed with 190 votes in favor out of 190 members present. At approximately 4:20 AM on December 4, 2024, the defendant announced a public address at the Presidential Office stating that he would lift martial law, and at approximately 4:29 AM on the same day, the martial law lifting bill was passed at the Cabinet meeting.

B. Impeachment of the accused by the National Assembly and request for impeachment trial

(1) 2024. 12. 7. Failure to vote on the first impeachment motion and the defendant's additional public address

In relation to the declaration of martial law in this case by the defendant, an impeachment motion against the defendant (hereinafter referred to as the "1st impeachment motion") was proposed in the National Assembly on December 4, 2024, and on July 7 of the same month, the defendant announced a public address stating, "I apologize for causing anxiety and inconvenience to the people due to martial law, and I will leave the task of stabilizing the political situation, including my term of office, to the People Power Party." On December 7, 2024, a vote on the 1st impeachment motion was held at the 17th plenary session of the 418th National Assembly (regular session), but the vote was not successful due to insufficient quorum.

On December 12, 2024, the defendant again made a public address, the gist of which is as follows.

“The government was paralyzed and the country was in a state of national crisis due to the massive opposition party's abuse of impeachment and the introduction of a special prosecutor's bill. The massive opposition party obstructed the revision of the espionage article in the criminal law and the National Security Act.

2

The huge opposition party is slashing the special security and special activity budgets of the prosecution and police next year to 0 won and drastically reducing other budgets, which is paralyzing state affairs and disrupting social order, making it impossible for the administration and judiciary to carry out their normal functions. When the National Intelligence Service inspected the computer system of the National Election Commission, it was discovered that data manipulation was possible and that there was virtually no firewall, so the Minister of National Defense was instructed to inspect the computer system of the National Election Commission. The current state of state affairs paralysis was judged to be a state of collapse of the state functions of the administration and judiciary due to social disruption, and martial law was declared, but the purpose was to inform the public of this situation and warn them to stop it. The reason for sending troops to the National Assembly was to maintain order in case a large number of National Assembly officials and citizens gathered after watching the martial law declaration broadcast, not to dissolve the National Assembly or paralyze its functions. The reason why the giant opposition party is falsely inciting impeachment is because they want to avoid the imminent conviction of the party leader by impeaching the president and hold an early presidential election. The president's exercise of the right to declare martial law is an act of government that is not subject to judicial review and can be controlled only by the National Assembly's request for its lifting.

(2) Dec. 14, 2024. Impeachment motion and impeachment trial request

On December 12, 2024, 190 members of the National Assembly, including Park Chan-dae, Hwang Un-ha, Cheon Ha-ram, Yoon Jong-oh, Yong Hye-in, and Han Chang-min, proposed a motion to impeach the President (Yoon Seok-yeol) (hereinafter referred to as the "impeachment motion in this case") on the grounds that the accused violated the Constitution or laws in the performance of his duties in relation to martial law in this case. On December 14, 2024, the National Assembly passed the impeachment motion in this case with the approval of 204 out of 300 members present at the 4th plenary session of the 419th National Assembly (extraordinary session), and on the same day, the impeachment committee submitted a copy of the impeachment resolution to the Constitutional Court in accordance with Article 49, Paragraph 2 of the Constitutional Court Act.

3

A motion for impeachment was filed against the recruiter.

D. Grounds for impeachment and summary of the plaintiff's argument

(1) Martial law declared in this case

The defendant declared martial law in this case without satisfying the substantive and procedural requirements of the Constitution and the Martial Law Act, and thus violated Article 5 Paragraph 2, Article 7 Paragraph 2, Article 74, Article 77 Paragraphs 1 and 4, Article 82, and Article 89 Paragraph 5 of the Constitution, and Article 2 Paragraphs 2, 5, 6, Article 3, Article 4, Article 5 Paragraph 1, and Article 11 Paragraph 1 of the Martial Law Act.

(2) Deployment of military and police into the National Assembly

The defendant's act of mobilizing the military and police armed with dangerous objects such as helicopters, military vehicles, and firearms to break windows and invade the National Assembly building, blocking members of the National Assembly and staff from entering the National Assembly and the plenary session hall, and assaulting and threatening them, and attempting to arrest National Assembly Speaker Woo Won-sik, Democratic Party of Korea representative Lee Jae-myung, and People Power Party representative Han Dong-hoon, etc., is a violation of Articles 1, 5 Paragraph 2, 7, 8, 41 Paragraph 1, 49, 66, 74, and 77 Paragraph 5 of the Constitution.

(3) Issuance of a proclamation for this case

By issuing the proclamation in this case through the martial law commander, the defendant violated Article 5, Paragraph 2, Article 7, Paragraph 2, Article 8, Article 14, Article 15, Article 21, Article 33, Article 41, Article 44, Article 49, Article 74, etc. of the Constitution.

(4) Search and seizure of the Central Election Management Committee, etc.

On December 3, 2024, the defendant deployed the military to the Central Election Commission (hereinafter referred to as the "Election Commission" and the Central Election Commission as the "Central Election Commission") and the Central Public Opinion Poll.

4

After occupying the National Election Commission building, they confiscated the cell phones of officials and filmed the server, and made plans to arrest and detain employees coming to work on December 4, 2024. This violated or infringed upon Article 77, Paragraph 3 of the Constitution, Article 9, Paragraph 1 of the Martial Law, the warrant principle, and the independence of the National Election Commission.

(5) Instructions for arrest of legal professionals

The defendant ordered the arrest of legal professionals, including former Chief Justice of the Supreme Court Kim Myeong-su and former Justice of the Supreme Court Kwon Soon-il, thereby violating Article 12, Paragraph 3, Articles 101, 105, and 106 of the Constitution, the principle of separation of powers, and the principle of the rule of law.

(6) Seriousness of violation of the Constitution and laws

The defendant's abuse of the right to declare martial law and the acts incidental thereto constitute serious violations of the Constitution and laws that endanger the existence of the nation. The defendant declared martial law in this case with the purpose of paralyzing the National Assembly, attempted to blockade the National Assembly and arrest members of the National Assembly, and mobilized the military for his own benefit. His betrayal of the people's trust has reached the point where he has lost the right to be in charge of state affairs.

2. Subject of Judgment

The subject of this case is whether President Yoon Seok-yeol violated the Constitution or the law in performing his duties and whether to issue a decision to dismiss him.

3. Determination of legal requirements

A. Possibility of judicial review

The defendant argues that the President's declaration of martial law is an act of high-level governance and is not subject to judicial review, and therefore the impeachment trial request in this case is illegitimate.

5

The President's right to declare martial law is a national emergency right that is exercised when it is necessary to respond to military needs or maintain public peace and order by using military forces in times of war, incident, or other national emergency, and its exercise requires the President's highly political determination.

It can be seen that it requires a single point.

However, since the national emergency power is an emergency measure recognized by the Constitution as a significant exception in preparation for a serious crisis that cannot be dealt with by exercising power only according to the normal constitutional order, the requirements for exercising the national emergency power, post-emptive control, and the inherent limitations of the national emergency power stipulated in the Constitution must be strictly observed (see Constitutional Court 2015. 3. 26, 2014Hun-Ga5). Regarding the declaration of martial law, Article 77 of the Constitution and the Martial Law Act stipulate the requirements, procedures, post-emptive control, etc., and considering that the impeachment trial procedure is a constitutional trial that protects the constitutional order by depriving high-ranking public officials of their authority when they abuse their authority and violate the Constitution or laws (see Constitutional Court 2017. 3. 10, 2016Hun-Na1), it is reasonable to consider that, even if the declaration of martial law in this case is an act that requires a high degree of political determination, it can be reviewed in the impeachment trial procedure whether it violates the Constitution or laws.

Therefore, the defendant's argument that the declaration of martial law in this case is an act of state and therefore cannot be subject to judicial review cannot be accepted.

B. Judgment on the flaws in the investigation procedures of the Legislation and Judiciary Committee

(1) Article 130, Paragraph 1 of the National Assembly Act states, "When an impeachment motion is proposed, ... the plenary session may, by resolution, refer the motion to the Legislation and Judiciary Committee for investigation." This places the discretion of the National Assembly on whether to investigate the reasons for the impeachment motion. Therefore, even if the National Assembly passed the impeachment motion in this case without an investigation by the Legislation and Judiciary Committee, it cannot be considered that the resolution violated the Constitution or the National Assembly Act (Constitutional Court 2004. 5. 14. 2004Hun-Na1; Constitutional Court 2017.

6

3. 10. 2016 Heon-na 1; See Constitutional Court 2025. 1. 23. 2024 Heon-na 1).

(2) The defendant argues that if the investigation procedure of the Legislation and Judiciary Committee as stipulated in Article 130, Paragraph 1 of the National Assembly Act is not interpreted as a mandatory procedure, it will be difficult for the defendant to exercise his right to defense, and thus violates the principle of due process under the Constitution. However, the impeachment procedure is a matter between the constitutional institutions of the National Assembly and the President, and the fundamental rights of the President as an individual are not violated according to the National Assembly's resolution to impeach. The principle of due process, which was established as a legal principle that state institutions must follow when exercising public power over the people, cannot be directly applied to the impeachment procedure aimed at protecting the Constitution against state institutions (see Constitutional Court Decision 2004Hun-Na1 dated May 14, 2004; Constitutional Court Decision 2016Hun-Na1 dated March 10, 2017), therefore, the defendant's argument in this part cannot be accepted.

(3) Furthermore, the defendant asserts that the National Assembly's decision to pass the impeachment motion in this case without going through the investigation procedures of the Legislation and Judiciary Committee violates the constitutional provisions and purpose of the presidential impeachment system and the principle of separation of powers between the National Assembly and the President.

The Constitution explicitly stipulates the subject of impeachment, grounds for impeachment, requirements for impeachment, effects of impeachment resolution, and effects of impeachment decision in relation to impeachment (Article 65 of the Constitution), and does not stipulate other matters regarding the impeachment procedure in the National Assembly, leaving it to legislation. As such, the fact that our Constitution grants the National Assembly the right to impeach high-ranking public officials as a means of checking the executive and judicial branches can be seen as an implementation of the principle of separation of powers, and therefore the defendant's argument in this regard cannot be accepted.

(4) In addition, the defendant argues that the grounds for prosecution become unclear by not going through the investigation procedure, which in turn increases the trial period and makes it difficult for the defendant to exercise his right to defense, thereby violating the principle of clarity in the principle of the rule of law. However, this is a defect in the investigation procedure.

7

This claim is virtually identical to the claim of violation of the due process principle that it makes it difficult to exercise the right to defense due to condensation, so this claim is also not accepted.

D. Judgment on the repeated introduction of impeachment motions

(1) The defendant asserts that the impeachment motion in this case, which is identical to the impeachment motion in this case, was already submitted to the plenary session of the National Assembly on December 7, 2024 and rejected, and therefore the vote on the impeachment motion in this case violates the principle of absence of double jeopardy under Article 92 of the National Assembly Act.

Article 92 of the National Assembly Act declares the principle of double jeopardy by stating that "a rejected bill cannot be re-introduced or submitted during the same session." Here, the period during which a rejected bill cannot be re-introduced or submitted is limited to the same session.

In this case, the first impeachment motion was voted on at the 17th plenary session of the 418th National Assembly (regular session) on December 7, 2024, but the vote failed due to insufficient quorum. As previously mentioned, the impeachment motion in this case was proposed at the 419th National Assembly (extraordinary session) on December 12, 2024, and a vote was held at the 4th plenary session of the 419th National Assembly (extraordinary session) on the 14th of the same month.

In that case, the impeachment motion in this case, which was proposed during the 419th extraordinary session, cannot be said to have been proposed again during the same session as the first impeachment motion that failed to pass a vote during the 418th regular session, and therefore, the resolution on the impeachment motion in this case does not violate Article 92 of the National Assembly Act.

(2) Meanwhile, the defendant argues that even if the impeachment resolution in this case does not violate Article 92 of the National Assembly Act, it is unlawful because it violates the Constitution, which stipulates the impeachment requirements for the President more strictly than for other subjects of impeachment.

The Constitution, in Article 65, Paragraph 2, provides that the impeachment requirements for the President are higher than those for other impeachment targets.

8

Although it is stipulated that the number of times an impeachment motion can be proposed, the requirements for re-introduction, or the restrictions thereon are not stipulated. In addition, since the National Assembly has the right to propose and vote on impeachment motions according to Article 65, Paragraphs 1 and 2 of the Constitution, it is difficult to limit the number of times an impeachment motion can be proposed to one simply because the requirements for impeachment against the President are strict, unless there are special circumstances such as the initiation of impeachment motions being in violation of the provisions of the Constitution or laws or an abuse of the right to impeach. Therefore, the defendant's argument in this regard is also unacceptable.

A. Judgment on other claims

(1) Claim regarding defect in protected interest

The defendant also argues that the martial law in this case was lifted within a short period of time upon the National Assembly's request for lifting it, and that no damage occurred as a result, so the protected interest is defective and the impeachment trial request in this case is illegitimate.

In view of the above, even if martial law in this case has been lifted, it cannot be said that the interest in judging whether or not to impeach the defendant in this case is denied on the grounds that the impeachment grounds in this case have already arisen due to martial law in this case. Therefore, this part of the defendant's argument is not accepted.

(2) Claims regarding withdrawal or change of grounds for prosecution for treason, etc. under the Criminal Act

Meanwhile, the defendant argued that the defendant's series of acts, including the declaration of martial law in this case, were constituted as acts of violation of the criminal law, including the crime of rebellion (Articles 87 and 91) in the criminal law, in the impeachment resolution for this case, but after the impeachment trial request for this case, the defendant separately stated that

It is also argued that the impeachment trial request in this case is unlawful because it is an act that violates the Constitution by claiming it without going through the resolution procedure or submitting a 'statement of facts in the impeachment complaint', etc., and this is equivalent to withdrawing or changing the grounds for impeachment.

9

After the National Assembly requests an impeachment trial, it is not permitted to add grounds for impeachment without a separate deliberation procedure or to change grounds for impeachment to the extent that they are no longer identical to the existing grounds for impeachment (see Constitutional Court Decision 2017. 3. 10. 2016Hun-Na1; Constitutional Court Decision 2025. 1. 23. 2024Hun-Na1). However, the Constitutional Court is not bound in principle with regard to the 'judgment of legal provisions' alleged in the impeachment resolution, and can judge the facts that led to the impeachment based on other relevant legal provisions in addition to the legal provisions alleged to have been violated by the plaintiff (see Constitutional Court 2004 Heon-Na 1, May 14, 2004; Constitutional Court 2016 Heon-Na 1, March 10, 2017). Therefore, simply adding, withdrawing, or changing applicable legal provisions to the same facts does not constitute adding, withdrawing, or changing the 'grounds for impeachment.' In view of this, the plaintiff's inclusion of the facts that constituted a violation of the criminal law as a violation of the Constitution is nothing more than withdrawing or changing the legal provisions alleged to have been violated while maintaining the basic facts stated in the impeachment resolution, and therefore, it cannot be considered to correspond to the withdrawal or change of the impermissible grounds for impeachment as mentioned above, and it is difficult to see that a special procedure based on this should be followed.

In addition, the defendant argues that if there is no resolution to withdraw or change the grounds for prosecution, the judgment should be made according to the contents of the original prosecution resolution. However, as seen above, the Constitutional Court is not bound by the 'judgment of legal provisions' in the prosecution resolution.

Therefore, this part of the defendant's argument cannot be accepted.

(3) Claim regarding lack of quorum

The defendant argued that if the part related to the crime of rebellion under the Criminal Act among the grounds for impeachment in this case had not been included, it would have been difficult to obtain the approval of two-thirds of the members of the National Assembly with only the part about the declaration of emergency, which is the remaining ground for impeachment, and therefore the impeachment in this case fell short of the quorum.

10

They claim that the impeachment trial request is illegal.

However, as mentioned above, the impeachment motion in this case was passed with the approval of 204 out of 300 members of the National Assembly. The above claim is merely a hypothetical claim by the defendant, and there is no objective basis to support it, so it is not accepted.

(4) Claims regarding abuse of impeachment power

(a) The defendant asserts that the impeachment resolution in this case violates Article 130, Paragraph 1 of the National Assembly Act because it lacks the investigative procedures of the Legislation and Judiciary Committee, violates Article 92 of the same Act which stipulates the principle of the absence of double jeopardy, and is an abuse of the right to impeach because it was made while martial law had been lifted and the interests of protection were lacking. However, as seen above, it cannot be said that the resolution on the impeachment motion in this case violates Article 130, Paragraph 1 or Article 92 of the National Assembly Act or that the interests of the trial were lacking, and therefore the argument of abuse of the right to impeach based on this premise cannot be accepted.

(l) The defendant claims that the opposition party, which holds a majority of seats in the National Assembly, abused its impeachment power to suspend the president from his duties, remove him from office, and then seize the president's position.

However, since the procedures stipulated in the Constitution and laws were followed during the process of deliberation on the impeachment motion in this case, and the defendant's violation of the Constitution or laws was proven to a certain extent, the main purpose of the impeachment resolution should be viewed as protecting and maintaining the Constitution by holding the defendant legally responsible and preventing similar violations from recurring. Even if the impeachment resolution includes some political purpose or motive, this alone cannot be considered an abuse of the impeachment power (see Constitutional Court Decision 2024 Heon-Na 1 dated January 23, 2025).

11

Therefore, we do not accept the defendant's argument that the impeachment trial in this case is an abuse of the plaintiff's right to impeach by exceeding his prosecutorial discretion.

Ma. Sintering

The impeachment trial request in this case is legal.

4. Requirements for impeachment

A. Violation of the Constitution or laws in the performance of duties

The Constitution stipulates that the grounds for impeachment are "violations of the Constitution or laws" and stipulates that the impeachment process is a normative judgment process rather than a political judgment process by having the Constitutional Court oversee the impeachment trial. The impeachment system is an institution that implements the principle of the rule of law that no one is above the law and protects the Constitution. If a president directly elected by the people is impeached, considerable political chaos may occur, but this is a cost of democracy that the national community must inevitably pay in order to maintain the basic order of liberal democracy (see Constitutional Court Decision 2016 Heon-Na 1, March 10, 2017).

Article 65 of the Constitution stipulates that the President "violates the Constitution or laws in the performance of his or her official duties" as grounds for impeachment. Here, "duty" refers to inherent duties that fall under the relevant duties under the law and duties related thereto under social convention, and is a concept that encompasses not only acts based on laws and regulations but also all acts performed by the President in relation to the execution of state affairs. In addition, "constitution" includes not only explicit constitutional provisions but also unwritten constitutions established and formed by decisions of the Constitutional Court, and "laws" include formal laws, international treaties with equivalent effect, and generally accepted international laws (see Constitutional Court Decision 2004Hun-Na1, May 14, 2004; Constitutional Court Decision 2017Hun-Na1, March 10, 2016).

12

B. Seriousness of violation of the Constitution or laws

Article 53, Paragraph 1 of the Constitutional Court Act stipulates that the court shall pronounce a decision to dismiss the accused "if the impeachment petition is justified." However, the decision to dismiss the president must be made with caution, as it deprives the president of the democratic legitimacy granted to him by the people through an election during his term, and may result in great national losses, such as a vacuum in state affairs and political chaos. Therefore, in order to impeach the president, the negative impact and harm caused by the president's unlawful act on the constitutional order must be so significant that the benefit of protecting the constitution by dismissing the president must be so great that it overwhelms the national losses that follow from the president's dismissal. In other words, "if the impeachment petition is justified" means a serious violation of the constitution or law that can justify the president's dismissal (see Constitutional Court 2017. 3. 10. 2016ÿÿ1).

D. Judgment order

Below, whether the defendant violated the Constitution or laws while performing his/her duties is judged in the following order: (1) declaration of martial law in this case, (2) deployment of military and police to the National Assembly, (3) issuance of the proclamation in this case, (4) search and seizure of the Central Election Commission, and (5) attempt to confirm the location of legal professionals.

Meanwhile, the plaintiff also asserts in the written statement submitted after the impeachment trial request in this case that the 'act of the defendant preparing a plan to arrest and detain the Central Election Commission employees who were coming to work on December 4, 2024 and ordering it' is also a ground for impeachment. As previously stated, after the National Assembly requests an impeachment trial, it is not permitted to add grounds for impeachment without a separate deliberation procedure or to change grounds for impeachment to the extent that they are no longer identical to the existing grounds for impeachment (see Constitutional Court 2017. 3. 10. 2016Hun-Na1; Constitutional Court 2025. 1. 23. 2024Hun-Na1), and the order to arrest and detain the Central Election Commission employees is a new fact not recorded in the impeachment resolution in this case, and therefore is subject to judgment.

13

I don't do it.

5. Judgment on the declaration of martial law in this case

A. Acknowledged facts

(1) At around 20:55 on December 3, 2024, the defendant told Prime Minister Han Duck-soo that he would declare martial law in the Presidential Office. Han Duck-soo told the defendant to listen to what the other State Council members had to say, and the defendant asked them to gather the State Council members. In response, the annex contacted the State Council members who were already in the Presidential Office, including Minister of National Defense Kim Yong-hyun, Minister of Unification Kim Young-ho, Minister of Foreign Affairs Cho Tae-yeol, Vice Minister of Justice Park Sung-jae, and Minister of the Interior and Safety Lee Sang-min. However, he only asked them to come to the Presidential Office and did not contact them to hold a State Council meeting. The Minister of Culture, Sports and Tourism Yoo In-chon, Minister of Environment Kim Wan-seop, Minister of Employment and Labor Kim Moon-soo, and Minister of Patriots and Veterans Affairs Kang Jeong-ae were not contacted.

(2) The State Council members who were contacted arrived at the reception room one by one and exchanged opinions upon hearing that the respondent intended to declare martial law. Some of them went into their offices to express their opposition to the respondent. As the Minister of SMEs and Startups Oh Young-joo arrived last, the Prime Minister and nine State Council members gathered at around 22:17 on the same day. At that time, the respondent came out of his office to the reception room and briefly explained the purpose of the declaration of martial law, and then left the reception room at around 22:22 on the same day to declare martial law in this case. The time it took from Oh Young-joo's arrival last to the respondent leaving the reception room to declare martial law in this case was only about 5 minutes, and there was no declaration of opening, presentation of agenda, explanation of proposal, discussion, declaration of adjournment, or preparation of minutes. The respondent did not explain the specific details of the martial law in this case, such as the necessity of martial law, the date of enforcement, and the martial law commander, and the Prime Minister and State Council members in attendance

14

The Prime Minister and relevant State Council members did not provide an opportunity to state their opinions on the declaration of martial law in this case, and there was no substantive review or discussion at the meeting regarding whether the substantive requirements for the declaration of martial law were met. The Prime Minister and relevant State Council members did not sign documents related to the declaration of martial law in this case.

(3) The defendant began the first national address at the Presidential Office at approximately 22:23 on December 3, 2024, and declared martial law for this incident at approximately 22:27. The content of the first national address is as set forth in [Appendix 3].

(4) The defendant did not notify the National Assembly after declaring martial law in this case.

(5) On December 3, 2024, at approximately 22:30, the defendant appointed Army Chief of Staff Park An-soo as martial law commander through the Minister of National Defense Kim Yong-hyun.

(6) At around 1:02 a.m. on December 4, 2024, the National Assembly passed a resolution demanding the lifting of martial law. At around 4:20 a.m. on December 4, 2024, the defendant made a public statement at the Presidential Office stating that martial law in this case would be lifted, and at around 4:29 a.m. on the same day, the State Council passed a resolution to lift martial law in this case.

B. Judgment

(1) Whether or not there is a violation of the substantive requirements for the declaration of martial law

(a) Substantive requirements for the declaration of martial law

1) When an emergency such as war, civil war, or economic depression occurs and the existence of the nation or the maintenance of constitutional order is in danger, it is difficult to respond with the way state power is exercised that is designed to function under normal conditions. Therefore, in the event of an emergency such as the above, it is necessary to recognize the authority to exercise emergency measures to preserve the nation and maintain constitutional order, that is, the right of national emergency. However, if the right of national emergency is recognized, power will be

15

There is a risk that constitutional values and the fundamental rights of the people will be violated because the various control devices that were established to prevent the concentration of state power in a single state agency and the abuse of state power will not be able to function. Accordingly, our Constitution stipulates that the national emergency power is an authority of the President, but also clearly states the content, effect, limits, and means of control over it, thereby preventing its abuse and misuse and ensuring that the national emergency power can function as an emergency measure to protect the Constitution (see Constitutional Court 1994. 6. 30. 92ÿÿ18; Constitutional Court 1996. 2. 29. 93ÿÿ186).

2) Article 77, Paragraph 1 of the Constitution requires the substantive requirements for the declaration of martial law, namely, "the occurrence of a time of war, an incident, or a similar national emergency" and "the need to respond to military needs or maintain public safety and order with the military force." Article 2, Paragraph 2 of the Martial Law Act more strictly stipulates the requirements for the declaration of emergency martial law based on the delegation in Article 77, Paragraph 1 of the Constitution. According to this, in order to declare emergency martial law, not only must a "time of war, an incident, or a similar national emergency" occur, but also "a state of engagement with the enemy or extreme disruption of social order making it significantly difficult to perform administrative and judicial functions," and the purpose must be "to meet military needs or maintain public safety and order."

Considering the intent of the recognition of the right to national emergency under the Constitution and the related provisions above, in order for the declaration of martial law to satisfy the substantive requirements stipulated in the Constitution and the Martial Law Act, ÿ there must be a realistic situation in which there is a state of war with the enemy or social order is extremely disrupted due to a national emergency such as war, incident, or similar, making it significantly difficult to perform administrative and judicial functions; ÿ there must be a need to respond to military needs or maintain public safety and order with military force; and ÿ the purpose of the declaration of martial law must be to meet military needs or to maintain public safety and order. Therefore, martial law must be declared when a crisis situation such as the above has realistically occurred.

16

Since it can be declared in order to maintain and restore the existing order with military force in cases where it is impossible to handle the situation with police force alone, it cannot be declared in advance or preventively simply because there is a concern that a crisis situation may occur, and it cannot be declared for an active purpose such as promoting public welfare (see Constitutional Court Decision 93 Heon-Ma 186 of February 29, 1996).

(l) Whether a crisis situation as defined in Article 77, Paragraph 1 of the Constitution and Article 2, Paragraph 2 of the Martial Law has occurred

1) Evaluation criteria and issues

a) In order to declare martial law, there must be a realistic situation where there is a state of war, an incident or a similar national emergency, and the social order is severely disrupted, making it significantly difficult to perform administrative and judicial functions (Article 77, Paragraph 1 of the Constitution and Article 2, Paragraph 2 of the Martial Law Act). In this regard, it should be considered that the defendant, who has been granted the authority to declare martial law by the Constitution, is granted a certain degree of discretion in his/her judgment. However, granting the defendant discretion in his/her judgment does not mean that he/she can declare martial law based on subjective conviction even when there is no objective crisis, so there must be a crisis situation that objectively justifies the defendant's judgment, and if the defendant's judgment is significantly irrational or arbitrary, it should be considered a violation of Article 77, Paragraph 1 of the Constitution and Article 2, Paragraph 2 of the Martial Law Act (see Constitutional Court Decision 93ÿÿ186, February 29, 1996).

b) 'Wartime' refers to the period from the time of declaration of war or hostilities against an opposing country or belligerent group to the time of conclusion of an armistice agreement with that opposing country or belligerent group, and 'incident' refers to any form of armed rebellion by a group with the purpose of invading the national territory or disrupting the constitutional order. Considering the intent of the recognition of the right to national emergency under the Constitution and the wording of Article 77, Paragraph 1 of the Constitution, 'a state of national emergency equivalent to wartime or incident' is equivalent to war.

17

It refers to a serious crisis situation in which the existence of the nation or the maintenance of the constitutional order is endangered due to an invasion by an external enemy who is not aware of the situation, a disruption of social order by armed or unarmed groups or crowds without the purpose of encroaching on the national territory or disrupting the constitutional order, or a disruption of social order due to a natural disaster, and it cannot be dealt with through the usual methods of exercising power according to the constitutional order.

It is clear that the political and social situations at the time of the declaration of martial law in this case cannot be considered as being equivalent to wartime or an incident, or as being in a state of engagement with the enemy. The defendant claims that the situation at the time of the declaration of martial law in this case was a state of national emergency equivalent to wartime or an incident, and that social order was extremely disrupted, making it significantly difficult to perform administrative and judicial functions. Therefore, we will examine whether the defendant's judgment is significantly irrational or arbitrary.

2) Judgment on the defendant's claim regarding the reasons for the declaration of martial law in this case

The defendant claims that the National Assembly, in which the opposition Democratic Party of Korea holds the majority of seats, has ÿ paralyzed judicial and administrative work by impeaching or attempting to impeach a large number of high-ranking public officials, ÿ promoted or unilaterally passed bills that are unconstitutional, against the national interest, or highly politically biased without agreement between the ruling and opposition parties, and opposed bills promoted by the ruling party, ÿ undermined the essential functions of the state, turned it into a drug paradise, a state of public safety panic, and caused a security vacuum by completely slashing the main budget for 2025, and ÿ held rallies demanding the resignation and impeachment of the president and committed anti-state acts in the areas of security and diplomacy, and asserts that such tyranny of the National Assembly has paralyzed state affairs and made normal execution of the administration and judiciary impossible.

The defendant claims that the acts of the National Assembly violate Article 77, Paragraph 1 of the Constitution and Article 2, Paragraph 2 of the Martial Law.

18

It is claimed that a crisis situation has occurred, so let's look into it.

a) The Democratic Party of Korea's push for impeachment and the National Assembly's impeachment

The defendant claims that the Democratic Party of Korea attempted to impeach a number of high-ranking public officials or proposed an impeachment bill, thereby

It is claimed that business and administrative work have been paralyzed.

Impeachment trial is a constitutional trial that protects the constitutional order by stripping high-ranking public officials of their authority when they abuse their power and violate the constitution or laws (see Constitutional Court 2004. 5. 14. 2004Hun-Na1). As examined above, the Constitution stipulates the impeachment trial procedure as a normative trial procedure, not a political trial procedure (see Constitutional Court 2017. 3. 10. 2016Hun-Na1).

However, since a person who has been impeached is automatically suspended from exercising his/her authority until the impeachment trial is held in accordance with Article 65, Paragraph 3 of the Constitution, once the National Assembly passes an impeachment motion, the exercise of authority is suspended for at least several months until the Constitutional Court makes a decision. Even if the acting authority, etc. can continue to exercise the authority of the accused, it is realistically difficult to perform the original duties of the accused at the same level due to the limitations of acting authority, and since the duties of the accused are performed in addition to the duties that he/she was previously responsible for, difficulties due to excessive workload also arise. Considering that the duties performed by high-ranking public officials are of national importance, the work vacuum caused by the suspension of the exercise of authority can cause great damage to the country and the people.

Nevertheless, the reason why our Constitution stipulates that the exercise of power by the accused is suspended when impeachment is brought about is because it assumes that the accused's violation of the law is serious. Therefore, if the National Assembly does not exercise its right to impeach after carefully considering the unconstitutionality and legality of the grounds for impeachment, and instead conducts an impeachment trial based solely on suspicion of violation of the law,

19

It is difficult to see using the impeachment trial system solely as a means of political pressure on the government as being in line with the original purpose of the impeachment trial system.

From the start of the defendant's term until the declaration of martial law in this case, the Democratic Party of Korea's National Assembly members proposed a total of 22 impeachment motions, including re-investigation, against one Minister of Public Administration and Security, twelve prosecutors, three chairmen of the Korea Communications Commission and one acting chairperson, and one chairman of the Board of Audit and Inspection. This raised concerns that the National Assembly was using the impeachment trial system as a means of political pressure on the government based solely on suspicions of violations of the law, without considering the unconstitutionality and illegality of the grounds for impeachment.

However, out of the 22 impeachment motions prior to the declaration of martial law in this case, 6 were withdrawn and 3 were discarded. Five motions were passed in the plenary session and impeachment proceedings were instituted, but the Constitutional Court had already issued a dismissal decision on 3 of them. In this case, in cases where the impeachment motions have already been withdrawn or discarded, or the Constitutional Court has issued a dismissal decision, the impact that the initial impeachment motion or impeachment decision could have on the existence of the country, constitutional order, social order, and the performance of administrative and judicial functions at the time of the declaration of martial law in this case is limited.

In addition, even if the Democratic Party of Korea members of the National Assembly push for impeachment or propose an impeachment motion, whether or not the impeachment actually takes place is determined by the results of the National Assembly's deliberation and resolution. Therefore, it is difficult to see that a serious crisis has realistically occurred simply because they are pushing for impeachment or have proposed an impeachment motion and the National Assembly is reviewing it.

Furthermore, since the impeachment motion is passed and the accused's exercise of authority is suspended, it is realistically expected that the acting authority, etc. will exercise the accused's authority to the same extent as before the impeachment motion.

20

Even if it was difficult to deal with, it is difficult to acknowledge that the performance of administrative and judicial functions immediately became significantly difficult. In particular, at the time of the declaration of martial law in this case, only the impeachment trial of one prosecutor and the chairman of the Korea Communications Commission was conducted.

It cannot be assessed that a situation has occurred in which the performance of the state's administrative and judicial functions has become significantly difficult, given the situation in which the authority of one prosecutor and the chairman of the Korea Communications Commission has been suspended.

Since the Constitutional Court can reject or dismiss the National Assembly's request for impeachment if the request is unlawful or the grounds for impeachment are not recognized, it cannot be said that the National Assembly's impeachment resolution has created a national emergency that cannot be dealt with through the exercise of power in accordance with the normal constitutional order.

B) The Democratic Party of Korea's promotion/opposition of bills and the exercise of the National Assembly's legislative power

The defendant asserts that the Democratic Party of Korea has proposed 35 bills on the appointment of unconstitutional special prosecutors, etc., and has promoted bulletproof legislation such as the Public Official Election Act amendment for party leader Lee Jae-myung, the abolition of the National Security Act, amendments to the Defense Acquisition Program Act, Criminal Act, and Criminal Procedure Act that are against the national interest and unreasonable, and has unilaterally passed bills that are financially burdensome, have the potential to be unconstitutional, or have a high degree of political bias, such as the amendment to the Act on Testimony and Appraisal in the National Assembly, the amendment to the Grain Management Act, the amendment to the Trade Union and Labor Relations Adjustment Act, the amendment to the Broadcasting Act, the amendment to the Broadcast Culture Promotion Association Act, and the amendment to the Educational Broadcasting System Act, thereby disrupting the constitutional order.

However, since a bill must be confirmed as a law through procedures such as deliberation and resolution in the National Assembly and promulgation by the President to take effect (Article 53 of the Constitution), the Democratic Party of Korea

21

It is difficult to accept the reasonableness of judging that a serious crisis has actually occurred because the members of the National Assembly are preparing to propose a bill or have proposed one and it is under review by the National Assembly. Among the bills mentioned by the defendant, there are bills that have already been abolished due to the expiration of the term of the 21st National Assembly. It is difficult to see that the already abolished bills had any influence on the existence of the country, the constitutional order, the social order, or the performance of administrative and judicial functions at the time of the declaration of martial law in this case.

The Constitution also grants the defendant the power to control the National Assembly's exercise of legislative power. That is, the President may withhold the promulgation of a bill passed by the National Assembly for 15 days, and may request reconsideration within that period if there is an objection to the bill. When the President requests reconsideration, the National Assembly shall put it on the table for reconsideration, and the bill may be confirmed as law only if it passes the same resolution as before with the attendance of a majority of the members present and the approval of more than two-thirds of the members present (Article 53, Paragraphs 1 to 4 of the Constitution).

The defendant claims that a serious crisis situation arose when the Democratic Party of Korea unilaterally passed bills proposed by its members of the National Assembly or alternatives for the relevant committee that reflect such bills. However, many of the bills pointed out by the defendant had already been rejected at the time of the declaration of martial law in this case, despite the defendant's request for reconsideration. The remaining bills also did not take effect because the defendant requested reconsideration or withheld their promulgation, and all were rejected in the reconsideration requested after the declaration of martial law in this case. Ultimately, at the time of the declaration of martial law in this case, the defendant prevented the above bills passed in the plenary session from taking effect by not requesting reconsideration or promulgating them, and thus the National Assembly's resolution on the above bills violated the constitutional law under normal times.

22

It cannot be said that a national emergency has occurred that cannot be dealt with through the exercise of power in accordance with order.

The defendant also cited the Democratic Party of Korea's opposition to the revision of the criminal law that expands the scope of punishment for espionage and the government's bills for improving people's livelihoods and revitalizing the economy as reasons for declaring martial law in this case. However, the Democratic Party of Korea

Korean National Assembly members have also proposed amendments to the Criminal Act that expand the scope of punishment for espionage, such as punishing spies for foreign countries, and on November 13, 2024, the 1st Subcommittee of the Legislation and Judiciary Committee deliberated on an alternative that reflects the amendments to the Criminal Act proposed by members of the ruling and opposition parties that expand the scope of punishment for espionage. Therefore, it is difficult to see that the Democratic Party of Korea opposed the amendments to the Criminal Act. In addition, as examined above, martial law can only be declared in cases where a serious crisis has actually occurred due to an invasion by an external enemy, a disruption of social order by a group or crowd, and thus maintains or restores the existing order by dealing with it after the fact. It cannot be declared in situations where there is a risk of such a crisis occurring or where the existing order is being maintained. Therefore, the declaration of martial law cannot be justified solely on the grounds that there are concerns about security instability because the criminal law provisions related to espionage are not amended more quickly, or that the Democratic Party of Korea's opposition to the government-promoted bill has caused setbacks in the implementation of various policies established by the defendant to promote public welfare.

D) Deliberation of the National Assembly's 2025 budget plan

The defendant claims that the National Assembly has reviewed the budget for the 2025 budget, including the budget for the Office of the President and the National Security Office, special activity expenses of the police, special activity expenses and specific business expenses of the prosecution, long-range ship-to-air guided missile (SM-6) project, integrated anti-drone system project in the contact area, and tactical data link system performance improvement project.

23

They claim that the government has created a drug paradise, a state of panic in the people's livelihood and security, created a security vacuum, and undermined the essential functions of the country by completely cutting the main budget.

The National Assembly Budget Settlement Special Committee decided on November 29, 2024 to reduce the 2025 expenditure budget. In the past, if there was a reduction, an increase was also reviewed and reflected within the same scope, but for the first time in constitutional history, the opposition party took the lead in the National Assembly Budget Settlement Special Committee and only decided on a reduction without an increase, and the main contents are as follows.

First, the entire budget for special activity expenses of the Office of the President, the Office of National Security, and the National Police Agency, and the special activity expenses and specific business expenses of the Prosecutors' Office and the Board of Audit and Inspection were each reduced. This included special activity expenses and specific business expenses related to investigation support such as the prosecution's investigation of crimes that infringe upon the people's lives, investigation of crimes targeting the socially disadvantaged, drug investigations, investigations of crimes that undermine social fairness, public investigations, and criminal departments.

Second, the reserve fund has also been significantly reduced.

Third, the budget for the 'Genetic Development Investment' project (aka the 'Blue Whale Project'), the budget for the 'Public-Private Joint Advanced Nuclear Reactor Export Base Construction (R&D)' project, and the budget for the 'Individual Basic Research (R&D) (Global Matching Type)' project were each drastically reduced, and the budget for the 'Quantum Science and Technology Global Partnership Leading University Support (R&D)' project, the budget for the 'Bio-Medical Technology Development (R&D)' project, and the budget for the 'Support for Innovation in the Training Environment for Residents' project were also each reduced.

However, since the 2025 budget is about the budget that the government will spend in 2025, it cannot be said that it had any real impact on the existence of the country, constitutional order, social order, or performance of administrative and judicial functions at the time of the declaration of martial law, when the 2024 budget was being executed.

Moreover, at the time of the declaration of martial law in this case, the National Assembly was reviewing the 2025 budget plan submitted by the government.

24

It was not even decided in the plenary session. The National Assembly Budget Settlement Special Committee passed an amendment to reduce the 2025 expenditure budget on November 29, 2024, but on December 2, 2024, at the request of the Speaker of the National Assembly, it was decided that the ruling and opposition parties would continue to discuss the budget until December 10, 2024 without going to the plenary session.

It was a situation. It is difficult to see that a serious crisis has occurred in reality simply because the Budget and Settlement Special Committee passed a reduction resolution while the National Assembly's budget review has not been completed, and it is impossible to justify the declaration of martial law simply because there are concerns about future public security instability if the plenary session passes it as is. It is also impossible to evaluate that a national emergency has occurred that cannot be dealt with by exercising power according to the normal constitutional order when the government can respond by submitting related materials and the ruling and opposition parties can respond by additionally reviewing the budget.

The National Assembly Budget Settlement Special Committee passed a resolution to reduce the 2025 expenditure budget by 4.1 trillion won. However, 4.7 trillion won was reduced in 2023 and 13.8 trillion won in 2022 through resolutions at the plenary session of the National Assembly. Considering that 1.4 trillion won of the reduced 4.1 trillion won is a general reserve fund to cover unforeseen expenditures outside the budget or over-budget expenditures (Article 22, Paragraph 1 of the National Finance Act) and 0.5 trillion won is an amount for the repayment of interest on the Public Funds Management Fund, it is difficult to accept the reasonableness of the defendant's argument that the essential functions of the state were damaged by cutting the entire major budget.

The defendant also pointed out that some of the budgets for the nuclear power industry, the East Sea deep-sea gas field development project, various technology development industries, and welfare projects were reduced. However, as examined above, this is not a case where a serious crisis has actually occurred and there is a need to maintain and restore the existing order.

25

Since martial law cannot be declared when the existing order is still in place, the declaration of martial law cannot be justified solely on the grounds that the defendant's project is expected to be disrupted.

Meanwhile, regarding the long-range surface-to-air missile (SM-6) project budget that the defendant claims was unilaterally reduced by the opposition party, there was an agreement between the ruling and opposition parties in the Budget and Settlement Review Subcommittee of the Standing Committee that the budget should be reduced due to delays in the US weapons development process, and there was an agreement between the ruling and opposition parties in the budget and settlement review subcommittee of the Standing Committee that the budget for the integrated anti-drone system project in the contact zone should be reduced due to failure to secure frequencies. In addition, among the project budgets that the defendant claims were unilaterally reduced by the opposition party, there was an agreement between the ruling and opposition parties in the Budget and Settlement Review Subcommittee of the Standing Committee to reduce a significant portion of the budget, including the tactical data link system performance improvement project, child care allowance, and youth employment support infrastructure operation project, and the budget for increasing the on-duty duty fee for improving the treatment of military officers was not originally included in the government plan. In light of these points, some of the defendant's claims regarding the budget cannot be considered valid.

a) Other activities of the Democratic Party of Korea

In addition, the defendant claims that the Democratic Party of Korea has held 200 rallies demanding the resignation and impeachment of the president, opposed the four major reforms, threatened security by claiming that UN sanctions against North Korea should be lifted or criticizing the joint military exercises in the East Sea between South Korea, the US, and Japan as acts of provoking war and extreme pro-Japanese behavior, caused chaos in the country and society by producing and disseminating countless fake news, and hindered the normal functioning of the judiciary by encouraging protests near the court and the prosecutor's office in relation to the criminal case of party leader Lee Jae-myung and obstructing the formation of the Constitutional Court. In addition, the defendant claims that the purpose or activities of the Democratic Party of Korea

26

They also claim that this is a situation where a political party dissolution trial should be conducted according to Article 8, Paragraph 4 of the Constitution as it violates the basic democratic order.

Today, the democratic system basically adopts a representative system, and is operated as a procedure that guarantees that a political party that wins the support of the majority of the people exercises the initiative in state affairs within a given time limit in the process of presenting alternatives and solutions to public conflicts and political problems in society by various political parties pursuing various political ideologies and values. In the midst of competition among political parties that seek to secure support through superiority in logic and legitimacy, a pluralistic government that seeks to achieve democratic development of society

The party system is its basic foundation (see Constitutional Court Decision 2013 Heon-da 1, December 19, 2014). Therefore, the role of the opposition party, which pursues different political ideologies and values from the president and the ruling party, in criticizing and keeping the government in check is an activity of a political party that must be guaranteed in a democratic system.

The fact that the Democratic Party of Korea expresses different political views from the defendant, criticizes the defendant's policies, restrains the defendant's exercise of authority, or demands the defendant's resignation cannot be a reason to justify martial law, considering the representative democracy and multi-party system guaranteed by the Constitution.

Even if the Democratic Party of Korea committed acts such as publishing false facts as claimed by the defendant, the social and political confusion that such acts may cause can be sufficiently dealt with through various institutional devices established by the current law to guarantee free and fair debate among the people (Article 307, Paragraph 2 of the Criminal Act, Articles 82-4, 96, 110, 110-2, and 250 of the Public Official Election Act, etc.), so such acts cannot be considered to have caused a national emergency that cannot be dealt with through the exercise of power according to the normal constitutional order. The defendant

27

Lee Jae-myung, the leader of the Democratic Party of Korea, claims that the judiciary could not function properly by using tactics to delay trials in his criminal case, encouraging protests near the court and the prosecutor's office, and obstructing the formation of the Constitutional Court. Even if this is true, it cannot be said that the social order was extremely disrupted due to a national emergency similar to wartime or an incident, making it significantly difficult to perform judicial functions.

Furthermore, even if the purpose or activities of the Democratic Party of Korea are in violation of the basic democratic order as claimed by the defendant, such a reason cannot justify the declaration of martial law. The system of political party dissolution adjudication under Article 8, Paragraph 4 of the Constitution guarantees the existence and activities of all political parties, especially the opposition party that criticizes the government, to the greatest extent possible, and even if a certain political party appears to deny the basic democratic order and actively attacks it, it is protected as much as possible by our Constitution as a political party that participates in the formation of the people's political will, and therefore cannot be dissolved simply by the ordinary disposition of the executive branch, and only when the Constitutional Court confirms the unconstitutionality of the party and recognizes the necessity of its dissolution can it be excluded from the realm of party politics, expressing the normative will of the constitutional drafters (see Constitutional Court 2014. 12. 19. 2013 Heon-da 1).

b) Election fraud, etc.

• The defendant also claims that martial law was declared in this case in order to dispel suspicions of election fraud, but it cannot be seen that a state of national emergency equivalent to wartime or an incident has occurred in which social order has been severely disrupted and the performance of administrative and judicial functions has become significantly difficult simply because there are suspicions.

The defendant argued that the National Election Commission is a constitutional body and its members are members of the judiciary, so it is subject to a warrant.

28

They claim that since search and seizure or forced investigation were virtually impossible, there was no other way to resolve the suspicions of election fraud. However, the National Election Commission has responded to the court's on-site inspection in election lawsuits and has also responded to the investigation agencies' search and seizure. Suspicions of election fraud can be resolved through election petitions or election lawsuits (Articles 219 and 222 of the Public Official Election Act), and since the Public Official Election Act provides for punishment in cases where ballot boxes are opened, votes are forged, or the number of votes increased or decreased without prior notice (Articles 243 and 249 of the Public Official Election Act, etc.), the truth about such suspicions can be revealed through criminal procedures.

Meanwhile, the defendant claims that the National Election Commission only responded to the security inspection by the National Intelligence Service (hereinafter referred to as the "NIS") by about 5% of the entire system equipment and did not respond to the inspection for the rest. However, the NEC provided all the equipment requested for inspection during the security inspection by the NIS from around July 2023 to around September 2023. Among the suspicions raised by the defendant are those that were raised in the 21st General Election held in 2020, such as ballots without any signs of folding, ballots with adhesive, and ballots with the imprint of the election supervisor blurred, and these suspicions have already been resolved through verification and appraisal by the court's final judgment (see Supreme Court Decision 2020su30, dated July 28, 2022; Supreme Court Decision 2020su5028, dated July 28, 2022, etc.).

The defendant also claims that although it demanded improvement of problematic areas ahead of the general election in April 2024, it is not known whether the improvements have been made properly. However, the National Election Commission issued a press release on October 10, 2023 stating that it had completed measures for urgent matters requiring improvement, such as security patches, changing vulnerable passwords, and strengthening access control to the integrated voter list DB server, and on November 2, 2023 stated that other major vulnerabilities will be improved through cooperation with the budget authorities before the 22nd National Assembly election.

29

The National Election Commission posted and distributed a press release on its homepage stating that most of the vulnerabilities pointed out in the security check on March 11, 2024 have been addressed. The National Election Commission strengthened security before the 22nd National Assembly election by allowing only the PC of the person in charge of information security to access the election server, and took measures such as releasing CCTV footage of the storage locations of advance and postal ballot boxes 24 hours a day and introducing a ballot counting system during the vote counting process to dispel suspicions of election fraud. In addition, it conducted on-site inspections twice jointly with the National Intelligence Service in the presence of political party observers to verify compliance.

Considering these circumstances, this part of the defendant's argument cannot be considered valid.

The defendant also asserts that at the time of the declaration of martial law in this case, our country was in a so-called "hybrid warfare" situation in which socialist and totalitarian states such as North Korea, China, and Russia were attacking us in all possible areas, using all available means, including irregular warfare, terrorism, psychological warfare, public opinion warfare, and cyber warfare, in addition to all-out warfare using conventional weapons. However, based on the circumstances asserted by the defendant alone, it is impossible to acknowledge that there were objective circumstances that would allow for a judgment that a serious crisis situation occurred at the time of the declaration of martial law in this case that could not be dealt with through the exercise of power according to the normal constitutional order due to a non-military attack, beyond a mere abstract possibility. In addition, it is not possible to mobilize troops in the National Assembly to respond to a non-military attack such as a "hybrid warfare."

3) Sintering

Ultimately, the circumstances claimed by the defendant regarding the Democratic Party of Korea are that the National Assembly members belonging to the Democratic Party of Korea exercise the right to propose bills and the right to deliberate and vote on bills granted by the Constitution as representatives of the people, or that the National Assembly, as a representative body of the people, exercises the right to impeach and legislate granted by the Constitution.

30

This corresponds to the exercise of the right to deliberate and confirm the budget bill, or the Democratic Party of Korea exercising the freedom of a political party guaranteed by the Constitution. Even if it caused considerable disruption to the defendant's state administration, this is a situation that can occur in our country, which has adopted a presidential system, when the so-called minority ruling party and majority opposition party are formed, and the opposition party, which holds the majority in the National Assembly, exercises its check and balance rights granted to the National Assembly to the fullest extent by the Constitution and laws, and therefore it cannot be considered a national emergency requiring the exercise of national emergency rights. The Constitution grants various powers to members of the National Assembly and the National Assembly and recognizes the freedom of political parties, but it also provides a mechanism to control the abuse of such power and acts that exceed the limits of freedom. Therefore, the defendant should have responded in the usual way of exercising power granted to the President by the Constitution.

Even if we take into account all of the other allegations of election fraud and the so-called "hybrid warfare" situations claimed by the defendant, it cannot be said that a crisis situation existed at the time of the declaration of martial law in this case that could objectively justify the defendant's judgment that a state of national emergency equivalent to wartime or an incident had occurred, causing extreme disruption of social order and making it significantly difficult to perform administrative and judicial functions. Therefore, the defendant's judgment as above can only be seen as significantly irrational or arbitrary.

(b) Whether the necessity of mobilizing troops is recognized

Martial law may be declared only when military force is required to respond to military needs or when it is necessary to maintain public peace and order (Article 77, Paragraph 1 of the Constitution).

Therefore, martial law may not be declared when mobilizing the military force is not appropriate to deal with a crisis situation or when the crisis situation can be dealt with by police force alone.

31

The infringement of national interests and the state of state administration paralysis due to the exercise of authority by the National Assembly, as claimed by the defendant, are issues that must be resolved through political and institutional means, not by mobilizing military forces. The Constitution also stipulates that special measures can be taken regarding the authority of the "government or the courts" even when martial law is declared (Article 77, Paragraph 3), and grants the National Assembly the right to demand the lifting of martial law on the premise that only the National Assembly will continue to exercise its authority (Article 77, Paragraph 5). In addition, as examined above, suspicions of election fraud can be resolved through judicial procedures, so it cannot be considered necessary to mobilize military forces to resolve them.

Meanwhile, the defendant claims that the martial law in this case was a "warning martial law" and "appeal martial law" to inform and appeal to the public about the tyranny of the opposition party and the national crisis. Given that troop deployment should be used as a last resort after considering all other means, the defendant could have first gathered the public's attention and warned and appealed to them by making a public address, etc., and if that were insufficient, by proposing a constitutional amendment regarding the impeachment system, etc. (Article 128, Paragraph 1 of the Constitution) or exercising the right to put important policies concerning national security to a referendum (Article 72 of the Constitution).

Therefore, it cannot be seen that there was a need to respond to military needs or maintain public peace and order with the troops at the time of the declaration of martial law in this case. Therefore, in this respect as well, the declaration of martial law in this case did not meet the substantive requirements for the declaration of martial law.

(A) Whether the purpose specified in Article 2, Paragraph 2 of the Martial Law is recognized

The purpose of declaring martial law must be for military necessity or to maintain public peace and order (Article 2, Paragraph 2 of the Martial Law). In other words, martial law is declared when a serious crisis actually occurs, in accordance with military necessity arising from the crisis, or in order to reduce the crisis situation.

32

It may be declared only for the purpose of maintaining or restoring public peace and order that has been damaged.

The defendant claims that the martial law in this case was a 'warning martial law' or 'appeal-type martial law' declared as a provisional and temporary measure with the premise of immediate lifting for the purpose of informing and appealing to the public about the tyranny of the opposition party and the state of national crisis. This claim alone shows that the defendant did not declare martial law in this case in accordance with military necessity arising from a serious crisis or to maintain public peace and order that was damaged due to the crisis. Furthermore, as will be seen later, the defendant did not stop at declaring martial law in this case. The defendant caused the proclamation in this case to be issued, which violates the fundamental principles of the Constitution and extensively infringes on the basic rights of the people. The defendant sent police to the National Assembly to control access to the National Assembly with the intention of blocking the National Assembly from exercising its constitutional authority, and sent troops to drag out the National Assembly members from the plenary session hall.

In order to suppress the activities of political parties, the respondent directed the seizure and search of the Central Election Commission with the purpose of clearing up suspicions of election fraud, and was also involved in the instructions to confirm the location of legal professionals with the purpose of arresting them if necessary. In addition, considering the fact that the respondent expected the lifting of martial law to take at least a few days but stated that it was completed sooner than expected, and that the respondent did not inform the members of the State Council or the military that martial law in this case was a warning, it cannot be seen that the respondent declared martial law in this case simply for the purpose of appealing to the people.

There can be no such thing as 'warning martial law' or 'appeal martial law'. As soon as martial law is declared, the respondent acquires the authority to restrict the basic rights of the people beyond the scope permitted in normal times and to take special measures with regard to the authority of the government or the courts (Article 77 of the Constitution).

33

Article 3). Even without separate instructions from the defendant, the martial law command is formed to implement martial law duties in accordance with the martial law law (Article 5, Paragraph 2), and the martial law commander is in charge of all administrative and judicial affairs in the martial law area and commands and supervises administrative and judicial agencies (Article 7, Paragraph 1, Article 8, Paragraph 1). Since the essence of martial law is to overcome a serious crisis situation with military force, its declaration cannot be limited to a simple warning. Therefore, the defendant's argument that the martial law in this case is merely a 'warning martial law' or 'appeal-type martial law' cannot be accepted.

(Ma) Sintering

The declaration of martial law in this case violates Article 77, Paragraph 1 of the Constitution and Article 2, Paragraph 2 of the Martial Law.

(2) Whether there is a violation of the procedural requirements for declaring martial law

(a) Constitutional significance of the martial law declaration procedure

The Constitution specifically prescribes the procedures for directly declaring martial law, and stipulates that martial law be declared in accordance with the provisions of the law. As examined above, the exercise of the national emergency power entails the concentration of power and the partial dismantling of the power control mechanism in normal times, so there is a risk that constitutional values and the basic rights of the people will be violated if it is abused or misused. Accordingly, the Constitution clearly stipulates the procedures for directly exercising the national emergency power in order to prevent the abuse and misuse of the national emergency power (see Constitutional Court 1994. 6. 30. 92ÿÿ18; Constitutional Court 1996. 2. 29. 93ÿÿ186).

The defendant argues that the martial law in this case is a "warning martial law" or "appeal martial law" that was declared as a provisional and temporary measure with the premise of immediate lifting for the purpose of informing and appealing to the public about the tyranny of the opposition party and the state of national crisis, and that it requires a high level of security and urgency, and therefore the procedural rules need to be interpreted flexibly.

However, as examined above, the defendant committed a series of acts in conjunction with the martial law in this case.

34

Considering that acts that violate the Constitution and laws and the declaration of martial law cannot be limited to a warning by their nature, the martial law in this case cannot be viewed as a simple 'warning martial law' or 'appeal-type martial law'. In addition, in a constitutionalist country governed by the rule of law, state power must always be exercised within the boundaries of the Constitution and in accordance with the procedures stipulated in the Constitution, the harm that abuse or misuse of the right to declare martial law can cause to the constitutional order is very serious, and the Constitution specifically stipulates the procedures for declaring martial law in order to prevent this, and stipulates that martial law be declared in accordance with the provisions of the law, and the procedures stipulated in the Constitution and laws must be observed.

Considering the fact that it is difficult to see this as harming security and urgency, the defendant's argument that the provisions on martial law declaration procedures should be interpreted flexibly cannot be accepted.

Therefore, in declaring martial law in this case, the defendant should have complied with all procedures for declaring martial law as stipulated by the Constitution and the law; however, as can be seen below, the defendant failed to comply with them.

(l) Whether the State Council deliberation procedures are followed

1) The declaration of martial law and the appointment of a martial law commander must be deliberated by the State Council (Article 89, Paragraph 5 of the Constitution, Article 2, Paragraph 5 and Article 5, Paragraph 1 of the Martial Law).

The State Council is composed of the President, the Prime Minister, and the State Council members (Article 88, Paragraph 2 of the Constitution), and the President, as the Chairman of the State Council (Article 88, Paragraph 3 of the Constitution), convenes and presides over meetings (Article 12, Paragraph 1 of the Government Organization Act). The State Council is opened with the attendance of a majority of its members (Article 6 of the State Council Regulations), and at the time of the declaration of martial law in this case, a majority was 11 or more. The 'deliberation' of the State Council refers to the exchange or coordination of opinions by the President, the Prime Minister, and the State Council members through free speech and discussion on agenda items. The State Council is held before the President decides on a policy.

35

Its significance lies in ensuring that policy decisions are made carefully and in preventing the president's tyranny or self-righteousness by allowing discussions that reflect various viewpoints and interests.

2) As examined above, it is acknowledged that the defendant briefly explained the purpose of the declaration of martial law in this case to the Prime Minister and nine State Council members immediately before declaring martial law in this case. However, although all State Council members are recognized as members of the State Council and have the authority and responsibility to deliberate on state affairs (Article 87, Paragraph 2 of the Constitution), considering that Minister of Culture, Sports and Tourism Yoo In-chon, Minister of Environment Kim Wan-seop, Minister of Employment and Labor Kim Moon-soo, and Minister of Patriots and Veterans Affairs Kang Jeong-ae were not contacted to come into the President's Office, and that the State Council members who were contacted were not contacted to convene a State Council meeting, but to come into the President's Office, it is difficult to acknowledge that a lawful notice of a State Council meeting was given simply by contacting some State Council members to come into the President's Office.

Furthermore, considering the fact that the time it took for the Minister of SMEs and Startups Oh Young-joo to arrive last and the respondent to leave the reception room to declare martial law in this case was only about 5 minutes; that the meeting did not proceed according to the normal procedures of a State Council meeting, such as opening the meeting, listing agenda items, explaining proposals, discussing, adjourning the meeting, and writing minutes; that the respondent did not explain the specifics of martial law in this case, such as the necessity of martial law, date and time of enforcement, and martial law commander; that the Prime Minister and the State Council members were not given the opportunity to state their opinions on the declaration of martial law in this case; that the meeting did not include any substantive review or discussion on whether the substantive requirements for the declaration of martial law in this case were met; etc., it is difficult to see that any "deliberation" regarding the declaration of martial law in this case took place among the above attendees.

The defendant entered the Presidential Office sequentially from around 20:30 on December 3, 2024, with the Prime Minister.

36

It is argued that there was a substantive deliberation process because the State Council members discussed martial law in this case. However, the contact to come to the Presidential Office for the State Council members other than the Minister of National Defense Kim Yong-hyun, the Minister of Unification Kim Young-ho, the Minister of Foreign Affairs Cho Tae-yeol, the Minister of Justice Park Sung-jae, and the Minister of the Interior and Safety Lee Sang-min was not made until after 9:00 p.m. on the same day, and the Ministers of Health and Welfare Cho Kyu-hong and Oh Young-joo arrived at the Presidential Office only around 10:17 p.m. It is also argued that the exchange of opinions by some State Council members in a situation where the quorum for the State Council was not met cannot be evaluated as a deliberation by the State Council, and the defendant also claimed that at the time, the defendant had not been present at the meeting.

Considering the fact that there was no substantive review or discussion regarding the specific content of martial law or whether the substantive requirements for declaring martial law were met, that the progress of the discussions by the State Council members who arrived early was not explained to the other State Council members after the quorum for the State Council meeting was met, and that the State Council members who arrived late were not given the opportunity to state their opinions, it is difficult to accept the defendant's argument above.

In addition, the defendant claims that since Kim Yong-hyun distributed 10 copies of the martial law declaration stating the type of martial law, martial law date, martial law area, and martial law commander in the main reception room, the agenda was put on the agenda and the deliberation on the above matters took place. However, Kim Young-ho, Cho Tae-yeol, Cho Kyu-hong, Oh Young-joo, Minister of Agriculture, Food and Rural Affairs Song Mee-ryeong, and Minister of Strategy and Finance Choi Sang-mok testified to the prosecution that they did not see such a document and did not know who the martial law commander was, Prime Minister Han Deok-soo also testified at the 10th oral argument date for this case that he did not know who the martial law commander was and that there was no deliberation on the matter, Lee Sang-min testified at the 7th oral argument date for this case that he saw the martial law declaration on a desk in his office, not in the main reception room where the 11 members of the State Council were gathered, and he stated to the police that there was no mention of the martial law commander at the time, and Park Seong-jae

37

Considering that Cho Tae-yong, the director of the National Intelligence Service, testified at the 8th oral argument date for this case that he was in the Office of the President from around 20:50 on December 3, 2024 but did not see the martial law declaration in his office or the reception room, it is also difficult to accept the defendant's claim above.

In that case, the defendant declared martial law and appointed the martial law commander without deliberation by the State Council, thereby violating Article 89, Paragraph 5 of the Constitution and Article 2, Paragraph 5 and Article 5, Paragraph 1 of the Martial Law Act.

(D) Whether martial law declaration procedures are followed

1) The declaration of martial law must be in the form of a document, and the document must have the countersigns of the Prime Minister and the relevant State Council members (Article 82 of the Constitution, see Constitutional Court Decision 93 Heon-Ma 186, February 29, 1996). This is an internal power control procedure required by the Constitution to clarify the exercise of the President's authority and to ensure accountability.

Considering the declaration of martial law submitted as evidence, the testimonies of Han Deok-soo and Lee Sang-min, and Park Sung-jae's statement at the National Assembly, it is acknowledged that a declaration of martial law was drafted at the time of the declaration of martial law in this case, specifying the type of martial law, date and time of martial law, martial law area, and martial law commander. However, it is not acknowledged that the Prime Minister and the relevant State Council members signed it. Rather, according to the statements of Choi Sang-mok, Cho Tae-yeol, and Oh Young-joo at the prosecution, it is only that they refused to sign when they were about to leave the reception room and an employee told them that they had to sign the document. Despite the fact that the Prime Minister and the relevant State Council members did not sign the document related to the declaration of martial law in this case, the defendant declared martial law in this case, thereby violating Article 82 of the Constitution.

38

It is done.

The defendant argues that in an emergency situation requiring extreme security, there is no choice but to prepare and approve documents after the fact, and since the Ministry of National Defense has not yet submitted approval after the declaration of martial law in this case, the department has not been formed, so the defendant cannot be evaluated as having ignored the document principle or the department system. However, the defendant claims that when 11 members of the State Council were gathered in the reception room of the Presidential Office before the declaration of martial law in this case, the head of the subordinate office, Kang **, made 10 copies of the martial law declaration and delivered them to Kim Yong-hyun. Therefore, it is difficult to accept the defendant's argument that Article 82 of the Constitution was not followed before the declaration of martial law in this case for security reasons. In order for the document principle and the department system to function as a procedure to clearly determine the responsibility of the president for his acts under the law and to control the president's power, it is necessary to establish the document principle and the department system prior to the president's acts under the law.

The Prime Minister and the relevant State Council members must be appointed. In addition, considering that the defendant, as the one with the authority to declare martial law, is responsible for ensuring that all procedures stipulated by the Constitution and laws are observed, the defendant's above argument cannot be accepted.

2) When the President declares martial law, he must announce the reason, type, date and time of enforcement, area of enforcement, and martial law commander (Article 3 of the Martial Law Act). This is to prevent abuse of the authority to declare martial law by informing the public of the specific details of martial law that have a significant impact on the rights and obligations of the people.

The defendant also violated Article 3 of the Martial Law Act by failing to announce the date and time of enforcement, the area of enforcement, and the martial law commander when declaring martial law in this case.

(A) Compliance with National Assembly notification procedures

39

When the President declares martial law, he must notify the National Assembly without delay (Article 77, Paragraph 4 of the Constitution, Article 4, Paragraph 1 of the Martial Law).

The defendant argues that, although it is true that the National Assembly was not notified, the National Assembly passed the resolution demanding the lifting of martial law within a very short period of time after the declaration of martial law in this case, so there was no time to separately notify the National Assembly, and since the first address to the nation was broadcast live, the National Assembly members were aware of the declaration of martial law in real time, so the defendant cannot be considered to have violated the duty to notify the National Assembly. However, the purpose of the Constitution imposing the duty of the President to notify the National Assembly is to ensure that the National Assembly can exercise its right to request the lifting of martial law granted under Article 77, Paragraph 5 of the Constitution in a timely manner, so it should be considered that the President bears the duty to officially notify the National Assembly regardless of whether the address to the nation was broadcast live. In addition, considering the time of the declaration of martial law in this case and the time of the National Assembly's passage of the resolution demanding the lifting of martial law in this case, it cannot be considered that the defendant did not have time to notify the National Assembly.

Therefore, the defendant violated Article 77, Paragraph 4 of the Constitution and Article 4, Paragraph 1 of the Martial Law.

(3) Whether there is a violation of the duty to command the armed forces according to the Constitution, etc.

(a) The President commands the Armed Forces "as prescribed by the Constitution and laws" (Article 74, Paragraph 1 of the Constitution). Since the President's abuse or arbitrary exercise of the authority to command the Armed Forces may cause irreparable damage, Article 74, Paragraph 1 of the Constitution stipulates that the President exercises the authority to command the Armed Forces within the limits prescribed by the Constitution, the Armed Forces Organization Act, and other laws.

One of the limitations stipulated in the Constitution with regard to the President's command authority over the Armed Forces is the political neutrality of the Armed Forces (Article 5, Paragraph 2 of the Constitution). In the past, our country had a military coup in which the military directly took power.

40

The military has historical experience of influencing politics by establishing a military junta or mobilizing the military in the political arena. Soldiers and military personnel are civil servants (Article 2, Paragraph 2, Subparagraph 2 of the National Civil Service Act), and although Article 7, Paragraph 2 of the Constitution guarantees the political neutrality of civil servants, the introduction of provisions on the political neutrality of the military in the current Constitution once again explicitly emphasizes this, expressing the will to never repeat the military's intervention in politics in our constitutional history (see Constitutional Court 2018. 7. 26. 2016jy139).

Therefore, it is a violation of Article 5, Paragraph 2 of the Constitution for the military to intervene in politics or engage in political activities such as supporting a specific political party, as well as for the political circles to attempt to exert influence on the military or use the military for political purposes. Ultimately, the President

Using the Armed Forces by exercising the right to command the Armed Forces for political purposes is a violation of the constitutional duty to command the Armed Forces as stipulated in Article 74, Paragraph 1 of the Constitution.

(Me) Martial law is declared to deal with a crisis situation with military force (Article 77, Paragraph 1 of the Constitution), so it inevitably entails the exercise of the President's authority to command the Armed Forces (Article 74, Paragraph 1 of the Constitution). In the event that martial law is declared, the martial law commander appointed from among active-duty general-level officers will implement martial law duties as the head of the martial law command (Article 5 of the Martial Law Act), and will be in charge of all administrative and judicial affairs in the martial law area, while commanding and supervising administrative and judicial agencies (Articles 7, Paragraph 1 and 8, Paragraph 1 of the Martial Law Act). In cases where the entire country is designated as a martial law area or where direct command and supervision are necessary, the President commands and supervises the martial law commander (Article 6, Paragraph 1 of the Martial Law Act), so the President ultimately implements martial law duties by exercising his authority to command and supervise military personnel.

As we have seen above, the defendant is of the opinion that the opposition party, which opposes his opinion, holds the majority of seats.

41

In order to mobilize troops and break the standoff with the National Assembly, the defendant declared martial law in this case. Therefore, the defendant violated Article 5, Paragraph 2 and Article 74, Paragraph 1 of the Constitution.

(4) Sintering

The President, who has the duty to abide by the Constitution according to Article 66, Paragraph 2 and Article 69 of the Constitution, is the 'symbolic existence of the rule of law and law compliance' for all citizens. The President must make every effort to protect and realize the Constitution, and must also comply with the law and refrain from committing any act that violates the current law, and furthermore, must take all actions to realize the objective will of the legislator (see Constitutional Court Decision 2004. 5. 14. 2004 Heon-Na 1).

The Constitution specifically stipulates the substantive and procedural requirements to prevent abuse and misuse of the right to declare martial law, and stipulates that martial law be declared "as prescribed by law." In addition, the Constitutional Court, while judging that past exercise of national emergency powers such as emergency measures were unconstitutional, clarified the limits of the exercise of national emergency powers, such as the purpose of the Constitution recognizing national emergency powers, the meaning of the state of emergency that can exercise national emergency powers, and the purpose that can justify the exercise of national emergency powers (see Constitutional Court 1994. 6. 30. 92ÿÿ18; Constitutional Court 2013. 3. 21. 2010ÿÿ132, etc.; Constitutional Court 2015. 3. 26. 2014ÿÿ5). Therefore, the President, who is obligated to abide by the Constitution, must exercise his or her authority carefully while complying with the requirements and limits of the declaration of martial law stipulated by the Constitution and law.

Nevertheless, the defendant declared martial law in this case, citing circumstances that cannot justify the declaration of martial law in terms of the provisions of the Constitution or the nature of the national emergency powers as examined above. The defendant argued that the crisis situation stipulated in Article 77, Paragraph 1 of the Constitution and Article 2, Paragraph 2 of the Martial Law was the current situation.

42

Even though there was no basis to believe that martial law had actually occurred, the defendant declared martial law in this case based on a significantly irrational or arbitrary judgment, thereby violating Article 77 Paragraph 1 of the Constitution and Article 2 Paragraph 2 of the Martial Law Act. If the defendant had complied with the procedures for declaring emergency martial law stipulated in the Constitution and the Martial Law Act, such as deliberation by the State Council, he could have recognized that the defendant's judgment was wrong and may not have proceeded with declaring martial law in this case. However, the defendant also violated the procedures for declaring emergency martial law stipulated in Articles 77 Paragraph 4, 82, and 89 Paragraph 5 of the Constitution, and Articles 2 Paragraph 5, 3, 4 Paragraph 1, and 5 Paragraph 1 of the Martial Law Act. Furthermore, the defendant declared martial law in this case and mobilized troops with the intention of resolving the confrontation with the National Assembly, thereby violating Articles 5 Paragraph 2 and 74 Paragraph 1 of the Constitution.

6. Decision on deploying military and police to the National Assembly

A. Acknowledged facts

(1) Instructions to mobilize the military to enter the National Assembly and drag out members of the National Assembly

(a) Order for the defendant to deploy troops

The defendant instructed the Minister of National Defense, Kim Yong-hyun, to deploy the military to the National Assembly in connection with the declaration of martial law in this case.

(i) Soldiers belonging to the Army Special Warfare Command enter the National Assembly

1) Just before the declaration of martial law for this incident, Kim Yong-hyun instructed Army Special Warfare Commander Kwak Jong-geun to dispatch soldiers from the 707th Special Mission Group to the National Assembly, and 97 soldiers from the 707th Special Mission Group departed for the National Assembly by helicopter. On December 3, 2024, at around 23:40, the defendant called Kwak Jong-geun and asked where the unit heading to the National Assembly was, and Kwak Jong-geun replied that it was still on the move. Soldiers from the 707th Special Mission Group arrived at the National Assembly sports field.

43

Afterwards, they moved to the main building to secure the entrance, and 16 of them broke the two right-side glass windows of the main building of the National Assembly at approximately 00:33 on December 4, 2024 and entered the building. About 170 soldiers from the 1st Airborne Brigade who had been ordered to mobilize immediately after the declaration of martial law also entered the National Assembly premises. National Assembly staff, aides to National Assembly members, etc. stacked furniture, sprayed fire extinguishers, and blocked them with their bodies, and in the process, some were injured and approximately 66 million won worth of material damage occurred.

2) Immediately after the declaration of martial law for this incident, the National Assembly Speaker and other members of the National Assembly were gathering in the main conference room of the National Assembly building to deliberate on the resolution demanding the lifting of martial law. At around 00:30 on December 4, 2024, the defendant instructed Kwak Jong-geun over the phone, "It seems that the quorum for the resolution has not been reached yet. Quickly break down the National Assembly door and get everyone inside out." Kwak Jong-geun discussed ways to carry out the above instructions, saying things like "They say that no more than 150 people can enter. Can't we?" to the 707th Special Mission Group Commander Kim Hyeon-tae. After confirming that the resolution demanding the lifting of martial law had passed, Kwak Jong-geun ordered the suspension of the mission and withdrawal. At Kim Yong-hyun's order to deploy additional troops, approximately 100 soldiers from the 707th Special Mission Group who had arrived at the National Assembly around that time also withdrew immediately. As a result, no troops entered the main conference room.

3) The defendant claims that he did call Kwak Jong-geun, but that he only confirmed the situation at the time and did not give any instructions to drag out the National Assembly member. He also claims that Kwak Jong-geun's statement regarding the above instructions is inconsistent and therefore lacks credibility. However, since Kwak Jong-geun's microphone remained on even after the end of the video conference with the Army Special Warfare Command units held immediately after the declaration of martial law, it is possible that Kwak Jong-geun received the above instructions from the defendant and called Kim Hyeon-tae.

44

In light of the fact that the remarks made during the discussion were being transmitted as is to the subordinate units, that Kwak Jong-geun and Kim Hyeon-tae were not given additional instructions for a while after receiving the order to "secure and guard the facility" upon dispatch to the National Assembly, and thus were unable to know the specific mission, and that if the respondent had not given the above instructions, there would have been no reason for Kwak Jong-geun to suddenly go inside with Kim Hyeon-tae and discuss ways to keep the number of people from exceeding 150, that considering the term "quorum" and the fact that there were many National Assembly members in the plenary session hall at the time and no soldiers, the subject of the point cannot be helped but be interpreted as the National Assembly members, and that Kwak Jong-geun consistently stated the contents of the respondent's above instructions from the prosecution's investigation on December 9, 2024 until the 6th oral argument date for this case when the witness examination was conducted, with only some differences in terminology, the respondent's argument is difficult to believe.

(All) Entry of soldiers belonging to the Capital Defense Command into the National Assembly

1) Immediately after the declaration of martial law for this incident, Kim Yong-hyun instructed Lee Jin-woo, the commander of the Capital Defense Command, to dispatch subordinate units to the National Assembly. Lee Jin-woo dispatched soldiers from the 1st Security Brigade and the Military Police Brigade and also moved to the National Assembly. After Lee Jin-woo arrived at the National Assembly, the defendant called to ask about the situation, and when Lee Jin-woo responded that it was difficult to enter the National Assembly grounds because many people were confronting the police at the National Assembly fence, the defendant called again a little while later and said, "Bring out the people inside."

2) At around 00:40 on December 4, 2024, Lee Jin-woo instructed the 1st Security Brigade Commander, Cho Sung-hyun, to "go inside the main building and drag the National Assembly members out," and shortly thereafter, he instructed the Army Special Warfare Command soldiers who had already entered to provide support from the outside, such as forming a passageway when they dragged the National Assembly members out. Cho Sung-hyun believed that the above mission was not justified.

45

Thinking that this was the case, he instructed the soldiers who entered the National Assembly premises to continue to gather in areas where there were no people, and the follow-up units that were moving to the National Assembly to wait without crossing the Seogang Bridge. After the resolution demanding the lifting of martial law was passed, Jo Seong-hyeon suggested to Lee Jin-woo to withdraw, and Lee Jin-woo approved it. At that time, a total of 210 soldiers belonging to the Capital Defense Command were dispatched to the National Assembly, and 48 of them entered the premises.

3) Defendant claims that he did call Lee Jin-woo, but that he only informed him that if he checked the situation at the time and told the police, they could enter the National Assembly fence, and that he did not order him to drag the National Assembly members out. However, while Lee Jin-woo was on the phone with Defendant, his exclusive aide, who was sitting in the front seat of the same vehicle, could have heard most of the conversation, and that Lee Jin-woo only received instructions from Kim Yong-hyun to go to the National Assembly without a specific mission, and that he intended to first guard the "outskirts" of key facilities, which was the original mission of the Capital Defense Command, and that if Defendant had not given him the above instructions, there would have been no reason for Lee Jin-woo to suddenly order Jo Seong-hyun to enter "inside" the building and drag the National Assembly members out. In light of this, Defendant's above argument is difficult to believe.

(2) Control of access to the National Assembly by mobilizing the police

(A) At around 7:20 PM on December 3, 2024, the defendant called the Commissioner General of the National Police Agency, Cho Ji-ho, and the Commissioner General of the Seoul Metropolitan Police Agency, Kim Bong-sik, to the presidential safe house in Jongno-gu, Seoul, and announced that martial law would be declared that night and that soldiers would be going to the National Assembly and other places, and asked that the police also control the National Assembly well. Kim Yong-hyun, who was present with the defendant, handed a single-page A4 document to Cho Ji-ho and Kim Bong-sik in front of the defendant, which contained information such as "2200 National Assembly, 2300 Democratic Party Headquarters," indicating the time and place of dispatch of the soldiers.

46

(Me) George Ho and Bongsik Kim deployed about 300 police officers around the National Assembly fence and completely blocked entry and exit from around 22:48 on December 3, 2024. However, after receiving a complaint about the control of entry and exit by members of the National Assembly, after confirming the National Assembly's right to demand the lifting of martial law under the Constitution, etc., and judging that martial law alone in this case was insufficient grounds, from around 23:06 on the same day, members of the National Assembly, aides, National Assembly staff, reporters, and other regular visitors to the National Assembly were required to undergo identity verification before entering and exiting.

At around 23:23 on the same day, the proclamation for this case was issued. At that time, the defendant called Martial Law Commander Park An-soo and asked him to inform Cho Ji-ho of the contents of the proclamation for this case, and Park An-soo informed Cho Ji-ho of this over the phone. The defendant also called Cho Ji-ho directly six times. Cho Ji-ho and Kim Bong-sik confirmed that the proclamation for this case included provisions such as prohibiting National Assembly activities and punishing violators of the proclamation, and then again blocked access to the National Assembly for approximately 2 hours and 8 minutes from around 23:37 on the same day to around 01:45 on December 4, 2024.

In the meantime, the number of police officers deployed to the National Assembly gradually increased, and finally, about 1,700 police officers were mobilized. Due to the above-mentioned blocking of access, some of the National Assembly Speaker and members of the National Assembly who were gathering at the National Assembly to deliberate the resolution demanding the lifting of martial law had to climb over the wall or were unable to enter at all, and the opening of the National Assembly plenary session was also delayed.

(D) The defendant claims that he never ordered the police to control the entry and exit of the National Assembly members, and that he instructed Kim Yong-hyun not to block his entry. However, the defendant admits that he called Cho Ji-ho and Kim Bong-sik to the presidential safe house and asked them to control the National Assembly well, that he saw Kim Yong-hyun draw a picture and explain where the police should be deployed, that the defendant had Park An-soo inform Cho Ji-ho of the proclamation in this case that included the ban on National Assembly activities, and that Cho Ji-ho exercised the right to demand the lifting of martial law, etc.

47

In light of the fact that it is difficult to find a special reason to block entry again in a situation where entry by members of the National Assembly was allowed after being acknowledged, the defendant's claim is difficult to believe.

(3) Attempt to confirm the location of major politicians, etc.

(A) On December 3, 2024, at around 20:22, the defendant called Hong Jang-won, 1st Vice Director of the National Intelligence Service, and said, "I might have to call you in an hour or two, so keep your secret phone handy." Then, at around 22:53 on the same day, he called him again and asked if he had seen the martial law declaration and that he would give the National Intelligence Service counterintelligence investigation authority this time, so he should first help and support the Defense Counterintelligence Command with funds and manpower.

Immediately after the declaration of martial law for this incident, Kim Yong-hyun gave a list of 14 people (hereinafter referred to as "the list for this case") to Yeo In-hyeong, the Commander of the Defense Counterintelligence Command, and instructed them, "These are people who may violate the proclamation. If any suspicion of violation is discovered after the joint investigation headquarters is formed, they may be arrested, so find out their locations and other activities in advance." The list of suspects included National Assembly Speaker Woo Won-sik, Democratic Party of Korea representative Lee Jae-myung, People Power Party representative Han Dong-hoon, Democratic Party of Korea representative Cho Kuk, Democratic Party of Korea floor leader and National Assembly member Park Chan-dae, former Supreme Court Chief Justice Kim Myeong-soo, and former Supreme Court Justice Kwon Soon-il.

(Me) Yeo In-hyeong asked Jo Ji-ho to confirm the location while giving him a list that mostly matched the list of this case. Hong Jang-won called Yeo In-hyeong at around 22:58 and 23:06 on the same day to ask her about the whole story, but Yeo In-hyeong did not respond properly, and when Hong Jang-won said that he had received a call from the defendant asking him to support the Armed Forces Counterintelligence Command, he explained the situation at the time and gave him a list that mostly matched the list of this case while asking him to confirm the location. Jo Ji-ho and Hong Jang-won did not cooperate with Yeo In-hyeong's request, and a total of 49 military investigators from the Armed Forces Counterintelligence Command from 10 teams that had been dispatched to the National Assembly waited outside the National Assembly fence until martial law was lifted.

48

After the resolution was passed, everyone withdrew. Accordingly, no actual location confirmation of the people on this list was carried out.

(D) Defendant claims that he never gave instructions to anyone regarding the list of cases. In particular, Defendant claims that although he did have two phone calls with Hong Jang-won, the first phone call was made under the mistaken belief that Director Cho Tae-yong of the National Intelligence Service was on an overseas business trip, and that he asked him to take good care of the National Intelligence Service. The second phone call was made to encourage Hong Jang-won for helping protect Defendant during his overseas trip, and that he asked him to support the Defense Counterintelligence Command in relation to espionage investigation work unrelated to martial law.

However, the defendant instructed Hong Jang-won to wait in case he would call in an hour or two during the first call on December 3, 2024, and then called him again immediately after the declaration of martial law for this case; the defendant said that Yeo In-hyeong and Hong Jang-won were seniors and juniors at the Korea Military Academy, and that he specifically mentioned support for the Armed Forces Counterintelligence Command to Hong Jang-won; and the defendant said that Yeo In-hyeong was on a business trip overseas.

Considering the fact that the respondent met Cho Tae-yong, who was thought to be the defendant, at the Blue House right before the declaration of martial law for this incident, and that he spoke with Cho Tae-yong right after the second call with Hong Jang-won, and that he said he did not give any special instructions to Cho Tae-yong, it is reasonable to believe that the respondent intended to convey to Hong Jang-won from the beginning special business related to the mission assigned to the Defense Counterintelligence Command under martial law, and it is difficult to believe the respondent's claim that the respondent intended to give simple encouragement or general instructions related to the work of investigating espionage in the urgent situation immediately after the declaration of martial law.

Rather, the fact that Yeo In-hyeong, who had hesitated to mention anything during the phone call with Hong Jang-won, asked for confirmation of the location while explaining the situation only after hearing that she had received a call from the defendant, and that the defendant could command Yeo In-hyeong, the commander of the Armed Forces Counterintelligence Command, Hong Jang-won, the first vice director of the National Intelligence Service, and Cho Ji-ho, the commissioner general of the National Police Agency.

49

In light of the facts about the location, it is difficult to see that Kim Yong-hyun's order to confirm the location of the people included in the list of people in this case for the purpose of arresting them if necessary due to concerns about violation of the proclamation was given without the defendant's will.

B. Judgment

(1) Whether there is a violation of Article 77, Paragraph 5 of the Constitution, representative democracy, etc., and whether there is a violation of the National Assembly members' privilege of immunity from arrest, etc.

(a) Our Constitution places the protection of the basic order of liberal democracy as its highest value, and in order to realize this, it adopts the principle of separation of powers, whereby the legislative power belongs to the National Assembly (Article 40 of the Constitution), the executive power belongs to the government headed by the President (Article 66, Paragraph 4 of the Constitution), and the judicial power belongs to the courts comprised of judges (Article 101, Paragraph 1 of the Constitution) (see Constitutional Court Decision 89 Heon-Ma 221, April 28, 1994). In representative democracy, the National Assembly, as a representative body of the people comprised of members of the National Assembly elected by the sovereign people, performs functions such as legislative functions, government supervision functions, and financial functions (see Constitutional Court Decision 2002 Heon-Ra 1, October 30, 2003). These functions of the National Assembly are mainly realized by the members of the National Assembly exercising their right to deliberate and vote in the plenary hall of the main building of the National Assembly, which is a public place where the political will of the people is collected and discussed.

(Me) On the other hand, Article 77, Paragraph 5 of the Constitution stipulates that when the National Assembly requests the lifting of martial law with the consent of a majority of its members, the President must lift it, thereby granting the National Assembly, as a representative body of the people, the authority to control the abuse of the President's right to declare martial law. Therefore, it should be considered that the authority of the National Assembly cannot be restricted even when martial law is declared. Otherwise, the President could render the National Assembly's control authority according to the Constitution ineffective by declaring martial law. In the same spirit, from the undue suppression of administrative power,

50

In order to guarantee the activities of members of the National Assembly, the privilege of immunity from arrest of members of the National Assembly, which is stipulated in Article 44, Paragraph 1 of the Constitution as "Members of the National Assembly shall not be arrested or detained without the consent of the National Assembly during the session except in case of flagrante delicto," is further strengthened and guaranteed regardless of whether the National Assembly is in session or has the consent of the National Assembly by stipulating in Article 13 of the Martial Law Act as "During martial law, members of the National Assembly shall not be arrested or detained except in case of flagrante delicto."

(D) Nevertheless, the defendant attempted to prevent the National Assembly from properly exercising its authority, including the right to demand lifting of martial law, by deploying the military and police to obstruct the free entry and exit of the National Assembly Speaker and members of the National Assembly and ordering them to be dragged out. Such actions by the defendant not only violate Article 77, Paragraph 5 of the Constitution, which grants the National Assembly, as a representative body of the people, the right to demand lifting of martial law, but also prevents the National Assembly from faithfully performing its functions, thereby depriving the National Assembly of its right to exercise its authority.

It directly violates the principles of shareholders' rights and separation of powers, and infringes on the constitutional rights of members of the National Assembly, who are representatives of the people, such as the right to deliberate and vote, as well as the privilege of immunity from arrest, which is particularly important in a martial law situation.

(2) Whether or not the freedom of political activities is violated

(a) As a mediator between the people and the state, political parties perform the function of a political conduit, forming and integrating the pluralistic will of the people, thereby forming political will on a scale that can directly influence the decision-making of national policies (see Constitutional Court 2020. 5. 27. 2019 Heon-Ra1). Accordingly, Article 8, Paragraph 1 of the Constitution explicitly stipulates the freedom to establish political parties. If only the establishment of political parties is guaranteed and their activities can be arbitrarily restricted, the freedom to establish political parties would be virtually meaningless. Therefore, the above provision can be said to broadly guarantee the freedom of political parties, including the freedom of political party activities (Constitutional Court 2004. 12. 16. 2004 Heon-Ma 456; Constitutional Court 2014. 1. 28. 2012 Heon-Ma 431, etc.)

51

reference).

(Me) The activities of party organs such as the party leader and floor leader are the activities of the party itself, and therefore can be seen as activities of the party that should naturally be guaranteed by the Constitution (see Constitutional Court Decision 2013 Heon-da 1, December 19, 2014). Members of the National Assembly belonging to a party basically have the status of representatives of the entire nation, but with the development of party democracy, they are elected with the support or background of the party they belong to after receiving the party's nomination, and in fact, they are influenced by the party's discipline or party line in forming their political opinions, and so they also have the status of representing the party's ideology (see Constitutional Court Decision 2013 Heon-da 1, December 19, 2014; Constitutional Court Decision 2019 Heon-ra 1, May 27, 2020). Their activities can also be considered activities of the party to some extent.

(D) Immediately after the declaration of martial law for this incident, Kim Yong-hyun instructed the location of the representatives and floor leaders of each political party to be confirmed for the purpose of arresting them if necessary, citing concerns about violations of the proclamation. As examined above, it is difficult to see that the above instructions were given without the defendant's will. This appears to be an act intended to restrict the activities of each political party by restricting the activities of the above individuals who can exercise significant influence over party members, including National Assembly members belonging to each party. Therefore, the defendant's above-mentioned actions infringed upon the freedom of political party activities.

(3) Whether there is a violation of the duty to command the armed forces according to the Constitution, etc.

As examined above, the defendant ordered the deployment of troops to the National Assembly and the evacuation of members of the National Assembly from the plenary session hall for the political purpose of blocking the National Assembly from exercising its constitutional authority and restricting the activities of political parties, and was involved in directing the confirmation of the locations of key politicians.

The soldiers, who had been training under the assumption of emergency situations such as wartime, were shocked by the martial law incident.

52

When the declaration and order to mobilize were given, they mobilized to the National Assembly carrying personal firearms, etc. However, what the soldiers faced were not the enemy, but ordinary citizens, and the soldiers, who could not actively use force against ordinary citizens, were unable to carry out the above order. The people, who have the power to enact the Constitution, have stated in the Constitution the political neutrality of the military in order to never repeat the military's intervention in politics again in our constitutional history, but the respondent, who has the power to command the military, has abused that power for political purposes, and the soldiers, who have served the country with the sacred duty of ensuring national security and defending the country, have once again come into conflict with ordinary citizens.

In that case, the defendant exercised the right to command the armed forces in violation of the political neutrality of the armed forces, and therefore, Article 5, Paragraph 2 and 74 of the Constitution

Violation of Article 1.

(4) Judgment on the defendant's claim

(A) The defendant claims that the troops were deployed to the National Assembly for the purpose of 'maintaining order' in preparation for a large gathering of National Assembly officials and citizens upon hearing the news of martial law declaration.

(Me) As the basis for this, the defendant states that he instructed Kim Yong-hyeon to deploy only 280 men, mainly consisting of executives, 'after martial law was declared, without providing them with live ammunition' and that he instructed them to immediately withdraw the troops as soon as the resolution demanding the lifting of martial law was passed.

However, the instructions claimed by the defendant were not given to either Kwak Jong-geun, Lee Jin-woo, or Yeo In-hyeong. Rather, they were instructed to prepare for the situation a few days before the declaration of martial law for this incident, and some units had already received mobilization orders before the declaration of martial law for this incident. The 280 people mentioned by the defendant seem to refer to approximately 270 soldiers from the Army Special Warfare Command who entered the National Assembly grounds just before the vote on the resolution demanding the lifting of martial law.

53

It appears that Guin did not intend to deploy only 280 people, as he had called soldiers from the Capital Defense Command to enter the National Assembly premises.

Furthermore, the soldiers dispatched to the National Assembly were primarily performing anti-terrorism operations as their original mission, so it is difficult to accept the argument that these soldiers were deployed beyond the original security personnel and additional police forces simply for the purpose of maintaining order in the National Assembly, which is a key national facility and is under strict security even in normal times. Furthermore, by not giving specific instructions for their mission, the defendant tolerated that they would act according to the manual prepared under the assumption of an actual emergency situation, and neither the issuance of live ammunition nor the withdrawal of troops were decisions made independently by the soldiers based on their own assessment of the situation, not at the defendant's instructions.

(D) Rather, it appears that the defendant attempted to maintain the martial law in this case and the effect of the proclamation in this case for a considerable period of time by obstructing the National Assembly's exercise of its right to demand the lifting of martial law by deploying troops.

Kim Yong-hyun planned that the police would control the area outside the National Assembly fence, the Capital Defense Command would control the area outside the National Assembly main building, and the Army Special Warfare Command would control the area inside the National Assembly main building. The defendant claims that until the troops arrived at the National Assembly, the National Assembly members in other buildings within the National Assembly could easily enter the main building, and the police also let the National Assembly members in through the fence, which leads to the inference that after the troops arrived at the National Assembly, they intended to block the National Assembly members' entry into the main building as planned. However, as the blocking of entry was not carried out as planned, and as the vote on the resolution demanding the lifting of martial law was imminent, it appears that they were instructed to drag out the National Assembly members in the main conference hall so that the quorum for the vote would not be met.

The defendant expected that it would take at least a few days for martial law to be lifted, but it ended sooner than expected.

54

He admitted that he had done so, and at the meeting of the major military commanders held after martial law was lifted for this incident, Kim Yong-hyeon stated, "Our military carried out the mission under the defendant's orders, but due to excessive workload, the desired results were not achieved." Judging from this, it can be seen that the defendant's purpose of deploying troops was not simply to maintain order.

(A) Furthermore, in the document that Minister of Strategy and Finance Choi Sang-mok received from the Presidential Office immediately after the declaration of martial law for this incident, it was stated that "all subsidies, support funds, and wages related to the National Assembly, including currently operating funds, will be completely blocked, and the budget related to the national emergency legislative body will be organized."

There was a content called "thing".

The defendant claims that he had no involvement in the drafting and delivery of the document in question, but Kim Yong-hyun drafted the document after receiving instructions from the defendant to seek cooperation from the relevant ministries as the Minister of the ministry in charge of martial law; the document also includes a provision to "secure sufficient reserve funds as soon as possible and report back," and it is reasonable to assume that the person to whom the Minister of Strategy and Finance should report is the President and the defendant; and the Ministers of Foreign Affairs Cho Tae-yeol, Cho Ji-ho, and Kim Bong-sik also received separate documents that day; Cho Tae-yeol received them from the defendant, and Cho Ji-ho and Kim Bong-sik received them from Kim Yong-hyun in the presence of the defendant, as discussed above. In light of this, it is difficult to believe the defendant's claim in light of this.

In addition, the defendant claims that the content of the document in question only means to block funds paid for political purposes through the National Assembly or to organize a budget for an organization under the Ministry of Strategy and Finance to issue an emergency financial and economic order. However, interpreting it in this way significantly deviates from the normal usage of the relevant text, and the content of completely blocking National Assembly-related operating funds, including wages, cannot be seen as being related only to organizations other than the National Assembly, and the defendant claims that the document is intended to promote government policies for people's livelihood and economic revitalization.

55

It is said that the emergency financial and economic order was considered as one of the ways to overcome the situation in which the bill is not passing the National Assembly due to opposition from the opposition party. However, considering that the emergency financial and economic order can only be issued when there is no time to wait for the National Assembly to convene (Article 76, Paragraph 1 of the Constitution), it is difficult to accept the defendant's argument.

(Ma) On the other hand, the defendant argues that the deployment of troops for the purpose of maintaining order is possible in the National Assembly because when martial law is declared, the martial law commander is in charge of administrative affairs and can take special measures regarding assembly and association.

Article 7, Paragraph 1 of the Martial Law Act stipulates that "upon the declaration of martial law, the martial law commander shall supervise all administrative and judicial affairs in the martial law area."

Article 77, Paragraph 3 of the Constitution, which is the basis for the above provision, stipulates that when martial law is declared, "special measures may be taken with respect to the authority of the government or the courts as prescribed by law." However, even if the government or the courts subject to special measures are interpreted broadly, the National Assembly cannot be included here. This is also true in light of the intent of Article 77, Paragraph 5 of the Constitution granting the National Assembly the right to demand the lifting of martial law, as examined above, and the intent of Article 13 of the Martial Law Act to strengthen and guarantee the privilege of immunity from arrest of National Assembly members during martial law. Therefore, the martial law commander cannot supervise the affairs of the National Assembly, even if such affairs have the nature of administrative affairs within the National Assembly.

However, according to the National Assembly Act, the right to guard the National Assembly premises to maintain order in the National Assembly during a session belongs to the Speaker of the National Assembly (Article 143), and even when the Speaker of the National Assembly requests the dispatch of police officers for security, the security work within the conference building is exclusively assigned to the police officers belonging to the National Assembly (Article 144). No one may interfere with a member of the National Assembly from entering or leaving the conference room to attend a meeting (Article 148-3), and the conference room may only be used by members of the National Assembly, the Prime Minister, or members of the State Council.

56

Or, no one other than government officials, other people necessary for the deliberation of bills, or those permitted by the Speaker of the National Assembly may enter (Article 151). As such, the work of maintaining order within the National Assembly during a session is entirely the work of the National Assembly, and therefore cannot be subject to special measures under Article 77, Paragraph 3 of the Constitution, nor can it be considered work under the jurisdiction of the Martial Law Commander under Article 7, Paragraph 1 of the Martial Law Act.

In the same vein, according to Article 9, Paragraph 1 of the Martial Law, the martial law commander may take special measures against assembly and association in martial law areas when military necessity requires it, but may not do so under the pretext of maintaining order within the National Assembly during a session.

I will say it all.

(B) As such, the defendant's claim that troops were deployed to the National Assembly for the purpose of 'maintaining order' cannot be accepted.

(5) Sintering

In that case, the defendant mobilized the military and police to control the free entry and exit of the National Assembly Speaker and members of the National Assembly into the National Assembly, while ordering them to be dragged out, thereby hindering the National Assembly from properly exercising its authority, including the right to demand the lifting of martial law, and by interfering with the instructions to confirm the locations of each political party representative for the purpose of arresting them if necessary, he violated Articles 5 Paragraph 2, 74 Paragraph 1, and 77 Paragraph 5 of the Constitution, representative democracy, and the principle of separation of powers, and at the same time infringed upon the constitutional rights of members of the National Assembly, such as their right to deliberate and vote and the privilege of immunity from arrest, and also infringed upon their freedom of political party activities.

7. Judgment on the issuance of a proclamation for this case

A. Acknowledged facts

(1) Minister of National Defense Kim Yong-hyun, in preparation for the defendant's imminent declaration of martial law, attached the 2017 proclamation to the 2017 martial law document and the Martial Law Proclamation No. 1 dated October 27, 1979, etc.

57

A draft of the proclamation for this case was prepared by referring to examples from the military regime. When the respondent asked Kim Yong-hyun around December 1, 2024 what was needed if martial law were declared, Kim Yong-hyun reported the draft of the proclamation for this case, etc. that he had prepared in advance, to the respondent, and the respondent instructed that the curfew provision be deleted on the grounds that it might cause inconvenience to the public and was not appropriate for the times. On December 2, 2024, Kim Yong-hyun reported the revised draft of the proclamation for this case, etc. according to the respondent's instructions, to the respondent, and the respondent approved it.

(2) Martial Law Commander Park An-soo received a draft of the proclamation for this case from Kim Yong-hyun after being appointed as Martial Law Commander on December 3, 2024 at around 22:30. After reading the draft of the proclamation for this case, Park An-soo told Kim Yong-hyun that it seemed like it needed legal review, but Kim Yong-hyun said that it had already been reviewed and to issue it as is. Accordingly, Park An-soo changed the proclamation time from 22:00 to 23:00 according to Kim Yong-hyun's instructions, signed the proclamation for this case at around 23:17 on December 3, 2024, and issued it at around 23:23. The content of the proclamation for this case is as set forth in [Appendix 4].

B. Judgment

(1) Legal nature and effect of the proclamation of this case

This proclamation supplements the contents of Article 9, Paragraph 1 and Article 14, Paragraph 2 of the Martial Law, and when combined with them, has the effect of an externally binding legal order (see Supreme Court Decision 2016do14781, November 29, 2018). Therefore, as soon as this proclamation is issued, all citizens have the obligation to refrain from any political activities or other acts prohibited by this proclamation, and if they violate this obligation, they may be arrested, detained, searched, or seized without a warrant, and may be subject to imprisonment for up to 3 years pursuant to Article 14, Paragraph 2 of the Martial Law.

58

The defendant claims that the declaration of martial law in this case was issued symbolically simply to establish the formality of martial law, and that there was no intention to enforce it and that it could not be enforced because it conflicted with a higher law. However, the defendant claims that the declaration of martial law in this case was

Since martial law takes effect immediately without any additional measures, there is no need to issue the proclamation in this case to have the form of martial law; if the respondent thought that the proclamation in this case would not be enforced, there was no need to delete the curfew provision; the deletion of the curfew provision on the grounds that it would cause inconvenience to the public and was not appropriate for the times can be seen as allowing the effectuation and enforcement of the remaining provisions; the respondent also claims that the content prohibiting the activities of the National Assembly was included in the proclamation in this case in order to prohibit anti-state activities by the National Assembly; the respondent called Martial Law Commander Park An-soo around the time the proclamation in this case was issued and asked him to inform Police Commissioner General Cho Ji-ho of the content of the proclamation in this case and called Cho Ji-ho directly six times; and Kim Yong-hyun testified during the 4th oral argument in this case that since the proclamation in this case was effective, he actually intended to enforce it and that he thought it was right to do so. In light of these facts, it is difficult to believe this. difficult.

(2) Whether there is a violation of Article 77, Paragraph 5 of the Constitution and representative democracy, etc.

In order to overcome the confrontation with the National Assembly, the defendant completely prohibited the activities of the National Assembly through the proclamation in this case. This, like the deployment of military and police to the National Assembly, not only violates Article 77, Paragraph 5 of the Constitution, which grants the National Assembly, as the representative body of the people, the right to demand the lifting of martial law, but also clearly violates representative democracy and the principle of separation of powers, and infringes upon the constitutional rights of the National Assembly members, who are the representatives of the people, such as the right to deliberate and vote.

59

The defendant claims that the proclamation was issued not to order the dissolution of the National Assembly or to prohibit normal activities such as parliamentary activities for the purpose of passing a resolution to lift martial law, but to prohibit anti-state activities. However, the proclamation in this case simply stipulates that the National Assembly's activities are prohibited, which can be interpreted as prohibiting all activities of the National Assembly. In addition, the defendant claims that anti-state acts are all acts that harm national interests and cause a national crisis, and that the National Assembly's exercise of legislative power and budget cuts, which were examined in the section on violations of the substantive requirements of the declaration of martial law, all fall under this category. However, since the National Assembly's exercise of legislative power and budget cuts are exercises of the National Assembly's authority based on the Constitution and laws, even according to the defendant's argument, the proclamation in this case is in fact no different from prohibiting all activities of the National Assembly. Therefore, the defendant's argument above cannot be accepted.

(3) Whether or not the essential content of local autonomy is violated

Local autonomy, institutionally guaranteed by Articles 117 and 118 of the Constitution, is intended to realize self-governance by residents as regional subjects of sovereignty, and the core areas, which are the essential content of local autonomy, must be protected from legislative or other infringements by the central government at all costs (see Constitutional Court 2014. 6. 26. 2013ÿÿ122). The local council, which is an organ of local government directly stipulated in the Constitution, is a representative body of residents comprised of local council members elected by local residents, and makes decisions on local administrative affairs and the will of local governments within the scope of laws and regulations, enacts ordinances on local administrative affairs, and monitors and supervises the work of executive agencies (see Constitutional Court 2008. 6. 26. 2005ÿÿ7). Denying the very existence of local governments or abolishing various authorities is an infringement on the essential content of local autonomy (see Constitutional Court 2001. 11. 29. 2000HunBa78).

60

The defendant has completely prohibited the activities of local councils through the proclamation in this case, which violates the essential content of local autonomy. The defendant claims that the activities of local councils are also prohibited only for anti-state activities, but such

The inability to accept the claim is the same as what we saw in the section on prohibiting National Assembly activities.

(4) Whether or not there is a violation of Article 8 of the Constitution

As examined above, the Constitution adopts a political party system in consideration of the significance and function of political parties in today's representative democracy, and broadly guarantees the freedom of political parties, including the freedom of political party activities.

The defendant, through the proclamation in this case, has completely prohibited the activities of all political parties. This not only infringes upon the freedom of political party activities, but also denies the political party system itself guaranteed by the Constitution, thereby violating Article 8 of the Constitution.

(5) Whether there is a violation of the principle of national sovereignty and the basic order of liberal democracy

The highest ideology contained in the preamble and the entire text of our Constitution is based on the essential fundamental principles of a constitutional democratic constitution based on popular sovereignty and liberal democracy. Since other constitutional principles also derive from it, it becomes the standard for the interpretation of all laws and regulations including the Constitution, suggests the limits of the exercise of legislative power and the direction of policy decisions, and is the highest value norm that all state agencies and citizens must respect and protect (see Constitutional Court Decision 88ÿÿ6 of September 8, 1989).

The sovereign people expressing their political thoughts or preaching through legal assemblies and demonstrations is not a threat to the security of the country, but is a core area of guarantee of the 'liberal democratic basic order', which is the fundamental ideology of our Constitution. Regarding criticism of the government

61

Rather than responding with rational publicity and persuasion, the exercise of public power or the establishment of norms that seek to fundamentally exclude criticism itself does not conform to the basic liberal democratic order envisaged by the Constitution of the Republic of Korea, and therefore cannot be granted legitimacy (see Constitutional Court Decision 2013. 3. 21. 2010ÿÿ132, etc.).

In addition to prohibiting the activities of the National Assembly through the proclamation in this case, the defendant comprehensively and completely restricted the basic political rights of the general public, such as the freedom of speech, publication, assembly, and association, and defined their exercise as a criminal act. This was a measure taken to fundamentally exclude criticism from the general public, based on the judgment that allowing the exercise of the above-mentioned basic rights would hinder resolving the conflict with the National Assembly, and thus violated the fundamental principles of the Constitution, the principle of popular sovereignty and the basic order of liberal democracy.

(6) Violation of Article 77, Paragraph 3 of the Constitution and Article 9, Paragraph 1 of the Martial Law

(a) Article 77, Paragraph 3 of the Constitution stipulates that when martial law is declared, special measures may be taken in accordance with the law regarding the warrant system and freedom of speech, publication, assembly, and association. Accordingly, Article 9, Paragraph 1 of the Martial Law Act allows the martial law commander to take special measures to restrict the basic rights of citizens in martial law areas when military necessity requires, while limiting the scope of such measures to arrest, detention, seizure, search, residence, relocation, speech, publication, assembly, association, or group action.

In light of the requirements for declaring martial law stipulated in Article 77, Paragraph 1 of the Constitution and Article 2, Paragraph 2 of the Martial Law Act, 'when necessary for military reasons' stipulated in Article 9, Paragraph 1 of the Martial Law Act means a situation in which there is a state of war with the enemy due to war, an incident or a similar national emergency, or when social order is extremely disrupted and it is significantly difficult to perform administrative and judicial functions, and police alone are not sufficient.

62

It means a time when it is absolutely impossible to handle the emergency situation and it is absolutely necessary to mobilize troops to eliminate the direct cause of the situation (see Supreme Court Decision 2016do14781 dated November 29, 2018). Also, the Constitutional right to national emergency

Considering the intent of the recognition and the fact that the special measures of the martial law commander restrict the fundamental rights of the people, special measures can be taken only to the minimum extent necessary to eliminate the direct cause of the crisis situation (see Constitutional Court 1996. 2. 29. 93HunMa186; Constitutional Court 2015. 3. 26. 2014HunGa5).

(Me) As examined above, at the time of the declaration of martial law in this case, it cannot be said that there was a state of war, incident, or national emergency equivalent thereto, or that there was a state of engagement with the enemy, or that social order was so disrupted that it was significantly difficult to perform administrative and judicial functions. Therefore, it cannot be said to correspond to the "times of military necessity" stipulated in Article 9, Paragraph 1 of the Martial Law Act. Nevertheless, the defendant restricted the fundamental rights of the people through the proclamation in this case, and thus violated Article 9, Paragraph 1 of the Martial Law Act.

(D) In addition, Article 9, Paragraph 1 of the Martial Law Act limits the scope of special measures of the martial law commander to 'arrest, detention, seizure, search, residence, relocation, speech, publication, assembly, association or group action.' However, through the proclamation in this case, the defendant restricted basic political rights and the freedom of political parties by prohibiting the activities of the National Assembly, local assemblies, and political parties, as well as all political activities, and also restricted occupational freedom by requiring all medical professionals who leave the medical field to return to their original work within 48 hours. Therefore, the defendant violated the above provision in that it restricted constitutional rights or freedoms not stipulated in Article 9, Paragraph 1 of the Martial Law Act.

(A) This proclamation prohibits the activities of the National Assembly, local assemblies, and political parties, prohibits all political activities, and places all media and publications under the control of the Martial Law Command.

63

It contains extensive restrictions on the basic rights of the people, such as a blanket ban on strikes, work stoppages, and rallies that incite social unrest, and requiring all medical personnel to return to their original work within 48 hours.

Article 6 of the proclamation for this case stipulates that "good citizens, excluding anti-state forces and other forces subverting the system, shall take measures to minimize inconvenience in their daily lives." However, the meaning of "good citizens" and "inconvenience in daily life" is unclear, so there is a risk that the enforcement agency will arbitrarily interpret them. Furthermore, even taking the above provisions into account, it cannot be said that the restriction of basic rights by the proclamation for this case was carried out to the minimum extent necessary to eliminate the direct cause of the crisis situation.

In that case, the defendant violated Article 77, Paragraph 3 of the Constitution and Article 9, Paragraph 1 of the Martial Law by issuing the proclamation in this case, thereby infringing upon the people's fundamental political rights, freedom of speech, publication, assembly, and association, freedom of political parties, right to collective action, freedom of occupation, and freedom of the body.

(7) Whether or not the warrant is violated

Article 12, Paragraph 3 of the Constitution stipulates, "When arresting, detaining, seizing or searching, a warrant issued by a judge through due process and upon the application of a prosecutor must be presented." Article 16 of the Constitution stipulates, "When seizing or searching a residence, a warrant issued by a judge upon the application of a prosecutor must be presented." This constitutional guarantee of the warrant principle. The warrant principle adopted by our Constitution is the principle that in order to make compulsory measures such as arrest, detention, seizure or search in relation to criminal procedures, a warrant issued by a judge whose status is guaranteed by the independence of the judiciary must be used. Therefore, the essence of the warrant principle under the Constitution is that it is neutral in making compulsory measures that restrict basic rights such as arrest, detention, seizure or search.

64

The point is that it must go through the specific judgment of a judge (see Constitutional Court 2018. 6. 28. 2012 Heonna 191, etc.).

Even in cases where military necessity is recognized in martial law areas and an exception to the prior warrant principle is recognized as a special measure, the essence of the warrant principle cannot be violated, so a mechanism must be established to allow a prompt post-trial review by a judge in cases where an investigative agency's compulsory disposition is made without a warrant (see Constitutional Court Decision 2011Hun-Ga5, December 27, 2012; Constitutional Court Decision 2010Hun-Ba132, March 21, 2013, etc.).

Through the proclamation in this case, the defendant prohibited a wide range of acts, including "any political activity," "any act that denies or attempts to overthrow the liberal democratic system," and "strikes, work stoppages, and assembly acts that incite social disorder," and allowed for the arrest, detention, seizure, and search of violators without a warrant. This allows for arrest, detention, seizure, and search without any restrictions and without a specific judgment by a judge, and does not provide for any ex post facto review mechanism by a judge, thereby violating the essence of the principle of warrants that must be protected even in a situation where the national emergency power is exercised.

(8) Whether there is a violation of the duty to command the armed forces according to the Constitution, etc.

As discussed above, the defendant caused the martial law commander to issue the proclamation in this case with the intention of resolving the conflict with the National Assembly. Therefore, the defendant exercised the authority to command the armed forces in violation of the political neutrality of the armed forces, thereby violating Article 5, Paragraph 2 and Article 74, Paragraph 1 of the Constitution.

(9) Sintering

The defendant violated the Constitution by having the martial law commander issue the proclamation in this case.

65

It violated Article 5 Paragraph 2, Article 74 Paragraph 1, Article 77 Paragraph 5, representative democracy, and the principle of separation of powers, infringed upon the constitutional authority of the National Assembly, who are the representatives of the people, such as the right to deliberate and vote, infringed upon the essential content of local autonomy, and violated Article 8 of the Constitution, the principle of popular sovereignty and the basic order of liberal democracy. Furthermore, through the proclamation in this case, the defendant violated Article 77 Paragraph 3 of the Constitution and Article 9 Paragraph 1 of the Martial Law, the principle of warrants, and infringed upon the people's basic political rights, freedom of the press, press, assembly, and association, freedom of political parties, the right to collective action, freedom of occupation, and personal freedom.

8. Decision on seizure and search of the Central Election Commission

A. Acknowledged facts

(1) The defendant claimed that suspicions of election fraud have not been resolved even after the National Intelligence Service's security inspection of the National Election Commission in 2023, and that "since the National Election Commission is a constitutional body and its members are members of the judiciary, search and seizure by warrant or compulsory investigation are virtually impossible under normal circumstances," and instructed the Minister of National Defense Kim Yong-hyun to mobilize troops if martial law is declared to conduct a comprehensive inspection of the National Election Commission's computer system.

(2) Immediately after the declaration of martial law for this incident, about 10 soldiers belonging to the Information Command entered the Central Election Commission Gwacheon building, confiscated the mobile phones of the night shift workers, monitored their actions, blocked external contact, and controlled their entry and exit. They also filmed the computer systems, including the Integrated Voter List System server, and then withdrew after the resolution demanding the lifting of martial law was passed.

Soldiers belonging to the Army Special Warfare Command were dispatched to the Central Election Commission Gwacheon Office Building, Gwanak Office Building, and Suwon Training Center (hereinafter collectively referred to as the "Central Election Commission Building"), and stood guard inside and outside the Central Election Commission Gwacheon Office Building and outside the buildings of the other buildings, respectively, before withdrawing after the resolution demanding the lifting of martial law was passed.

Soldiers belonging to the Defense Counterintelligence Command were dispatched with instructions to secure the computer system, including the server, of the Central Election Commission building so that they could verify data related to suspicions of election fraud, but in accordance with the review opinion of the Office of Legal Affairs, they waited before arriving at their destination and withdrew after the resolution demanding the lifting of martial law was passed.

B. Judgment

(1) Whether or not the warrant is violated

(a) The defendant asserted that it was virtually impossible to confirm suspicions of election fraud through search and seizure under a warrant, and thus exercised physical force by mobilizing the military to inspect the National Election Commission's computer system. This can be seen as an order to enforce search and seizure without a warrant. As examined above, under the current Constitution, search and seizure must be conducted under a warrant issued by a judge, unless it falls under an exception that is strictly permitted under Article 77, Paragraph 3, Article 12, Paragraph 3, and Article 16.

(Me) First, let's see if it falls under the exception stipulated in Article 77, Paragraph 3 of the Constitution. According to the above provision and Article 9, Paragraph 1 of the Martial Law Act, the martial law commander can take special measures regarding search and seizure in an emergency martial law area 'when it is military necessary', but in this case, 'the martial law commander must announce the contents of the measures in advance'. However, as examined above, the situation at the time of the declaration of martial law in this case cannot be considered as a case where the special measures stipulated in the above provision were military necessary, and martial law commander Park An-soo did not announce the contents of the measures in advance. Therefore, the requirements for the exception stipulated in Article 77, Paragraph 3 of the Constitution are not met.

(D) Next, we will examine whether it corresponds to an exception recognized in the interpretation of Article 12, Paragraph 3 of the Constitution and the latter part of Article 16. Article 12, Paragraph 3 of the Constitution states, 'In the case of a person caught in the act or sentenced to a long-term sentence of three years or more,

The Constitution explicitly recognizes an exception to the principle of warrants by stating, "If a person commits a corresponding crime and there is concern about the possibility of escape or destruction of evidence, a warrant may be requested after the fact," and the latter part of Article 16 of the Constitution allows an exception to the principle of warrants when, in its interpretation, "it is established that there are materials proving criminal charges, etc. or suspects at that location, and there are urgent circumstances that make it difficult to obtain a warrant in advance" (refer to Constitutional Court 2018. 4. 26. 2015yy370, etc.). The respondent argues that the National Election Commission is a constitutional body and its members are members of the judiciary, making search and seizure by warrants virtually impossible. However, as examined above, the National Election Commission has complied with the search and seizure by investigative agencies, and it is impossible to recognize urgent circumstances that make it difficult to obtain a warrant in advance for that reason alone. Therefore, the requirements for exceptions recognized in the proviso to Article 12, Paragraph 3 of the Constitution and the interpretation of the latter part of Article 16 are not met.

(A) Ultimately, the defendant's act of causing the National Election Commission to conduct a search and seizure without a warrant violates the principle of warrants.

(2) Whether the independence of the National Election Commission has been violated

(a) In today's representative democracy, elections are a method by which the people decide and form their representatives, and play a key role in realizing the principle of popular sovereignty by granting democratic legitimacy to the elected representatives. If election management is not conducted fairly, the election will not be able to perform its original democratic political function and will end up being a mere formality. This is precisely why there are requests that the agency in charge of election management affairs be organized as an independent agency separate from general administrative agencies (see Constitutional Court Decision 2005HunRa7, June 26, 2008; Constitutional Court Decision 2023HunRa5, February 27, 2025).

(l) The so-called March 15 rigged election, in which the government carried out an official election, has undermined representative democracy and the national

Our people, who experienced the crisis of democracy, have, through a constitutional decision, functionally and organizationally separated the election management affairs from the executive branch and entrusted them to an independent constitutional body since the constitutional amendment on June 15, 1960 (the 3rd amendment to the Constitution). The current constitution also establishes the National Election Commission as an independent, collegial constitutional body in charge of the fair management of elections and referendums and the processing of affairs related to political parties under the heading of "Election Management" in Chapter 7, while ensuring equal participation of the President, the National Assembly, and the Chief Justice of the Supreme Court in its composition, guaranteeing the term and status of the members, and granting them the right to establish rules (Article 114). Although election management affairs are administrative in nature, our Constitution has chosen a system that emphasizes their independence and neutrality by stipulating the subject of the affairs as an independent, collegial constitutional body, as mentioned above. This reflects the firm intention that in order to manage fair elections, the influence of external power agencies, especially the executive branch headed by the president, must be institutionally blocked (see Constitutional Court Decision 2023 Heon-Ra 5, February 27, 2025).

(D) However, the defendant mobilized the military in a way not provided for by the Constitution and the law, entered the building of the National Election Commission without permission, and seized and searched the computer system used for election management. This is an unjust interference with the election management affairs of the National Election Commission and an act that threatens the original democratic political function of the election, and it is against the purpose of our Constitution to thoroughly guarantee the independence of the National Election Commission.

(3) Judgment on the defendant's claim

The defendant claims that the inspection of the National Election Commission's computer system was conducted as part of the execution of administrative affairs supervised by the martial law commander in accordance with Article 7, Paragraph 1 of the Martial Law Act. However, if we pay attention to the fact that our Constitution stipulates that election management affairs are functionally separated from general administrative affairs (see Constitutional Court Decision 2005 Heon-Ra 7, June 26, 2008), election management affairs are in principle subject to the above.

It would be difficult to apply the provision, and even if it were applicable, the defendant's argument cannot be accepted for the following reasons.

The intent of the above provision is to allow the martial law commander to take necessary measures to prevent the paralysis of the functions or to maintain and restore them to normal in cases where the performance of administrative functions is significantly difficult due to war, incident, or similar national emergency. Therefore, it is significant to note that this does not mean that the normal performance of functions of the relevant agency will be taken over in full, but that individual and specific measures can be taken only to ensure that the relevant agency's duties can be performed normally within the extent absolutely necessary to achieve the purpose of martial law. The National Election Commission is responsible for the fair management of elections and referendums and for political parties (Article 114, Paragraph 1 of the Constitution), and at the time of the declaration of martial law in this case, the National Election Commission was not in a state where it could not perform the above duties normally. The defendant claims that it was necessary to dispel suspicions of election fraud, but it is difficult to see the inspection of the computer system for this reason as a measure that must be taken to prevent the functions of the National Election Commission from being paralyzed or to maintain or restore them, even to the point of mobilizing troops.

(4) Sintering

In that case, the defendant violated the warrant principle by ordering the National Election Commission to search and seize without a warrant even though there was no reason corresponding to an exception to the warrant principle, and also violated the independence of the National Election Commission, an independent constitutional body from the position of the head of the executive branch, by mobilizing the military to search and seize in a manner not provided for by the Constitution and the law.

9. Judgment on attempts to locate legal professionals

A. Acknowledged facts

70

The fact that immediately after the declaration of martial law for this case, the defendant called Hong Jang-won, the 1st Vice Director of the National Intelligence Service, and asked him to assist the Armed Forces Counterintelligence Command; the fact that at that time, Yeo In-hyeong, the Commander of the Armed Forces Counterintelligence Command, received instructions from the Minister of National Defense Kim Yong-hyun to identify the locations of the people on the list for this case and asked Cho Ji-ho to identify the locations; the fact that when Hong Jang-won called Yeo In-hyeong and told her that he had received a call from the defendant, Yeo In-hyeong read out a list that was mostly identical to the list for this case and asked to identify the locations; and the fact that the locations of the people on the list for this case were not actually identified are as stated above. In light of these facts, even if it is unclear whether the defendant instructed the arrest of the people on the list for this case, it is also difficult to see that the attempt to identify the locations of the above people, with the purpose of arresting them if necessary, was made without the defendant's will, as stated above. However, the list for this case also included former Chief Justice Kim Myeong-soo and former Supreme Court Justice Kwon Soon-il.

B. Judgment

(1) Whether or not the independence of the judiciary is violated

(a) Article 101, Paragraph 1 of the Constitution stipulates that the judicial power belongs to the courts composed of judges, thereby guaranteeing the independence of the courts in terms of organization, operation, and function, and Article 103 guarantees the independence of judges in their duties, that is, in their trials, so that judges are not subject to any external pressure or interference other than the constraints of the law and their conscience when making a judgment. In addition, the Constitution guarantees the qualifications of judges by law, guarantees their terms of office, and guarantees the status of judges by preventing them from being arbitrarily dismissed or subjected to unfavorable treatment (Article 101, Paragraph 3, Article 105, Article 106, Paragraph 1, etc.). The independence of the courts, the independence of judges in their trials, and the guarantee of their status are all elements that constitute the independence of the judiciary. The independence of the judiciary is one of the central contents of the principle of separation of powers.

71

It is a characteristic indicator of a liberal democratic system and an element of the rule of law, and at the same time, it is significant in that it ensures that the people's right to request a trial guaranteed by Article 27 of the Constitution is properly exercised (see Constitutional Court 2016. 9. 29. 2015yy331). In addition, since the judiciary plays an important role in checking the executive and legislative branches, all state organs have a duty to protect and respect the independence of the judiciary and must not infringe upon it through excessive interference and control.

(Me) The defendant, as the head of the executive branch, was involved in the order to confirm the location of former Chief Justice Kim Myeong-su and former Justice Kwon Soon-il, who had recently retired, with the purpose of arresting them if necessary. This could pose a serious threat to the current judges' ability to faithfully perform their judicial duties by putting them under pressure that they too could be arrested by the executive branch at any time (see Constitutional Court 1992. 11. 12. 91Hun-Ga2). Such acts that threaten the protection of individual judges' status and judicial independence ultimately lead to the shaking of the independence of the entire court, thereby destroying the institutional foundation of judicial independence that was established to guarantee the people's right to a fair trial and to realize the rule of law and the principle of separation of powers.

(2) Sintering

In that case, the defendant, in his position as head of the executive branch, violated the independence of the judiciary by being involved in giving instructions to confirm the location of former Chief Justice Kim Myeong-su and former Justice Kwon Soon-il for the purpose of arresting them if necessary.

10. Whether to dismiss the defendant

A. Criteria for judging the severity of violation of law

As examined above, Article 53, Paragraph 1 of the Constitutional Court Act stipulates that 'the request for impeachment trial must be justified.

72

It stipulates that the court shall pronounce a decision to dismiss the accused in case of 'impeachment trial', and in the case of impeachment trial of the President, 'case where the impeachment trial request is justified' means when there is a serious violation of the Constitution or laws that can justify the dismissal of the President (see Constitutional Court 2017. 3. 10. 2016ÿÿ1).

The criteria for judging the severity of violations of the Constitution or laws that can justify the impeachment of the President can be found in the perspective that the impeachment trial process is a system for protecting the Constitution and the perspective that the decision to remove the President deprives the President of the public's trust. From the perspective that the impeachment trial process is a process that ultimately contributes to protecting the Constitution, the decision to remove the President is justified only when the President's act of violating the law has a significant meaning from the perspective of protecting the Constitution to the extent that it requires restoration of the damaged constitutional order through the decision to remove the President. In addition, from the perspective that the President is a representative body directly granted democratic legitimacy by the people, the grounds for impeachment of the President should be considered to exist only when the President betrays the public's trust through acts of violating the law to the extent that the public's trust given to the President should be deprived during his term of office (see Constitutional Court Decision 2004 Heon-Na 1, May 14, 2004; Constitutional Court Decision 2016 Heon-Na 1, March 10, 2017).

B. Judgment

(1) Whether the violation of the law is serious from the perspective of protecting the Constitution

(a) Violation of national sovereignty and democracy;

Article 1, Paragraph 1 of the Constitution stipulates that "The Republic of Korea shall be a democratic republic," thereby adopting democracy as its form of government, and Article 1, Paragraph 2 of the Constitution stipulates that "The sovereignty of the Republic of Korea shall reside in the people, and all state authority shall emanate from the people," thereby declaring popular sovereignty, which states that the source and subject of state power is the people, and that only the people can grant legitimacy to the political rule of the country.

73

This makes it clear that the formation and exercise of state power are not exclusively dominated by a specific class or group of the nation.

Articles 40, 41, Paragraph 1, 66, Paragraph 4, and 67, Paragraph 1 of the Constitution concretize the principle of democracy by adopting representative democracy. In representative democracy, the sovereign people elect members of the National Assembly through elections, and the members of the National Assembly, as representatives of the people, bear political responsibility to the people for their decisions. The National Assembly, as a pluralistic and pluralistic body of representatives of the people, performs legislative functions, government supervision functions, and financial functions through democratic procedures that allow criticism from the general public and the opposition party and recognize and bridge the diverse opinions and interests of the people through public discussion (see Constitutional Court Decision 2003. 10. 30. 2002HunRa1; Constitutional Court Decision 2004. 3. 25. 2001HunMa882). In short, the National Assembly is a representative body of the people that realizes a democratic state based on popular sovereignty.

Through the declaration of martial law and the proclamation in this case, the defendant completely prohibited the activities of the National Assembly, deployed military and police to the National Assembly with the intention of preventing the National Assembly from exercising its constitutional authority, controlled access to the National Assembly, and ordered that members of the National Assembly be removed from the plenary session hall, thereby obstructing the exercise of authority by the National Assembly, the representative body of the people.

In addition, the defendant, through the proclamation of this case, prohibited all political activities, including political party activities, political associations, rallies, and demonstrations, in order to fundamentally exclude citizens from expressing political opposition, and placed all media and publications under martial law.

By placing the country under the control of the command, the freedom of political expression of all citizens was completely and comprehensively deprived.

Such acts by the defendant violate the basic order of liberal democracy and constitute a serious violation of national sovereignty and democracy, thereby damaging the constitutional order.

74

The negative influence of friends is also serious.

(l) Denial of the governing structure established by the Constitution

The Constitution adopts the principle of separation of powers to disperse the various authorities and functions of exercising state power and to ensure checks and balances between powers in order to prevent state organs that have been delegated the exercise of state power by the sovereign people from abusing that power (see Constitutional Court Decision 2004 Heon-Ba 98, December 27, 2007).

Furthermore, as a reflection on our country's painful historical experience in which the ruling party infringed on the fundamental rights of the people and constitutional values by using the state organization in charge of specific functions, the Constitution stipulates the political neutrality of the Armed Forces (see Article 5, Paragraph 2 of the Constitution, Constitutional Court 2018. 7. 26. 2016HunBa139), and functionally separates affairs related to various elections and voting management from general administrative affairs and entrusts them to the National Election Commission, an independent constitutional body (see Articles 114 and 115 of the Constitution, Constitutional Court 2008. 6. 26. 2005HunRa7), thereby institutionally excluding and restraining the ruling party's undue use and interference.

The current Constitution abolished the President's right to dissolve the National Assembly in order to block the possibility of long-term dictatorship, and grants the National Assembly the right to demand the lifting of martial law, which can control the President's right to declare martial law in Article 77, Paragraph 5. Nevertheless, the Respondent declared martial law in this case with the intention of resolving the conflict with the National Assembly, issued the proclamation in this case that completely prohibited the activities of the National Assembly, and attempted to obstruct the exercise of the National Assembly's authority by mobilizing the military and police. In addition, the Respondent violated the essential content of local autonomy by completely prohibiting the activities of local councils, which are local government organizations stipulated in the Constitution, through the proclamation in this case, and by being involved in the instructions to confirm the location of legal professionals for the purpose of arresting them if necessary.

75

It violated the independence of the judiciary. The defendant's actions seriously violated the principle of separation of powers, which is a basic element of the principle of the rule of law.

In addition, in order to dispel suspicions of election fraud, the defendant dispatched the military and police at the same time as martial law was declared for this case, to occupy the Central Election Commission building and to seize and search the computer systems used for election management. This act by the defendant is a serious violation of the independence of the National Election Commission by unduly interfering with election management affairs.

Furthermore, the defendant mobilized troops and committed the above acts with the intention of resolving the confrontation with the National Assembly. This was not only an exercise of command authority against the political neutrality of the Armed Forces, but also lowered the morale of the Armed Forces, which have served the country with the sacred duty of national security and national defense, and undermined the public's trust in the Armed Forces, making the violation very serious.

In the end, the defendant did not exercise his authority in accordance with the governing structure stipulated in the Constitution, but abused his authority to declare martial law and his authority to command the Armed Forces, thereby infringing upon the authority of the National Assembly, local assemblies, the independence of the judiciary, and the National Election Commission, and damaging the political neutrality of the Armed Forces. Therefore, this constitutes an act that violates the principle of the rule of law, and the degree of this violation and the resulting negative impact on the Constitutional order are also serious.

(c) Serious violation of the fundamental rights of the people

As the head of the executive branch, the defendant has the duty to exercise his authority and perform his duties so that the state can faithfully fulfill its duty to confirm and guarantee the inviolable fundamental human rights of individuals (Article 10 of the Constitution, see Constitutional Court Decision 2016 Heon-Na 1, March 10, 2017).

The Seoul High Court ruled that the martial law proclamation No. 1 dated October 27, 1979 was a stipulation of the warrant system and the principle of legality.

76

It was judged unconstitutional and invalid as it violated the principle of amplification and infringed upon the freedom of the press, publication, assembly, and association (see Seoul High Court Decision 2020jaeno26, pronounced on November 11, 2021), and the Supreme Court also judged Martial Law Proclamation No. 1, etc. pursuant to the declaration of martial law on October 18, 1979, which contained similar content to the martial law declaration above, to be unconstitutional and invalid (Supreme Court Decision 2016do14781, pronounced on November 29, 2018; Supreme Court Decision 2016do1397, pronounced on December 13, 2018; Supreme Court Decision 2015mo2381, pronounced on December 13, 2018; Supreme Court Decision 2017mo107, pronounced on December 28, 2018; Supreme Court Decision 2019. 1. 31. (See Judgment 2018do6185).

Nevertheless, the defendant issued the proclamation in this case, which was drafted with reference to the Martial Law Proclamation No. 1 dated October 27, 1979, etc. The proclamation in this case comprehensively restricts the freedom of the people by completely prohibiting the activities of the National Assembly, local assemblies, and political parties, prohibiting all political activities, placing all media and publications under the control of the Martial Law Command, completely prohibiting strikes, work stoppages, and assemblies that incite social disorder, and requiring all medical professionals to return to their original work within 48 hours, while stipulating that any violation of these provisions shall be subject to arrest, detention, seizure, and search without a warrant and punishment in accordance with Article 14 of the Martial Law Act.

Ultimately, the defendant has comprehensively and completely violated the fundamental rights of the people by declaring martial law in this case and issuing the proclamation in this case in violation of the Constitution and the law. Therefore, the degree of violation of the law is serious and the negative impact on the constitutional order is also very significant.

(A) The defendant asserts that the martial law in this case is a 'warning martial law' or 'appeal-type martial law' declared as a provisional and temporary measure with the premise of immediate lifting for the purpose of informing and appealing to the public about the tyranny of the opposition party and the state of national crisis, that the National Assembly swiftly carried out the procedures for requesting the lifting of the martial law, and that parliamentary activities were conducted normally.

77

The defendant claims that the defendant's violation of the law was not serious, citing the fact that martial law was lifted in about 6 hours according to the law, that there were no specific cases confirmed in which the freedom of the press, publication, assembly, or association was actually blocked, and that no arrests were made against politicians or others.

However, as examined above, the emergency martial law declared by the defendant and the series of constitutional and legal violations committed in the wake of it cannot be viewed as mere "warning martial law" or "appeal-type martial law" in that they immediately violate constitutional values and fundamental rights. The defendant's series of acts, including the declaration of martial law in this case, by deploying the military and police to obstruct the National Assembly from exercising its constitutional authority, thereby denying the sovereignty of the people and democracy, the dispatch of the military to seize and search the Central Election Commission, and the extensive infringement of the people's fundamental rights by issuing the proclamation in this case, are a series of acts that violate the basic principles that constitute the principle of the rule of law and the principle of a democratic state, and in themselves violate the constitutional order and seriously harm the stability of a democratic republic, and therefore constitute a serious violation of law that cannot be tolerated from the perspective of protecting the Constitution.

Despite the defendant's control of the National Assembly, the fact that the National Assembly was able to quickly pass the resolution demanding the lifting of martial law was due to the resistance of citizens and the passive performance of duties by the military and police. Therefore, it cannot be said that the defendant's violation of the law is not serious simply because the resolution demanding the lifting of martial law was passed. In addition, at the same time as the proclamation of this case, the basic rights of the people were extensively violated, and the defendant called the martial law commander Park An-soo and reported this case to the police chief Cho Ji-ho.

I was told to inform him of the contents of the proclamation and called George Ho directly six times, so I did not receive any additional information on the grounds of violation of the proclamation in this case.

78

The fact that no action was taken does not mean that the defendant's violation of the law is not serious. It is true that the defendant accepted the National Assembly's request to lift martial law and lifted martial law in this case, but this only shows that the defendant did not violate the duty to lift martial law in accordance with the National Assembly's request to lift martial law. Furthermore, it cannot be evaluated that the violation of the law that the defendant has already committed is not serious.

(B) As seen in the previous judgment on legal requirements, the plaintiff framed the defendant's series of acts, including the declaration of martial law, as acts of violation of the criminal law, including sedition, and then included them as acts of violation of the Constitution. In this case, the Constitutional Court reviewed the facts related to the above acts by including them in the legal relationship of violation of the Constitution and martial law, and based on this, determined that the defendant's violation of the law was serious. In light of this, even if there was no judgment on whether there was a violation of the criminal law, including sedition, in this case, the court reviewed the facts related to it, made a judgment on violation of the Constitution and martial law, etc., and based on this, determined the severity of the violation of the law, so it cannot be said that the judgment on the severity of the defendant's violation of the law was wrong or insufficient.

(2) Whether it constitutes an act of betraying the trust of the people

(a) Recurrence of the history of abuse of national emergency powers

The people of our country have a long history of suffering from the abuse of national emergency powers. In 1952, former President Syngman Rhee caused a so-called 'political uproar' in Busan, declared martial law, and passed a constitutional amendment that stipulated a direct presidential election system. Former President Park Chung-hee declared a state of emergency on December 6, 1971, and the 'Special Measures Act on National Security' enacted on December 27, 1971 to legally support this, allowed the president to declare a state of emergency at his discretion.

79

The president was granted emergency powers, including the power to declare a state of emergency, suspend the basic rights of the people, and change the budget plan deliberated and confirmed by the National Assembly (see Constitutional Court Decision 92Hun-Ga18, June 30, 1994; Constitutional Court Decision 2014Hun-Ga5, March 26, 2015).

Former President Park Chung-hee declared martial law on October 17, 1972, in order to suspend the existing constitutional order and transition to the so-called Yushin regime, and to block resistance against it in advance through a special presidential declaration (see Supreme Court Decision 2016do1397 dated December 13, 2018). He also declared martial law on October 18, 1979, in order to suppress the Bu-Ma Democratic Struggle (Article 2, Paragraph 1 of the Act on Restoration of Honor, Compensation, etc. of Persons Participating in the Bu-Ma Democratic Struggle), a popular resistance against the Yushin regime (see Supreme Court Decision 2016do14781 dated November 29, 2018). Former Presidents Chun Doo-hwan and Roh Tae-woo seized control of the military and the nation's intelligence agencies through the so-called December 12 Military Rebellion, and then, in order to seize power, coerced the then President and others into declaring a nationwide expansion of martial law on May 17, 1980 (see Supreme Court Decision 96do3376, April 17, 1997). All of the above martial law declarations were accompanied by martial law proclamations that broadly restricted the basic rights of the people.

The serious abuse of the national emergency power was also evident in the exercise of the emergency measure authority based on Article 53 of the Yushin Constitution (the Constitution completely revised as Constitution No. 8 on December 27, 1972). The emergency measure was exercised nine times, but was abused for unconstitutional purposes that infringed on the basic rights of the people. As a reflection on this, the 8th amendment to the Constitution on October 27, 1980 abolished it and replaced it with the emergency measure authority (Article 51), and the emergency measure authority was also abolished in the 9th amendment to the Constitution on October 29, 1987 (refer to Constitutional Court Decision 2010öyö 132, March 21, 2013).

After martial law, declared on October 27, 1979 due to the death of the president, was lifted on January 24, 1981, the 'Emergency Financial and Economic Order on Real-Name Financial Transactions and Protection of Confidentiality' was issued on August 12, 1993, and this order was not implemented.

80

The national emergency power was not exercised until martial law was declared. This was a natural result of the establishment of democracy and the people's will to protect the Constitution becoming firm. As seen above, the Constitutional Court and the Supreme Court also confirmed that the past exercise of the national emergency power was in violation of the Constitution, thereby solidifying constitutional democracy.

On December 3, 2024, approximately 45 years after the last martial law was declared, the defendant once again declared martial law for political purposes, thereby abusing the national emergency power. The declaration of martial law in this case and the measures that accompanied it had enormous repercussions socially, economically, politically, and diplomatically, and the people who believed that the national emergency power would no longer be abused for political purposes were greatly shocked. The defendant's abuse of the national emergency power not only violated the people's basic rights under the Constitution and infringed upon the constitutional order, but also seriously harmed the national interest, considering the negative impact on international credibility and the diplomatic and economic disadvantages resulting from the expansion of political uncertainty.

Ultimately, considering the shock that the declaration of martial law and the accompanying measures gave to the people in the context of our constitutional history, and the repercussions that the abuse of national emergency power had both domestically and internationally, it is inevitable to see that the public has lost confidence that the defendant will protect the basic order of liberal democracy and faithfully carry out state affairs, to the point where state affairs can no longer be entrusted to him.

(I) Causing distrust in the exercise of power as President

Our Constitution stipulates that the President is the head of the executive branch and the head of state (Article 66, Paragraphs 1 and 4), and allows him to exercise numerous powers. However, since the powers of the President are granted by the Constitution (see Constitutional Court 2004. 5. 14, 2004 Heon-Na 1), he cannot arbitrarily exercise them beyond the constitutional limits simply because he possesses the powers.

81

In particular, in the presidential system adopted by our Constitution, the president's exercise of authority has a significant impact on the people's basic rights and constitutional order, so more caution must be exercised in exercising it, and appropriate checks and balances from other state organs must also be applied.

Among the various powers granted to the President by our Constitution, the 'national emergency power' is an emergency power recognized as an extremely exceptional power in preparation for a serious crisis that cannot be dealt with by the normal constitutional order alone, as discussed above, and therefore, the constitutional limitations must be particularly strictly observed in its exercise (see Constitutional Court 2014ÿÿ5, March 26, 2015). However, the respondent claims that the martial law in this case was declared in order to inform and appeal to the people about the tyranny of the opposition party and the state of national crisis, which is no different from using the martial law declaration power, which cannot be exercised for such a purpose, as a means to overcome the political situation of the minority ruling party and the majority opposition party. In addition, the respondent claims that the proclamation in this case was issued without any intention to actually execute it in order to have the form of martial law, but this is difficult to understand because it is difficult to understand that when issuing a norm that has the effect of an externally binding legal order, it is possible that the effect of the content may not be intended. Furthermore, the defendant claims that because martial law was declared, he attempted to conduct "search and seizure without a warrant against the National Election Commission," which could not be done in normal times. Such measures are not permitted even under martial law.

Considering the above attitude shown by the respondent in exercising the national emergency power, which is one of the powers that must be exercised most carefully, if the respondent were to exercise his power as president again, the people would be concerned that the respondent would violate the Constitution.

Whenever the power is exercised, it is impossible not to constantly suspect whether there is a hidden purpose other than what is stipulated in the Constitution, or whether the Constitution and laws are violated. In that case, the defendant's exercise of power

82

Distrust of the government will inevitably build up, which will cause extreme chaos not only in state affairs but also in society as a whole.

(3) Sintering

In light of the above circumstances, even without examining the remaining arguments of the plaintiff, the defendant's violation of the Constitution and the law in this case is a betrayal of the people's trust and constitutes a serious violation of the law that cannot be tolerated from the perspective of protecting the Constitution. Since the negative impact and ripple effect that the defendant's violation of the law has had on the constitutional order is so significant, it is recognized that the benefit of protecting the Constitution by impeaching the defendant, who has been directly granted democratic legitimacy by the people, is so great that it overwhelms the national loss that would result from the impeachment of the president.

11. Conclusion

A. The Republic of Korea is a democratic republic (Article 1, Paragraph 1 of the Constitution).

Democracy is based on a pluralistic worldview that trusts in the autonomous reason of individuals and assumes that all political views have relative truth and rationality, and is essentially based on autonomous and cooperative public decision-making based on respect and fraternity among equal fellow citizens (see Constitutional Court Decision 2014. 12. 19. 2013 Heon-da 1).

Since the defendant took office, the opposition party, which holds the majority of seats in the National Assembly, has repeatedly unilaterally exercised the power of the National Assembly, which has led to considerable friction between the government headed by the defendant and the National Assembly. In less than two years and seven months from the time the defendant took office as president to the declaration of martial law in this case, 22 impeachment motions were proposed. Due to the unusually large number of impeachment motions led by the opposition party, the exercise of power by several high-ranking public officials has been hindered by the impeachment trial.

83

The budget review by the National Assembly was also reviewed and reflected in the past when there was a reduction, but for the first time in constitutional history, the opposition party voted only on a reduction without an increase in the National Assembly Budget Settlement Special Committee. In particular, the National Assembly Budget Settlement Special Committee voted to reduce the entire budget for the special activity expenses of the Office of the President, the National Security Office, and the National Police Agency, and the special activity expenses and specific business expenses of the prosecution and the Board of Audit and Inspection. Among these, the budget for investigation support such as the prosecution's investigation of crimes that infringe on the people's livelihood, investigation of crimes targeting the socially disadvantaged, investigation of drugs, investigation of crimes that undermine social justice, and public investigations were included. The major policies established by the defendant could not be implemented due to the opposition of the opposition party, and the opposition party unilaterally passed bills opposed by the government, resulting in a situation where the defendant's request for reconsideration and the re-consideration and deliberation of bills that were rejected in the reconsideration were repeated. In the process, the defendant, as the head of the executive branch and the head of state, must have felt a great sense of responsibility to recognize that the state administration was paralyzed and national interests were significantly undermined due to the tyranny of the opposition party, and that he had to overcome this by any means possible. It can be understood that the declaration of martial law and the measures that followed were based on this recognition and sense of responsibility that the defendant, as the person most responsible for state affairs, had.

The defendant's judgment that the exercise of power by the National Assembly centered around the opposition party is an abuse of power or an act that causes a paralysis of state affairs must be respected politically, regardless of whether it conforms to objective reality or enjoys the support of the majority of the people.

However, it is difficult to see this kind of conflict between the defendant or the government and the National Assembly as being the responsibility of one party, and it is a political issue that must be coordinated and resolved in accordance with democratic principles. It is difficult to express political opinions or make public decisions on this matter.

It must be done within the scope that is in harmony with the essence of democracy guaranteed by the Constitution.

84

B. The defendant declared martial law in this case in order to overcome the confrontation with the 22nd National Assembly, where the opposition party held the majority of seats, by mobilizing the military.

Each citizen of a democratic country must respect each other as equal members of the community and recognize that the opinions of others can be given equal value as much as they believe their own opinions are correct (see Constitutional Court 2014. 12. 19. 2013 Heon-da 1). The National Assembly should respect minority opinions in that it should serve the interests of the entire nation, not the interests of a party, and in its relationship with the government, it should have tried to reach a conclusion through dialogue and compromise based on tolerance and self-restraint. The respondent should also have respected the National Assembly, which represents the people, as an object of cooperation according to the order of distribution of powers stipulated in the Constitution. Nevertheless, the respondent has excluded the National Assembly, which destroys the premise of democratic politics and is difficult to see as being in harmony with democracy.

A. Our Constitution provides self-correcting mechanisms to protect democracy by correcting political tyranny of the state power or majority, such as guaranteeing basic human rights, binding state power on the Constitution and laws, the principle of separation of powers, and the multi-party system. Therefore, even if the defendant judged that the exercise of power by the National Assembly centered around the opposition party was tyranny of the majority, it should have ensured that checks and balances were realized through self-rescue measures provided for in the Constitution.

Our Constitution does not provide for the president's right to dissolve the National Assembly due to concerns about the president's abuse of power in the presidential system. However, since the presidential election and the National Assembly election are held at a certain interval due to the difference in the terms of office of the president and the National Assembly members, the president may have the opportunity to reorganize the National Assembly during his term, that is, to achieve the same effect as dissolving the National Assembly. In the case of the respondent, he had such an opportunity in the 22nd National Assembly election held approximately two years after his inauguration. The respondent had the opportunity to correct the tyranny of the opposition party.

85

There was nearly two years to persuade the people so that the defendant could take the lead in state affairs and realize responsible politics. Even if the result did not match the defendant's intention and the defendant felt a sense of crisis, responsibility, or pressure, it should not have attempted to exclude the opposition party or the will of the people who supported the opposition party by going outside the path set forth in the Constitution. The defendant could have followed the principle of separation of powers set forth in the Constitution by humbly accepting the will of the people expressed through the election and engaging in more active dialogue and compromise. If it was judged that the current power structure was not sufficient to realize checks and balances and cooperation, that important policies regarding national security could not be implemented due to opposition from the National Assembly, and that there were loopholes in the election system or management, it could have proposed a constitutional amendment (Article 128 of the Constitution), submitted important policies regarding national security to a national referendum (Article 72 of the Constitution), or submitted a bill through the government (Article 52 of the Constitution), and persuaded the government to improve the power structure or system. Even if it was determined that the purpose or activities of the opposition party were to cause a specific risk of causing substantial harm to the democratic basic order of our society, it was possible to consider whether to bring a suit to the Constitutional Court for the dissolution of the political party (Article 8, Paragraph 4 of the Constitution) within the scope of compliance with the normative will of the constitution-makers to specifically guarantee the existence and activities of the opposition party as a critic of the government (see Constitutional Court Decision 2013 Heon-da 1, December 19, 2014).

However, the defendant declared martial law without following the procedures despite the fact that the substantive requirements for the declaration of martial law stipulated in the Constitution and the law were not met, thereby unfairly mobilizing the military and police, thereby undermining the authority of constitutional institutions such as the National Assembly, and extensively infringing upon the freedom of political party activities and the basic human rights of the people. This not only violated the binding of state power to the Constitution and the law, but also violated the democratic principles designed by our Constitution, such as the guarantee of basic human rights, the principle of separation of powers, and the multi-party system.

It resulted in a threat to the entire midnight system of the state. Even if the defendant's claim that the purpose of martial law in this case was to 'appeal to the people about the tyranny of the opposition party' or 'normalize the state' is true, it cannot be helped but be seen as having caused incalculable harm to democracy.

A. Democracy is a political system with excellent adaptability in overcoming conflicts and tensions and finding the best response as long as the self-correcting mechanism functions normally and institutional trust exists in it. Even if the respondent judged that the current political situation was causing serious damage to national interests, he should have confronted it in accordance with the democratic procedures and methods stipulated by the Constitution and laws. However, the respondent has shocked the people by reenacting the history of abuse of national emergency powers and caused confusion in all areas of society, economy, politics, and diplomacy. As the president of all the people, he has violated his duty to integrate the social community by serving the entire people beyond the scope of the people who support him.

By violating the Constitution and the law, he has neglected his duty to protect the Constitution and has seriously betrayed the trust of the people of the Republic of Korea, the sovereign of the democratic republic.

Therefore, the defendant is removed from the presidency. This decision is based on the unanimous opinion of all the justices, and is supported by the supplementary opinions of Justices Lee Mi-seon and Kim Hyeong-du, Justices Kim Bok-hyung and Cho Han-chang, and Justice Jeong Hyeong-sik.

12. Supplementary opinions by Judge Lee Mi-seon and Judge Kim Hyeong-du

As we can see below, considering the nature of the impeachment trial process, the difference between the impeachment trial process and the criminal litigation process, and the need for rapid progress of the process, we believe that the provisions of the Criminal Procedure Act regarding the expert rule can be relaxed and applied in the impeachment trial process.

I believe that this is in line with the intent of Article 40 of the Small Business Act, so I express my opinion as follows:

A. Meaning of Article 40 of the Constitutional Court Act

Article 40 of the Constitutional Court Act stipulates that, except in cases where the Constitutional Court Act contains special provisions regarding the adjudication procedures of the Constitutional Court, other laws and regulations concerning litigation procedures, such as the Civil Procedure Act, the Criminal Procedure Act, and the Administrative Litigation Act, shall apply to the extent that they do not conflict with the nature of constitutional adjudication. If the Constitutional Court Act or the Rules on Adjudication do not contain provisions on the progress of the constitutional adjudication and the progress of the constitutional adjudication is impeded, the function of the constitutional adjudication may be hindered. Article 40 of the Constitutional Court Act supplements the insufficient provisions on the progress of the procedure by allowing the application of other laws and regulations concerning litigation procedures in such cases (see Constitutional Court Decision 2014 Heon-Ma 7, February 27, 2014).

However, on the other hand, Article 40 of the Constitutional Court Act takes the form of comprehensively and generally applying laws and regulations concerning other litigation procedures, but also clearly defines the limits of application by allowing application "within the limits that do not conflict with the nature of constitutional adjudication," thereby ensuring that the characteristics of constitutional adjudication are reflected in the application of laws and regulations concerning other litigation procedures.

Here, the case where it does not conflict with the nature of constitutional adjudication refers to the case where the application of laws concerning other litigation procedures does not undermine the inherent nature of constitutional adjudication. Whether it conflicts with the nature of constitutional adjudication must be judged specifically and individually by the Constitutional Court by comprehensively considering the purpose and nature of the relevant trial procedure, the nature of the procedure to be applied, and the subject of application. The judgment on whether the application of a specific law in a specific procedure conflicts with the nature of constitutional adjudication is the exclusive authority of the Constitutional Court.

(Refer to Constitutional Court Decision 2014. 2. 27. 2014 Heonma7). Therefore, the Constitutional Court considers the purpose and characteristics of the relevant trial procedure and determines whether the law on other litigation procedures is applicable.

88

It is reasonable to assume that it is possible to determine whether or not to apply the law, the scope and degree of application, etc.

In the case of impeachment proceedings, laws regarding criminal proceedings are given priority in accordance with Article 40, Paragraph 1, Subparagraph 2 of the Constitutional Court Act. Even in this case, laws regarding criminal proceedings are applied "within the scope that they do not conflict with the nature of the impeachment trial." The Constitutional Court must comprehensively consider the purpose and function of the impeachment trial, the nature of the provision in question, etc. to determine whether the provision in question is conflicting with the nature of the impeachment trial. However, whether a specific provision is applicable is ultimately a matter of specific legal interpretation (see Constitutional Court Decision 2014HunMa7 dated February 27, 2014).

B. The problem of application of expert rules under the Criminal Procedure Act

(1) The purpose of Article 40, Paragraph 1, Subparagraph 2 of the Constitutional Court Act to give priority to the application of laws and regulations concerning criminal proceedings to impeachment proceedings can be seen as the impeachment proceedings bring about the grave result of removing the accused from public office, and revealing the grounds for impeachment through criminal proceedings faithfully guarantees the accused's basic procedural rights.

However, the impeachment trial procedure is fundamentally different from the criminal procedure that realizes the state's right to punish, the most powerful public power, in that it only examines whether a high-ranking public official has violated the Constitution or laws and whether to remove him or her from public office, and does not examine whether he or she is criminally responsible.

The criminal procedure begins with the prosecution's filing of a public indictment, and at this time, the suspect acquires the status of a defendant as a litigation subject. However, in the investigation procedure, the suspect is merely a subject of investigation by the prosecutor who has the authority to compulsory investigation, and such status in the investigation procedure may in fact extend to the criminal procedure, so there is a possibility that the legal status of the defendant as a litigation subject equal to the prosecutor may be limited to a formality. In this way, the parties that arise when the investigation procedure leads to the criminal procedure

89

The issue of equality of status is unique to criminal proceedings, and this is an important feature that distinguishes criminal proceedings from impeachment proceedings.

When deciding whether to apply specific provisions of the criminal procedure laws to impeachment proceedings, the differences between impeachment proceedings and criminal procedure must be taken into consideration.

(2) The Criminal Procedure Act adopts the hearsay rule, and while denying the evidentiary value of hearsay evidence in principle, it exceptionally recognizes its evidentiary value when certain requirements are met (Articles 310-2, 311 to 316 of the Criminal Procedure Act). In particular, with respect to the interrogation record of a suspect prepared by an investigative agency, the evidentiary value is recognized only when the defendant, who was the suspect, acknowledges its contents, and with respect to a record in which the investigative agency records the statement of a person other than the defendant or a statement prepared by a person other than the defendant during the investigation process, the evidentiary value is recognized only when the cross-examination of the defendant is guaranteed (Article 312, Paragraphs 1, 3, 4, and 5 of the Criminal Procedure Act).

In criminal proceedings, the defendant is not simply a subject of punishment, but a party who forms and maintains the proceedings and has an equal status with the prosecutor, another party. However, if the prosecutor is allowed to use the statement obtained by exercising the right to investigate as evidence simply by acknowledging the authenticity and arbitrariness of the establishment, the status of the suspect, who is merely a subject of investigation, will continue into the criminal proceedings, and the defendant will not be guaranteed a status as a litigation subject equal to the prosecutor, and there is a concern that actual equality of parties will not be achieved. Accordingly, the Criminal Procedure Act provides that the defendant does not acknowledge the content (such as a record of the defendant's statement) or the defendant's cross-examination is not guaranteed.

If it is not possible (such as a statement from a person other than the defendant), it can be said that it cannot be used as evidence at all before determining its credibility.

However, the impeachment trial process begins with the National Assembly's resolution to prosecute, and the investigation process is similar to the criminal trial process.

90

The issue of equality of the parties that arises when the matter is connected by car cannot arise in the impeachment trial, and it is clear that the National Assembly cannot intervene in the investigation of the accused in relation to the grounds for impeachment. Therefore, even if the investigative agency is allowed to use the records containing the statements of the accused or the people involved in the case as evidence without the accused's acknowledgement of the content or guarantee of cross-examination in the impeachment trial, it is difficult to see that the issue of substantial equality of the parties arises as in the criminal trial. Furthermore, as will be seen later, if the evidentiary capacity of forged records, etc. is recognized only in cases where the authenticity and arbitrariness of the establishment are guaranteed, it is difficult to see that the recognition of such evidentiary capacity alone will unilaterally result in disadvantage to the accused.

In addition, a person who has been impeached is suspended from exercising his or her authority until the impeachment trial (Article 65, Paragraph 3 of the Constitution). In particular, if the accused is the President, the suspension of his or her authority will cause a vacuum in state affairs and great confusion, so there is a strong need for a speedy trial. However, if the expert rule is strictly applied to the impeachment trial procedure, the Constitutional Court will have to select multiple witnesses and conduct a witness examination if the accused disagrees with the evidence, which will inevitably lead to a prolonged procedure. Given the nature of the Constitutional Court, which is composed of a single panel of nine judges, there may be cases where the prolonged core trial procedure, such as repeated renewal of arguments or insufficient quorum for the trial, may lead to the suspension of the impeachment trial procedure.

Considering the nature of the impeachment trial process as examined above, the difference between the impeachment trial process and the criminal procedure process, the need for rapid progress of the process, etc., it is not necessary to strictly apply the provisions of the Criminal Procedure Act on the expert rule in the impeachment trial process, but it is possible to apply them in a relaxed manner, as long as it does not go against the nature of the impeachment trial.

91

It can be said that this is in line with the intent of Article 40 of the Constitutional Court Act, which stipulates that laws and regulations concerning criminal proceedings be applied in the 'Do'.

In this case

In this case, the plaintiff submitted several pieces of evidence, and the evidentiary value of each piece of evidence will be examined on the premise that the hearsay rule under the Criminal Procedure Act can be relaxed and applied.

(1) Evidence capacity of suspect interrogation records, etc. prepared by investigative agencies regarding persons related to the case

Even if the expert rule in the Criminal Procedure Act can be relaxed and applied, the authenticity and arbitrariness of the establishment must be guaranteed. Therefore, the suspect interrogation records or statement records of persons related to the case other than the accused prepared by the investigative agency can be accepted as evidence if the legality of the procedure is guaranteed, that is, the records in which the statement process is videotaped or the records in which the attorney was present during the statement process and confirmed that there were no problems with the statement process. The Constitutional Court stated this standard during the argument process of the 2016 Heon-Na 1 case of the Constitutional Court on March 10, 2017, and it should be considered that this still applies regardless of the amendment of Article 312, Paragraph 1 of the Criminal Procedure Act by Act No. 16924 of February 4, 2020, as will be examined later.

(2) Evidence of records of accomplices in related criminal cases

(a) Article 312, Paragraph 1 of the Criminal Procedure Act, as amended by Act No. 16924 of February 4, 2020, stipulates that the suspect interrogation record prepared by the prosecutor may be used as evidence only when the defendant or the defense attorney who was the suspect acknowledges its contents during trial preparation or on the trial date.

By stipulating this, the evidentiary requirements for the suspect interrogation records prepared by the prosecutor were aligned with the evidentiary requirements for the suspect interrogation records prepared by investigative agencies other than the prosecutor (Article 312, Paragraph 3 of the Criminal Procedure Act).

The 'suspect interrogation record prepared by the prosecutor' stipulated in Article 312, Paragraph 1 of the Criminal Procedure Act includes the suspect in question.

92

Not only the suspect interrogation record of the deceased, but also the suspect interrogation record prepared by the prosecutor regarding another defendant or suspect who is an accomplice with the defendant in question is included (see Supreme Court Decision 2023do3741 dated June 1, 2023). The same applies to the suspect interrogation record prepared by an investigative agency other than the prosecutor (see Supreme Court Decision 2009do1889 dated October 15, 2009). Therefore, if the defendant does not acknowledge the contents of the suspect interrogation record prepared by the prosecutor or judicial police officer regarding a person who is an accomplice with him/her, it cannot be adopted as evidence.

(Me) However, since the impeachment trial is a procedure to determine whether the accused, a high-ranking public official, should be removed by judging whether his or her performance of duties violates the Constitution and laws, taking into account the inherent duties and responsibilities granted by his or her position, it is difficult to assume the concept of "accomplice" as in a criminal trial. Accordingly, the expert rule in criminal proceedings that states that if the accused does not acknowledge the contents of the statement of guilt prepared by the investigative agency about a person with whom he or she is an accomplice, it cannot be accepted as evidence cannot be directly applied to the impeachment trial procedure.

In that case, the suspect interrogation records or statement records of people who were accomplices of the accused in the related criminal case are records in which the prosecutor or judicial police officer recorded the statement of a "person other than the accused" in the impeachment trial of this case, so it is appropriate to apply Paragraph 4 of the same Article, rather than Paragraphs 1 and 3 of Article 312 of the Criminal Procedure Act. However, since Paragraph 4 of Article 312 of the Criminal Procedure Act was not amended at the time of the revision of the Criminal Procedure Act on February 4, 2020, it is appropriate to adopt as evidence the suspect interrogation records or statement records prepared by the investigative agency of people who were accomplices of the accused in the related criminal case, even if the accused denies the contents, if the statement process was videotaped or if the defense attorney was present during the statement process and confirmed that there were no problems with the statement process.

93

(3) Evidence ability of National Assembly minutes

The principle is that the National Assembly meetings are open to the public (Article 50, Paragraph 1, Main Text of the Constitution). Accordingly, unless there are exceptional circumstances, such as when the plenary session or committee has decided not to disclose the statements made at the National Assembly meeting, they are usually broadcast live via the Internet broadcasting system or the media, and the video conference minutes that are recorded as is are also made public. The minutes of the National Assembly are written in stenography, not in written form, and the minutes of the plenary session are signed and stamped by the Speaker of the National Assembly or the Vice Speaker of the National Assembly representing him, and the minutes of the committee meeting are signed and stamped by the chairperson or the secretary representing him (Article 69, Paragraphs 2 and 3, Article 115, Paragraphs 2 and 3 of the National Assembly Act). A speaker may request corrections to the words in the minutes as long as they do not change the intent of the speech, but even in this case, the contents of the minutes written in stenography cannot be deleted, and if a correction or cancellation of a word is made through a speech, the speech must be recorded in the minutes. Minutes shall be distributed to members and distributed to the general public, unless necessary for confidentiality or national security (Article 71, Paragraphs 1 to 3 of Article 117, and Paragraph 1 of Article 118 of the National Assembly Act).

In this way, the National Assembly minutes are guaranteed procedural legitimacy, such as a high degree of discretion and accuracy of record, by the nature of the written document itself and the legally established procedural guarantees in the process of writing it. In addition, the National Assembly minutes record all statements related to the testimony without omission, so that the circumstances and atmosphere that led the witness to the statement, the context of the statement, etc. can be understood. Furthermore, the National Assembly minutes are

Since it is verified and impeached by members of the National Assembly in a public meeting, it is fundamentally different from a unilateral statement by a third party.

Therefore, the National Assembly minutes containing the statements of those involved in the case are naturally of evidentiary value in accordance with Article 315, Paragraph 3 of the Criminal Procedure Act, which states that they are 'documents prepared under other particularly credible circumstances.'

94

It can be seen as an existing document.

A. Conclusion

As examined above, it is reasonable to assume that the criminal procedure law provisions regarding the expert rule can be applied with moderation in impeachment proceedings. Accordingly, the suspect interrogation records or statement records of the persons involved in the case prepared by the investigative agency submitted by the plaintiff in this case can be adopted as evidence to the extent that the legality of the procedure is guaranteed, and the National Assembly minutes containing the statements of the persons involved in the case are documents with evidentiary power pursuant to Article 315, Paragraph 3 of the Criminal Procedure Act, which are "documents prepared under other particularly credible circumstances."

13. Supplementary opinions by Judge Kim Bok-hyung and Judge Jo Han-chang

We agree with the court opinion that the impeachment trial in this case should be accepted. However, as we will examine below, considering the gravity of the impeachment trial and the protection of the defendant's right to defense, we would like to point out that the Constitutional Court needs to apply the expert rule of the Criminal Procedure Act more strictly in the impeachment trial process in the future.

A. The Constitutional Court's Attitude on Expert Rules in Impeachment Trials

(1) The Constitutional Court Act provides that laws and regulations pertaining to criminal procedures may be applied to impeachment proceedings to the extent that they do not conflict with the nature of constitutional trials (Article 40, Paragraph 1 of the Constitutional Court Act). Whether the application of the Criminal Procedure Act conflicts with the nature of impeachment trials must be judged specifically and individually by the Constitutional Court in consideration of the purpose and nature of the impeachment trial, the gravity of the effect of removal, and the fact that the accused's exercise of authority is suspended during the impeachment trial period.

(2) Since the Constitutional Court's decision of March 10, 2017, 2016 Heon-Na 1, the Constitutional Court has not permitted the defendant to consent to the suspect interrogation records or statement records prepared by the investigative agency.

95

Even if the procedural legality is guaranteed, that is, if the statement process was videotaped or if the defense attorney was present during the statement process and confirmed that there were no problems with the statement process, the evidentiary value is recognized. In addition, the National Assembly minutes are recognized as evidentiary value under Article 315, Paragraph 3 of the Criminal Procedure Act, which states that they are "documents created under other particularly credible circumstances." It can be said that these evidentiary value recognition requirements are the result of the Constitutional Court relaxing and applying the expert rule in the Criminal Procedure Act.

B. Necessity of strict application of expert rules under the Criminal Procedure Act

(1) The purpose of preferential application of the 'Criminal Procedure Act' to the impeachment trial process

The intention behind giving priority to the criminal procedure law in the case of impeachment trials appears to have been to take into account the fact that impeachment trials are procedures that lead to the serious consequence of dismissal from public office, and that following criminal procedure can faithfully guarantee the accused's procedural fundamental rights and right to defense.

(2) The tendency toward trial-centeredness in criminal trials and the guarantee of opportunities for cross-examination

The criminal procedure law has gradually strengthened the trial-centered principle and developed in the direction of strictly applying the rule of expertise. The Criminal Procedure Act revised on June 1, 2007 added 'guaranteeing the opportunity for cross-examination of the defendant' as a requirement for the evidentiary ability of 'a record containing the statement of a person other than the defendant' (Article 312, Paragraph 4), and the Criminal Procedure Act revised on February 4, 2020 stipulated 'recognition of the contents by the defendant or his/her defense attorney who was the suspect' as a requirement for the evidentiary ability of 'a record of interrogation of a suspect prepared by the prosecutor' (Article 312, Paragraph 1), so that if the defendant or his/her defense attorney does not acknowledge in the trial that the contents of the record are consistent with the actual facts, the record cannot be adopted as evidence. This realizes the right to a fair trial in criminal proceedings by granting the defendant the opportunity to cross-examine evidence unfavorable to the defendant (see Constitutional Court 2013. 10. 24. 2011HunBa79), and further

96

It can be seen as an awareness of concerns about potential distortion of statements in expert evidence written outside of a courtroom. In particular, since there is a risk of errors being introduced in the process of perceiving a fact, remembering it, and then re-expressing and describing it, the guarantee of the right to cross-examination is becoming a major means of securing the truthfulness and credibility of statement evidence in criminal proceedings.

(3) Structure and operation of impeachment trial procedures

The impeachment trial process is basically structured so that the National Assembly, which is the representative body of the people, holds the accused person legally responsible, and the accused person defends against it. In this way, the claimant makes claims and proves the grounds for impeachment, and the accused refutes them and impeaches them with evidence, and in the impeachment trial process, which is structured so that they are in conflict with each other, it is important to secure the fairness of the process, just like in criminal proceedings.

In addition, unlike the constitutionality review or constitutional petition review (Article 30, Paragraph 2 of the Constitutional Court Act) that are based on written examination, the impeachment trial is a necessary oral argument case (paragraph 1 of the same article) in which the claimant and the defendant orally submit facts and evidence in a public courtroom. Through the oral argument process, the constitutional judges directly examine the evidence in the courtroom and provide the defendant with an opportunity to state his or her opinion and cross-examine, which can contribute to the realization of a fair trial and further enhance the legitimacy and reliability of the constitutional trial. Therefore, it is desirable to form a conviction on the substance of the case and to recognize the grounds for impeachment based on evidence directly examined in front of the judges in public, as in criminal proceedings, and to guarantee an opportunity for cross-examination for expert evidence.

(4) Need to ensure the seriousness and procedural fairness of the impeachment trial of the president

The President is the representative body with the greatest democratic legitimacy, elected directly by the people (Constitution)

97

(Article 67, Paragraph 1), represents the country to foreign countries as the head of state (Article 66, Paragraph 1), has the authority to command the armed forces (Article 74, Paragraph 1), and is guaranteed a five-year term of office (Article 70). The impeachment trial of the president is a procedure to decide whether to strip the president of the public's trust and authority granted to him, who holds such an important position under the Constitution, during his term of office. A decision to remove the president may result in national losses due to the interruption of his performance of duties, a vacuum in state affairs, political chaos due to the division of public opinion, etc. (See Constitutional Court Decision 2004. 5. 14. 2004 Heon-Na 1), and has an impact on the entire country. In light of the gravity and ramifications of the impeachment trial of the president, it is necessary to ensure clarity and fairness in accordance with criminal procedure, and sufficiently guarantee the defendant's right to defense against unfavorable evidence through cross-examination.

(5) Problem of inconsistency between criminal trials and standards of evidence

The impeachment trial procedure and the civil and criminal trial procedures are separate procedures, so they can proceed independently and reach independent conclusions. However, if the impeachment trial and criminal trial based on the same facts produce different results, it is not desirable as this will undermine the unity of the legal order and trust in the trial. Therefore, in cases where the grounds for impeachment are related to criminal crimes, the expert rule of the Criminal Procedure Act should be applied as strictly as possible in the impeachment trial procedure to minimize the discrepancy between the impeachment trial and the criminal trial. This is also in line with the intent of Article 51 of the Constitutional Court Act, which stipulates that "if a criminal trial is in progress for the same reason as the impeachment trial request against the accused, the court may suspend the trial procedure," allowing the results of the criminal trial to be considered in the impeachment trial.

(6) Sintering

In order to more clearly guarantee the fairness of the procedure and the defendant's right to defense, the criminal

98

I believe that strictly applying the expert rule in the procedural law is more in line with the purpose of Article 40, Paragraph 1 of the Constitutional Court Act, which stipulates that the criminal procedure law be given priority. Below, we will examine the problematic aspects of the trial procedure of this case by assuming the case where the expert rule in the criminal procedure law is strictly applied.

D. Specific application

(1) Evidence capacity of suspect interrogation records, etc. prepared by investigative agencies regarding persons involved in the case

(a) Whether to consider accomplices in impeachment trial

The defendant asserts that, in relation to the suspect interrogation records prepared by the investigative agency regarding the accomplices in the case in which the defendant was indicted on charges of sedition under the Criminal Act, the Constitutional Court cannot accept them as evidence if the defendant denies the contents of the records pursuant to Article 312, Paragraph 1 of the Criminal Procedure Act, as amended on February 4, 2020.

However, the impeachment trial is a procedure to determine whether the accused, a high-ranking public official, should be removed from office by judging whether his or her performance of duties is in violation of the Constitution and laws, taking into account the inherent duties and responsibilities granted by his or her position (Article 65, Paragraphs 1 and 4 of the Constitution), and since the accused or official must be in that position, the concept of an "accomplice" as in a criminal trial cannot be assumed. Therefore, the accused or official's argument above, which assumes that the accomplice relationship in a criminal case will be recognized as an accomplice relationship in an impeachment trial, cannot be accepted.

(i) Requirements for recognition of evidentiary capacity

Since a person other than the accused cannot be an accomplice in the impeachment trial process, the suspect interrogation records prepared by the investigative agency regarding him are subject to Article 312, Paragraph 4 of the Criminal Procedure Act.

The records of interrogation of suspects, etc. prepared by the investigative agency against persons other than the accused are used as evidence for the impeachment trial.

99

In order to be adopted as a witness, pursuant to Article 312, Paragraph 4 of the Criminal Procedure Act, the investigative agency record must meet the following requirements: ÿ it must have been prepared in accordance with due process and method; ÿ it must have been proven that the record contains the same content as the statement made before the investigative agency by ÿ the statement of the original declarant during his/her argument preparation or at the argument date, ÿ a video recording, or ÿ other objective means; ÿ the defendant or his/her attorney must have been able to question the original declarant regarding the content during his/her argument preparation or at the argument date; and ÿ it must have been proven that the statement recorded in the record was made in a particularly credible state.

If this position is taken, the evidentiary value of some records for which the defendant's right to cross-examination is not guaranteed will be denied.

(2) Evidence ability of National Assembly minutes

Article 315, Paragraph 3 of the Criminal Procedure Act stipulates that "any other document created under particularly credible circumstances" can be used as evidence, and the court has been restrictively recognizing this as "a document with a high degree of circumstantial guarantee of credibility to the extent that there is no issue with whether or not to provide an opportunity for cross-examination" in accordance with Article 315, Paragraph 1 (certificates of family relationship records, copies of notarized documents, and other documents created regarding matters that can be proven by public officials or foreign public officials in the course of their duties) and Paragraph 2 (trade ledgers, logbooks, and other ordinary documents created for business purposes) (refer to Supreme Court En banc Decision 2018do14303, rendered on August 29, 2017).

However, the National Assembly minutes adopted as evidence in this case are records of meetings held in the National Assembly, not impeachment proceedings, and include statements about experiences and things heard by people related to the case, not the accused. The National Assembly meeting is not a structure where statements from people related to the case are impeached by the parties in a court-like structure, and independence in official duties is not a structure where statements from people related to the case are impeached by the parties.

100

The guaranteed judge (Article 103 of the Constitution) does not preside, and rather, there is a high possibility that the National Assembly members will lead the inquiry based on their own political inclinations and interests. In addition, in criminal proceedings, witnesses in principle take an oath and give testimony (Article 156 of the Criminal Procedure Act), but witnesses who appear as witnesses in the National Assembly do not take an oath in accordance with Article 7 of the Act on Testimony, Appraisal, etc. in the National Assembly unless they consent, and they make statements without punishment even if they commit perjury. Considering these points, it is difficult to conclude that the National Assembly meeting was conducted in a state where procedural neutrality and objectivity were sufficiently secured, and it is also difficult to view the minutes of the meeting as a document with a high degree of circumstantial guarantee of credibility on the same level as the court trial records. Therefore, it is difficult to directly apply Article 315, Paragraph 3 of the Criminal Procedure Act when adopting the National Assembly minutes as evidence in impeachment proceedings.

A. Conclusion

As discussed above, in the case of the impeachment trial of the President, it is desirable to apply the hearsay rule of the Criminal Procedure Act as strictly as possible in terms of its gravity and impact and in terms of guaranteeing the defendant's right to defense. On the other hand, since the President's exercise of authority is suspended and a vacuum in state affairs occurs during the impeachment trial, it is requested that the trial procedure be conducted as quickly as possible to resolve this vacuum in state affairs and national confusion. It is fully predictable that it will take a long time to investigate evidence if the hearsay rule is strictly applied compared to the case where the Constitutional Court currently applies the relaxed hearsay rule, and in particular, the size of the national damage caused by the prolonged impeachment trial period of the President, the highest leader of the country, will be truly enormous. Therefore, the request for fairness in the impeachment trial of the President has been replaced by the request for speed.

101

Here it has retreated somewhat.

However, given the significant influence and ramifications of the decision to impeach the president, the fact that reinforcing the trial-centered approach in the impeachment trial and providing the accused with an opportunity for cross-examination are not necessarily contrary to the demand for speedy impeachment trials or are less important than them, and rather, they are in line with the structure of the impeachment trial, and the fact that the Constitutional Court has been realizing a fair trial by allowing evidence to be directly presented in the courtroom through the examination of witnesses at the request of the parties or by its own authority in the impeachment trial, strengthening the fairness of the impeachment trial procedure will enhance the public's trust in the impeachment trial and improve the impeachment trial.

In light of the fact that the decision could minimize national confusion, it is now time to seek ways to better harmonize the two conflicting values required for the impeachment trial process: speed and fairness.

14. Supplementary opinion of Judge Jeong Hyeong-sik

While I agree with the court's opinion that the motion for impeachment in this case should be accepted, I would like to point out that it is necessary to enact a provision limiting the number of times an impeachment motion can be re-introduced during another session if it is rejected by the National Assembly, as shown below.

A. Application of the principle of absence of sunlight and its purpose

(1) Article 92 of the National Assembly Act stipulates the principle of double jeopardy, which prohibits a rejected bill from being re-introduced during the same session. The above provision does not impose any restrictions on the types or categories of bills to which it applies, nor does it provide separately for impeachment motions, so that the principle of double jeopardy is applied to impeachment motions as well. Accordingly, an impeachment motion, like other bills, cannot be re-introduced during the same session once it is rejected, but it can be re-introduced during another session.

102

(2) The principle of the absence of double jeopardy is to prevent the National Assembly from drifting without finalizing its intention on a specific matter, and thus the principle of the absence of double jeopardy contributes to the unification of the National Assembly's intention, efficient operation of meetings, and prevention of obstruction of proceedings by the minority (see Constitutional Court Decision 2009 Heon-Ra 8, October 29, 2009). On the other hand, the principle of the absence of double jeopardy allows for the re-promotion of rejected agenda items after a session has changed. This can be seen as a consideration of the fact that, in principle, National Assembly members can freely propose agenda items, and since a session change usually presupposes a certain amount of time having passed, the possibility that circumstances or environments surrounding the agenda item may have changed in the meantime, or that the National Assembly members' opinions on the agenda item may have changed.

B. Problems of Allowing Unlimited Repeat Proposals for Impeachment

(1) Low possibility of change in circumstances regarding grounds for prosecution

The purpose of an impeachment motion is to pursue legal responsibility when the subject of the impeachment has violated the Constitution or the law in the performance of his/her duties. Putting aside the possibility that new violations of the Constitution or the law may be discovered or the content may change retroactively, it is difficult to specifically assume changes in circumstances over time.

(2) Instability of high-ranking public officials' positions and decline in national functions

The instability of the positions of high-ranking public officials leads to the decline of state functions. High-ranking public officials subject to impeachment are responsible for the key functions of the state in key and important positions of the executive and judicial branches. If impeachment motions are repeatedly proposed against them for substantially the same reason, the positions of the targets of impeachment become unstable, which can lead to chaos in state affairs and the decline of key state functions. In particular, if the targets of impeachment are the head of the executive and the head of state,

103

If you are the president, your influence on the overall administration of the country is bound to be significant.

(3) The political strife of the impeachment system

Allowing public officials to repeatedly initiate impeachment for essentially the same reason in different terms as long as they remain in office runs the risk of allowing a political party with a majority of seats in the National Assembly to use it as a political bargaining chip, thereby turning the impeachment system as a legal system into a political tool, and there is a great concern that this will aggravate political chaos. In particular, in the case of impeachment of the president, public opinion conflict and national division may become extreme.

D. Problems due to combination with the session system under the National Assembly Act

In light of the nature of the impeachment system, which is an emergency measure under the Constitution (see the Constitutional Court's October 28, 2021, 2021Hun-Na 1, Justices Lee Seon-ae, Lee Eun-ae, Lee Jong-seok, and Lee Young-jin's dissenting opinion; and the Constitutional Court's January 23, 2025, 2024Hun-Na 1, Justice Kim Hyung-doo's supplementary opinion), the impeachment motion must be made with exceptional caution. However, allowing repeated proposals of virtually identical impeachment motions can be further abused as a tool for political strife, as it is intertwined with the session system under the National Assembly Act.

The regular session of the National Assembly is held once a year, and the session cannot exceed 100 days (Article 47, Paragraphs 1 and 2 of the Constitution, Article 4, Main Text, Article 5-2, Paragraph 2, Subparagraph 2 of the National Assembly Act). However, unlike regular sessions, extraordinary sessions can be convened at any time if requested by at least one-fourth of the members of the National Assembly, and the session length can be determined through a resolution of the National Assembly, provided that it does not exceed 30 days (Article 47, Paragraphs 1 and 2 of the Constitution, Article 7, Paragraph 1 of the National Assembly Act).

Because of this possibility of freely convening extraordinary sessions, the party with the majority of seats in the National Assembly

By setting shorter sessions as needed, a motion can be proposed repeatedly at very short intervals until a specific agenda item is passed or a political goal is achieved.

And this type of repeated motions bypasses the principle of absence of double jeopardy, which was intended to request a certain amount of time between sessions to reconsider and deliberate on the agenda, and nullifies its purpose. Even if the impeachment motion is rejected, if a certain political party repeatedly convenes a short-term extraordinary session to push through the impeachment motion and then repeatedly proposes and deliberates the same impeachment motion, it can reduce the efficiency of the proceedings and cause the National Assembly's agenda to drift.

A. Sintering

In consideration of the above points comprehensively, the re-introduction of impeachment motions that have no substantial change in the main grounds for impeachment should be limited, and the legislator should establish regulations regarding the number of times an impeachment motion can be proposed, taking into account the nature and essence of the impeachment motion, the balance between the early confirmation of the National Assembly's decision and the public interest of impeaching a high-ranking public official who has violated the Constitution or laws in the performance of his or her duties, etc.

Judge

judge

Moon Hyung-bae

judge

Already already

judge Kim Hyung-doo

judge Jeong Jeong Mi

judge Jeonghyeongsik

judge Kim Bok-hyung

judge Cho Hanchang

judge Jeong Gye-seon

105

106

[Appendix 1]

List of Prosecutor's Representatives

1. Attorney Kim Lee-su

2. Attorney Song Du-hwan

3. LKB & Partners, LLC

Attorneys in charge: Lee Gwang-beom, Jang Sun-wook, Kim Hyeon-gwon, Seong Gwan-jeong

4. Leegong Law Firm

Attorney in charge Kim Seon-hyu

5. Citizen Law Firm

Attorney in charge: Kim Nam-jun

6. Law Firm Dosi

Attorney in charge: Lee Geum-gyu

7. Dasan Law Firm

Attorney in charge: Sangbeom Seo

8. Saerok Law Firm

Attorneys in charge: Jeon Hyeong-ho, Hwang Yeong-min

9. Attorney Kim Jeong-min

10. Attorney Park Hyuk

11. Attorney Lee Won-jae

12. Attorney Kwon Young-bin

107

13. Attorney Kim Jin-han

108

[Appendix 2]

List of Defendant's Representatives

1. Attorney Jo Dae-Hyeon

2. Attorney Bae Bo-yoon

3. Attorney Bae Jin Han

4. Law Firm Cheongnyeong

Attorney in charge: Gap-geun Yoon, This road

5. Attorney Do Tae-woo

6. Samseung Law Firm

Attorney in charge: Kim Gye-ri

7. Attorney Seo Seong-geon

8. Ace Law Firm (Limited)

Attorney in charge Choi Geo-Hoon

9. Selection of a law firm

Attorney in charge Cha Ki-hwan

10. Attorney Kim Hong-il

11. Statement of the defense

12. Attorney Song Hae-eun

13. Attorney Song Jin-ho

14. Attorney Lee Dong-chan

15. Attorney Seok Dong-Hyeon

16. Attorney Park Hae-chan

17. Attorney Oh Wook-hwan

18. Attorney Hwang Kyo-ahn

19. Attorney Kim Ji-min

20. Law Firm Yul Jeon

Attorney in charge: Jeon Byeong-gwan

21. Attorney Bae Jin-hyeok

22. Cheongam Law Firm

Attorney in charge: Do Byeong-su

110

[Appendix 3]

Contents of the defendant's address to the nation on December 3, 2024

Dear citizens, as President, I appeal to you with a heart full of sorrow.

Up until now, the National Assembly has initiated 22 impeachment motions against government officials since our government was launched, and is currently pursuing the impeachment of the 10th person since the launch of the 22nd National Assembly in June. This is not only unprecedented in any country in the world, but also an unprecedented situation since the founding of our country. They are paralyzing the judiciary by intimidating judges and impeaching a large number of prosecutors, and even paralyzing the executive branch by impeaching the Minister of Public Administration and Security, the Chairman of the Korea Communications Commission, the Chairman of the Board of Audit and Inspection, and the Minister of National Defense.

The handling of the national budget also undermined the essential functions of the state, cracking down on drug crimes, and maintaining public order by completely cutting all major budgets, thereby turning the Republic of Korea into a drug paradise and a state of public order panic. The Democratic Party cut 1 trillion won in disaster countermeasure reserve funds, 38.4 billion won in child care support allowances, and 4.1 trillion won in youth jobs and deep-sea gas field development projects from next year's budget. They even put the brakes on improving the treatment of military officers, such as raising the salaries and allowances of junior military officers and increasing the duty pay. Such budgetary abuse is, in a word, making a mockery of the national finances of the Republic of Korea. This legislative dictatorship of the Democratic Party, which even uses the budget solely as a means of political strife, did not even hesitate to impeach the budget.

The government is paralyzed and the people's sighs are increasing. This is trampling on the constitutional order of the Republic of Korea and disrupting the legitimate state institutions established by the Constitution and law.

111

This is a clear anti-state act of plotting a civil war. The lives of the people are not taken into consideration, and the state administration is paralyzed only by impeachment, special prosecution, and the bulletproofing of the opposition party leader. Now, our National Assembly has become a den of criminals, and through legislative dictatorship, they are paralyzing the country's judicial and administrative systems and attempting to overthrow the liberal democratic system. The National Assembly, which should be the foundation of liberal democracy, has become a monster that is destroying the liberal democratic system. The Republic of Korea is now in a state of such uncertainty that it would not be strange if it collapsed at any moment.

Dear citizens,

I declare martial law to protect the free Republic of Korea from the threat of North Korean communist forces, eradicate the shameless pro-North Korean anti-state forces that are plundering the freedom and happiness of our people, and protect the free constitutional order. Through this martial law, I will rebuild and protect the free Republic of Korea that is falling into the abyss of national ruin. To this end, I will absolutely eradicate the anti-state forces that have been the root cause of the ruin of the country and have been committing heinous acts up to now. This is an inevitable measure to guarantee the freedom and safety of the people and the sustainability of the country from the activities of anti-state forces that seek to overthrow the system, and to pass on a proper country to future generations. I will eradicate anti-state forces and normalize the country as soon as possible.

There will be some inconvenience to the good citizens who believe in and follow the values of the Constitution of the Republic of Korea due to the declaration of martial law, but we will focus on minimizing such inconvenience. Such measures are unavoidable for the sustainability of the Republic of Korea, and there is no change in the foreign policy of the Republic of Korea fulfilling its responsibilities and contributions in the international community.

As President, I earnestly appeal to you, the people. I only ask you, the people.

112

I will believe and devote my life to protecting the free Republic of Korea. Please believe in me.

thank you

113

[Appendix 4]

Martial Law Command Proclamation No. 1

In order to protect liberal democracy from the threat of overthrowing the Republic of Korea's system by anti-state forces operating within the Republic of Korea and to safeguard the safety of the people, the following is hereby proclaimed throughout the Republic of Korea as of 23:00 on December 3, 2024.

1. All political activities, including activities of the National Assembly, local assemblies, political parties, political associations, rallies, and demonstrations, are prohibited.
2. Any act that denies or attempts to overthrow the liberal democratic system is prohibited, and fake news, manipulation of public opinion, and false propaganda are prohibited.
3. All press and publications are under martial law control.
4. Strikes, work stoppages, and assemblies that incite social unrest are prohibited.
5. All medical personnel, including residents, who are on strike or have left the medical field must return to their regular work within 48 hours and work faithfully. Violators will be punished in accordance with martial law.
6. Measures will be taken to minimize inconvenience in the daily lives of good citizens, excluding anti-state forces and other forces that seek to overthrow the system.

Violators of the above proclamation may be arrested, detained, searched and seized without a warrant pursuant to Article 9 (Special Measures Authority of Martial Law Commander) of the Martial Law Act of the Republic of Korea, and punished pursuant to Article 14 (Penalties) of the Martial Law Act.

December 3, 2024 (Tue) Martial Law Commander, Army General Park An-soo.

114