

# Prof. Sang-Kyung Lee

**THE ASSOCIATION OF KOREAN LAW SCHOOLS**

**Chairman, 2022.10.~**

**University of Seoul Law School**

**Dean, 2020.9.~**

**Member of the Supreme Court Justice**

**Recommendation Committee**

**2022.10.~**

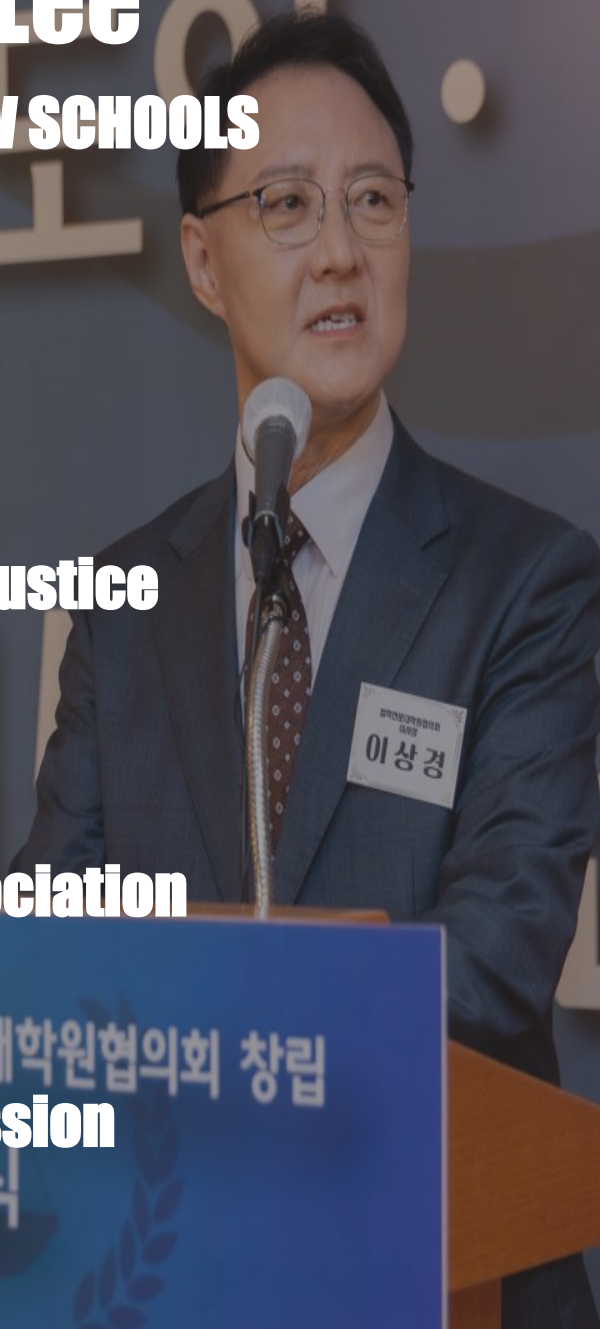
**Korean Constitutional Law Association**

**President, 2022.01.~2022.12.**

**National Human Rights Commission**

**Member of Anti-Discrimination**

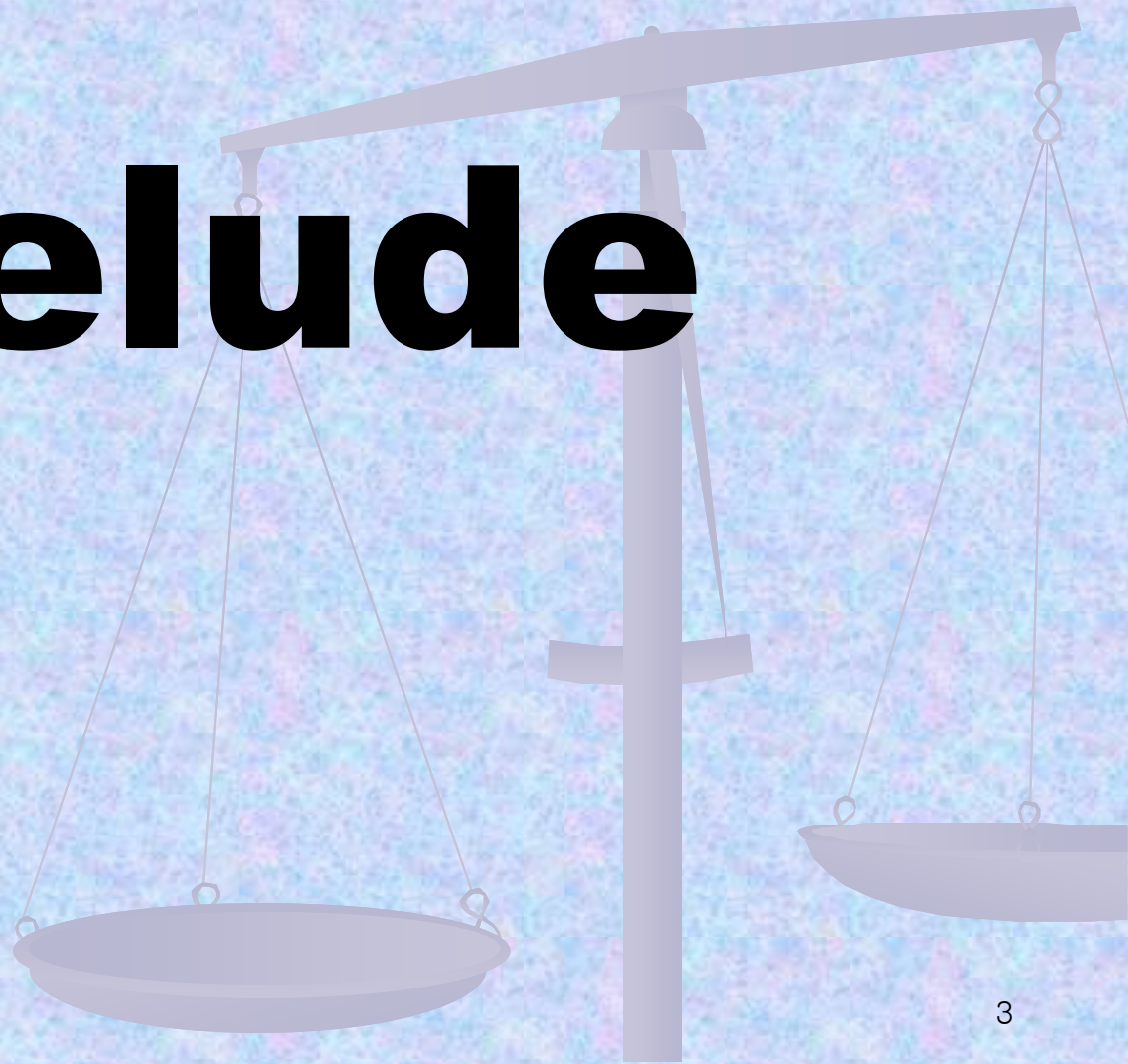
**Committee, 2013.05.~**

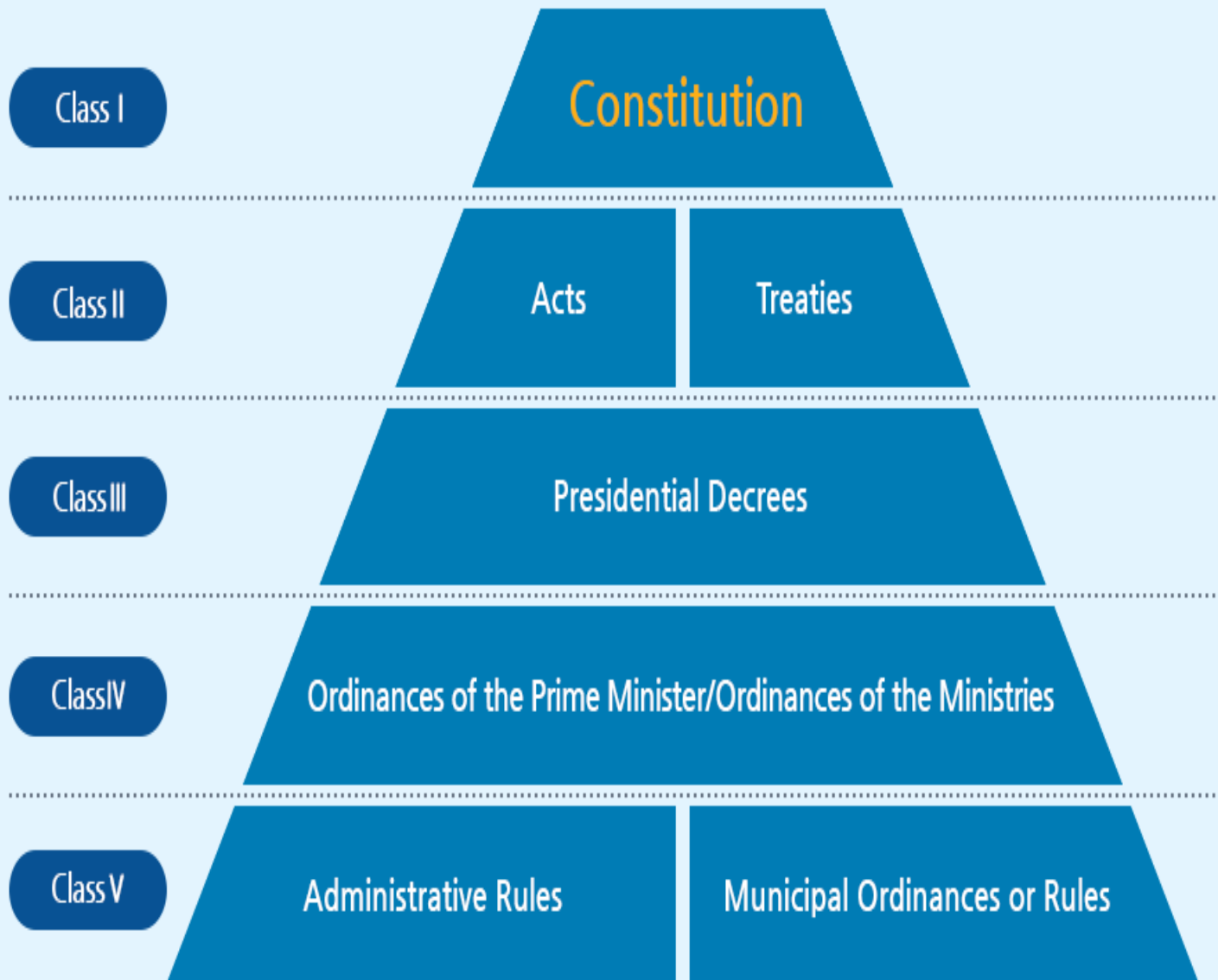




- **How to Make Local Cities Human Rights Friendly?**
- **What Efforts Do We Make to Encourage Local Cities?**

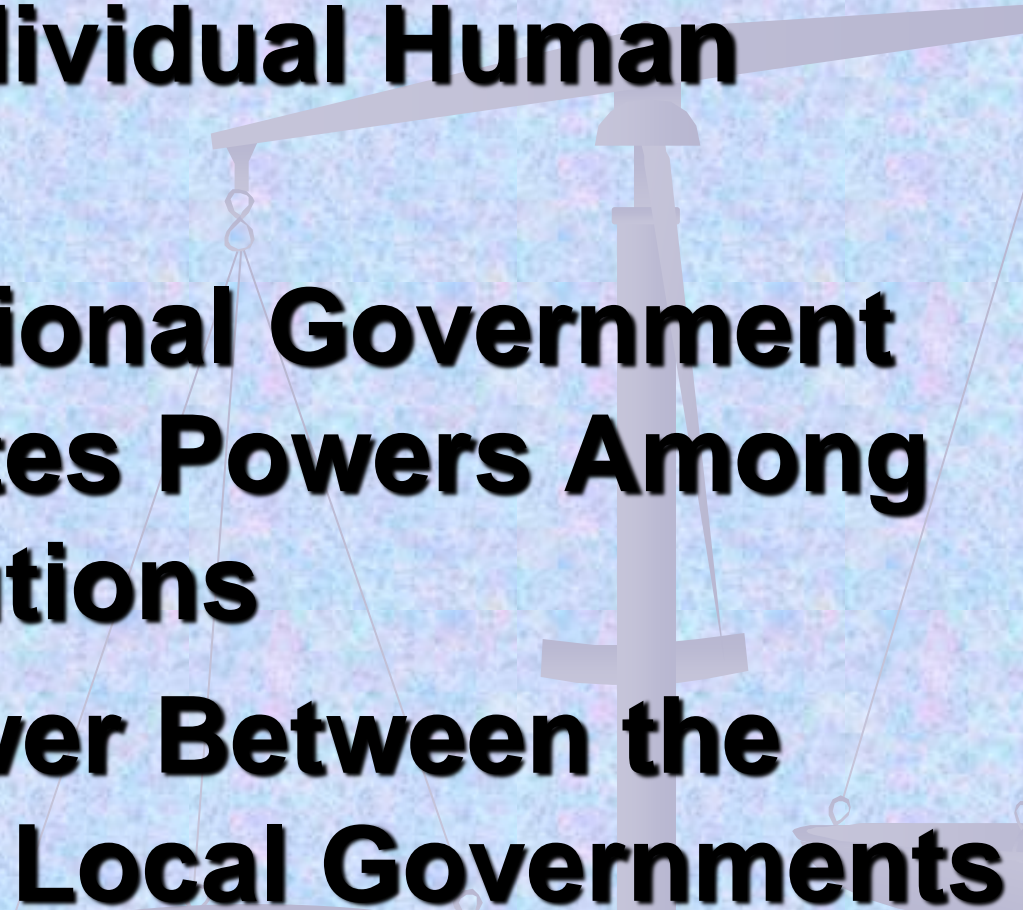
# Prelude





Hierarchy of Acts & Subordinate Statutes

# The Constitution's Function

- **Protects Individual Human Rights**
  - **Creates National Government and Separates Powers Among State Institutions**
  - **Divides Power Between the Central and Local Governments**
- 







헌법재판소  
Constitutional Court of Korea





A wooden gavel is positioned vertically on a wooden block. The background features a blurred American flag with its stars and stripes. A black rectangular box is overlaid on the right side of the image, containing the title text in white.

# The Power of Judicial Review

# Judicial Review in United States





# Judicial review

- The Supreme Court exercises the power of judicial review, whereby it can declare acts of Congress or the state legislatures unconstitutional. Executive, administrative, and judicial actions also are subject to review by the court.
- The doctrine of judicial review is not mentioned explicitly in the Constitution; instead, it was articulated by Marshall in *Marbury v. Madison* (1803), in which the court struck down part of the Judiciary Act of 1789.

# The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

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- I. Introduction
- II. The Role of the Central Government in Protecting Human Rights and Enhancing the people's Life
- III. The Role of Local Cities in Protecting Their Citizen's Rights and Enhancing the Citizen's Life
- IV. Conclusion

# The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

## Introduction

With the rise of the modern welfare state people have come to value the quality of life.

Thus, states have taken on the significant responsibility of protecting the human rights including living conditions, i.e. the housing development of their citizens

# The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

## Welfare State

Mandatory Employment of Disabled Persons Case  
[15-2(A) KCCR 58, 2001Hun-Ba96, July 24, 2003]

**The Preamble of the Constitution** declares that an equal opportunity is guaranteed for all citizens and seeks to realize a welfare state by presenting the direction of the guarantee of the social basic rights.

**Article 32 of the Constitution** provides that all citizens are entitled to the right to work, and that the state shall make effort to promote employment and to guarantee appropriate wages by social and economic means.

# The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

## Welfare State

**Article 34 of the Constitution** declares that every citizen is entitled to a life worthy of human beings; at the same time, it obligates the state to promote social security and social welfare to specifically realize such humane living conditions, and emphasizes that especially those citizens lacking capability of living due to such factors as disability, ailment, or aging shall be protected by the state pursuant to the relevant statutes.

# The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

## Welfare State

Also, **Article 35(1) of the Constitution** provides that All citizens shall have the right to a healthy and pleasant environment. The State and all citizens shall endeavor to protect the environment.

And **Article 35(3) of the Constitution** provides that the State shall endeavor to ensure comfortable housing for all citizens through housing development policies and the like.

# The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

The actual role of the central government that has lead efforts to legislate a framework act on human rights policies has been critical in implementing the policies that enhance the overall level of human rights protection in Korea.

# The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

In case the central government sets basic policy guidelines for human rights protection, and supports and oversees the local autonomous entities' action plans for promoting and protecting human rights, it becomes possible to establish consistent and coherent human rights protection guidelines throughout the nation, and to significantly raise human rights protection standards in general.

# The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

In addition, it should be noted that the role of the local autonomous entities is equally important in protecting and promoting human rights.

Local governance is a system that promotes democratic and efficient local governing administration, balanced development of the locales, and overall democracy by delegating responsibilities of welfare administration to elected officials.

## The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

It increases the self-autonomy of local citizens in certain bureaucratic matters and thus well aligns with the ideals of liberal democracy that value liberty and responsibility, and significantly promotes the protection of basic human rights

# The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

Furthermore, since local cities are institutions seeking to realize the ideals of grassroots democracy they are human rights friendly, it is thus desirable that they carry out the task of implementing action plans for promoting and protecting human rights.

# The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

Modern constitutionalism is the political doctrine that political power should be authorized and bound by the constitution as the fundamental law enacted according to the will of the people.

# The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

Also, constitutionalism is the idea that the supremacy of the constitution in government can best protect human rights from arbitrary abuse of power. Therefore, the protection of human rights is the first element of constitutionalism.

# The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

The basic components of constitutionalism are the protection of human rights, popular sovereignty, the separation of powers, a written constitution and the rigidity of constitutional amendment.

# SEPARATION of POWERS

POWER TO MAKE JUDGEMENTS ON LAW



JUDICIARY

POWER TO PUT LAW INTO ACTION



EXECUTIVE GOVERNMENT

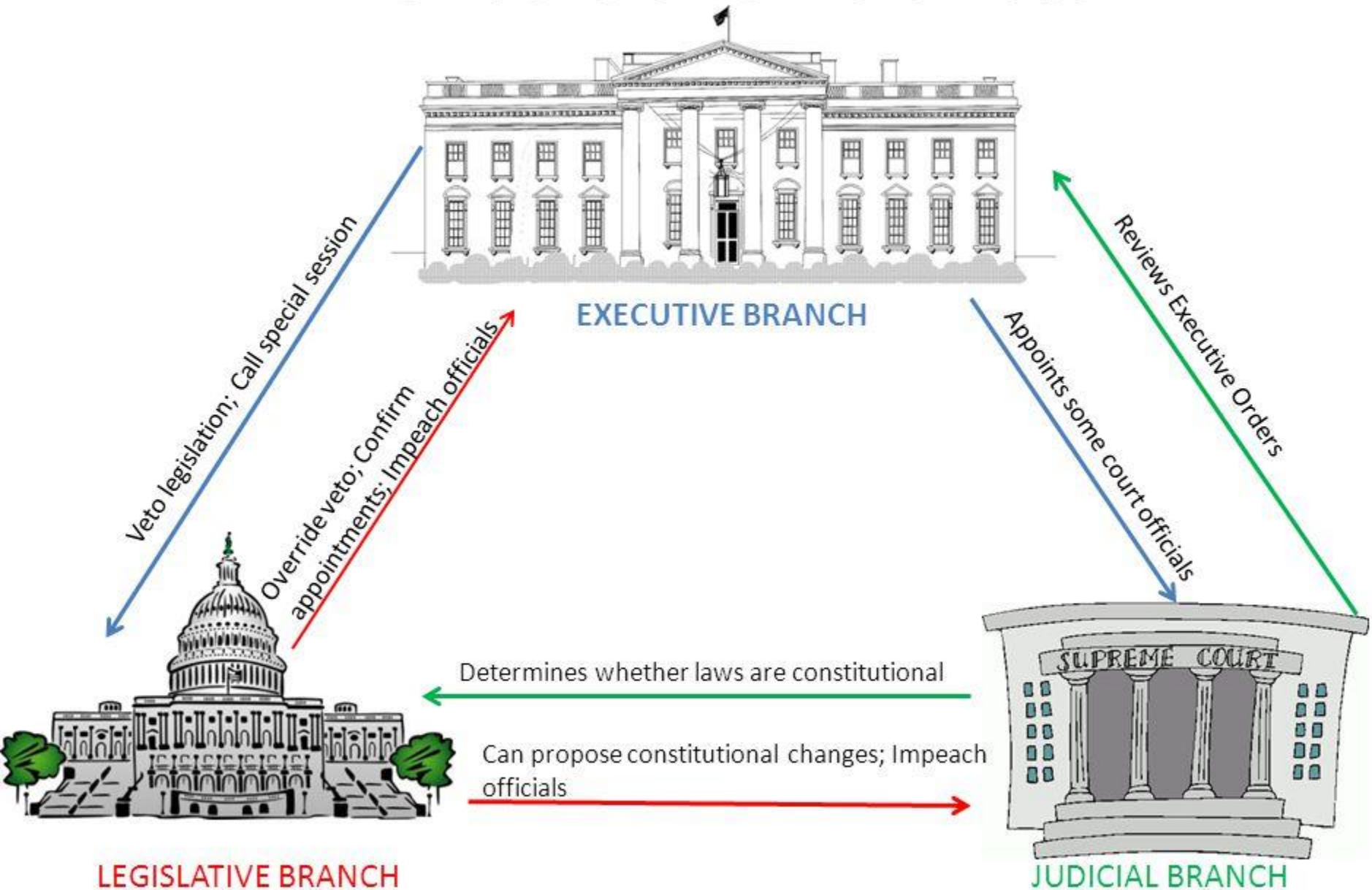
POWER TO MAKE AND CHANGE LAW



PARLIAMENT



# Checks and Balances



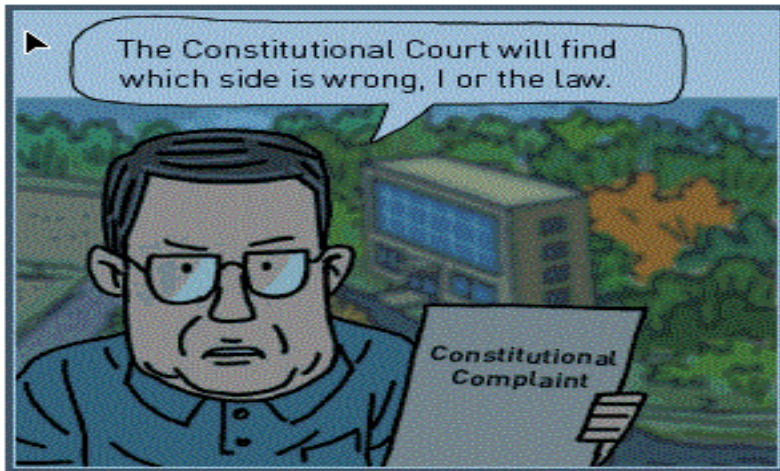
# The Roles of the Government and Local Cities to Better Protect and Enhance Their Citizens' Life in Korea

Designating a development-restricted zone without formulating any compensation provision is unconstitutional when it imposes a cruel burden exceeding the scope of social restriction on the landowner. (KCCR Dec. 24, 1998, 89Hun-Ma214, etc. / Unconformable to Constitution)

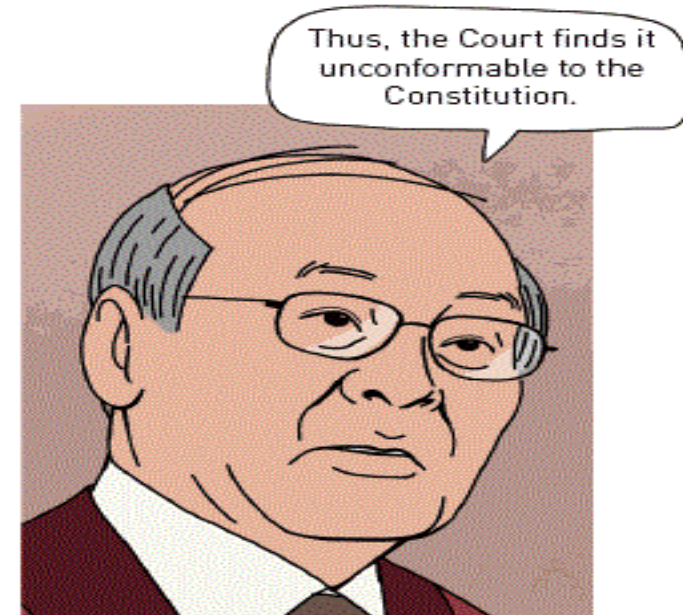
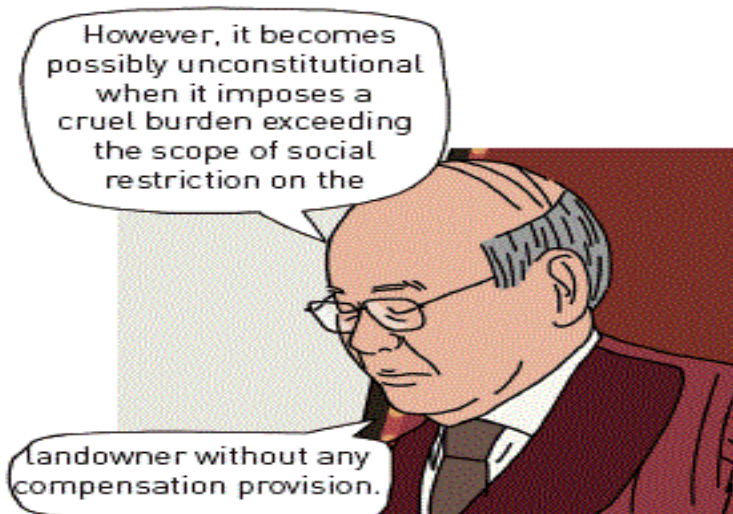
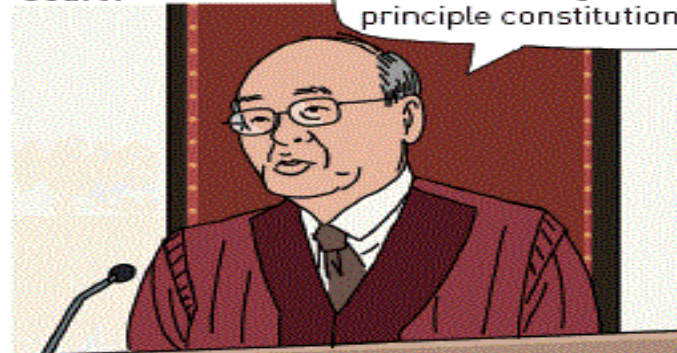
## Designation of Green-Belt Zone without any compensation provision is unconstitutional!



★ Article 21 of the Urban Planning Act  
Inside the development-restricted zone (namely, the Green-Belt Zone), there shall not be any construction or structure erected, any change in the quality and form of the ground, any subdividing, or any urban planning activity.



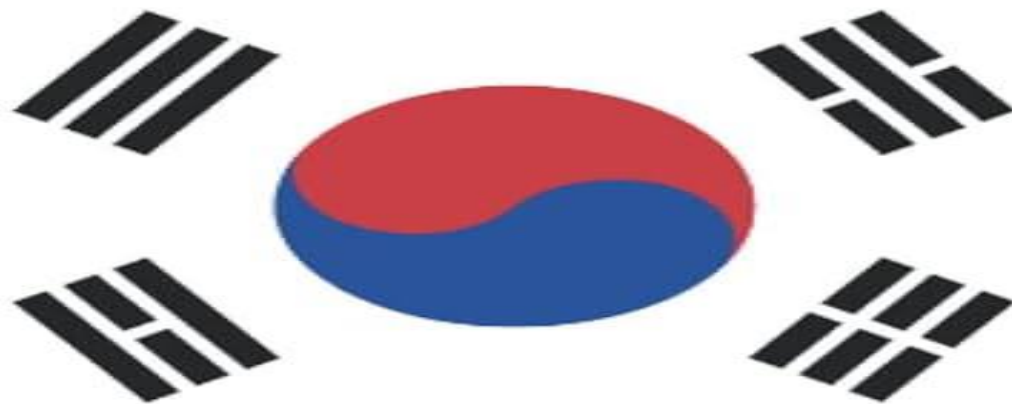
**What was the ruling of the Constitutional Court?**



**After the ruling, the legislature came up with an inclusive legal ground for comprehensive, systematic management of the development-restricted zones, designed to strike a balance between the preservation of nature and convenient life of the people, and guarantee people's right to property.**



# CONSTITUTION OF THE REPUBLIC OF KOREA



**W**E, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

**A R T I C L E I.**  
Section 1. ALL legislative powers herein granted shall be vested in a Congress, which shall consist of a Senate and House of Representatives.

# The Constitution of the United States

## Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

# Difference between Written and Unwritten Constitutions:

## Written Constitution

- 1) is written in the form of a book or document;
- 2) is made and enacted by a constituent assembly;
- 3) is usually less flexible than an unwritten constitution (a rigid constitution);
- 4) is definite. Its provisions can be quoted in support or against any power exercised by the government

## Unwritten Constitution

- 1) is not framed as a single document;
- 2) is the result of a gradual process of constitutional evolution;
- 3) depends mostly on unwritten rules or conventions which do not require any formal amendment (flexible or elastic constitution);
- 4) cannot be produced in evidence. It has to be proved by quoting its sources and practices

# Relocate the capital city by enacting a special law?

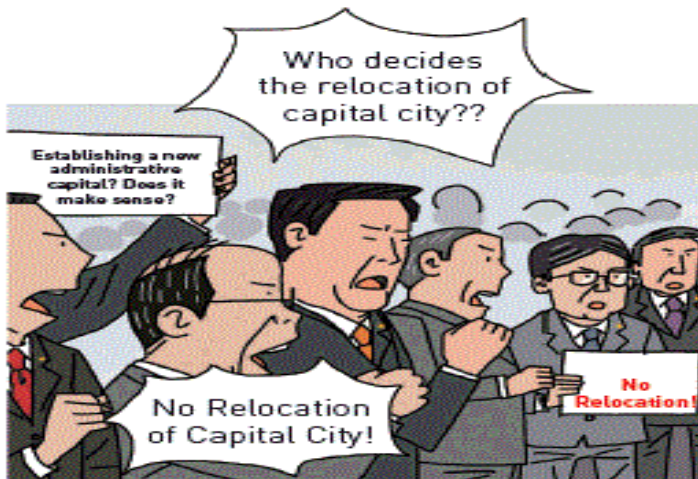
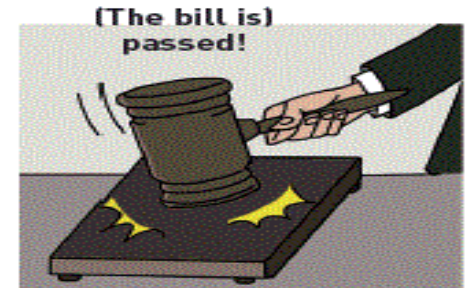
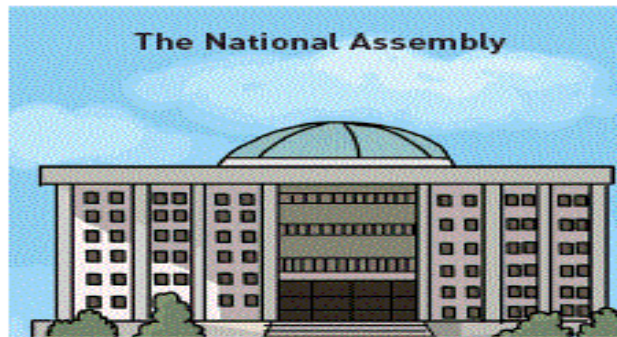
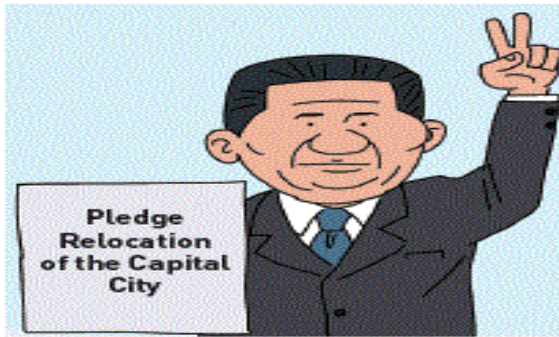
The Special Act on the Establishment of the New Administrative Capital invades people's right to cast vote on national referendum. (KCCR Oct. 21, 2004, 2004Hun-Ma554, etc. / Unconstitutional)

Episode  
**21**

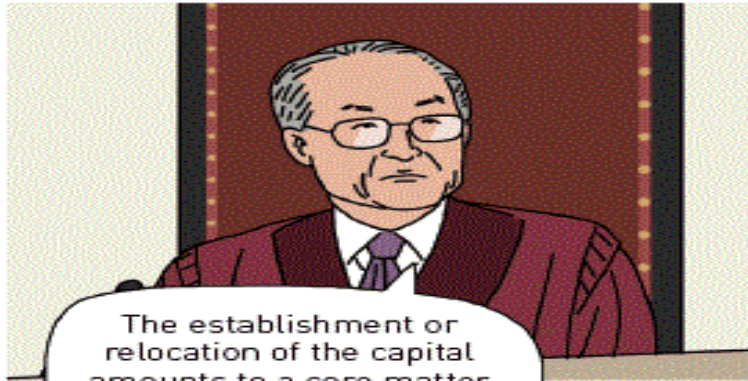
## Relocate the capital city by enacting a special law?

As one of the election pledges, Roh Moo-Hyun announced a plan to relocate the Blue House and government ministries to the Chungcheong area to curb concentration and overpopulation of the capital and boost the lagging economy in rural areas.

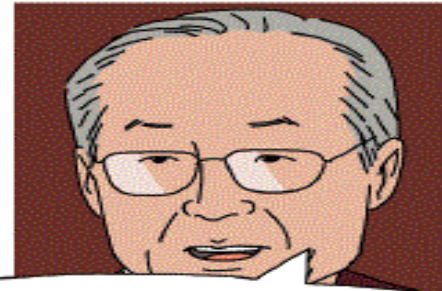
He proposed the Special Act on the Establishment of the New Administrative Capital.



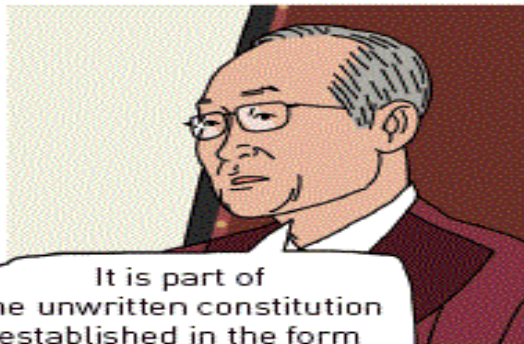
**What was the ruling of the Constitutional Court?**



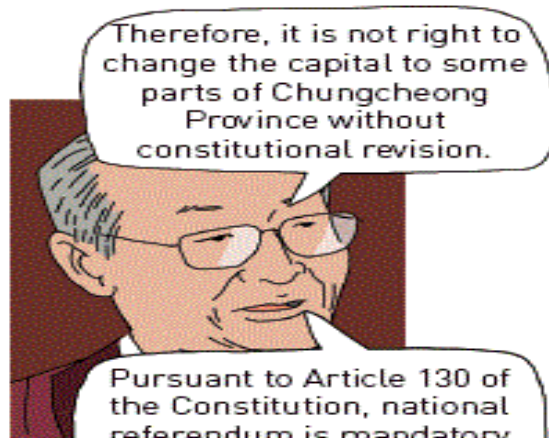
The establishment or relocation of the capital amounts to a core matter that requires national consensus.



The fact that Seoul is the capital of Korea is a constitutional custom that has remained intact since even before the establishment of our written Constitution.

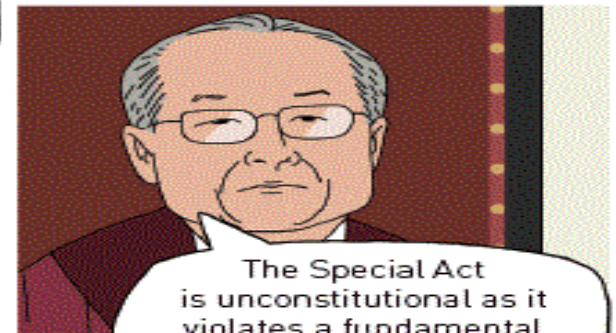


It is part of the unwritten constitution established in the form of a constitutional custom.



Therefore, it is not right to change the capital to some parts of Chungcheong Province without constitutional revision.

Pursuant to Article 130 of the Constitution, national referendum is mandatory for a constitutional revision.



The Special Act is unconstitutional as it violates a fundamental right of the people to participate in politics for a constitutional revision.

# Unwritten Constitution

*[Relocation of the Capital City Case, 16-2(B) KCCR 1, 2004Hun-Ma554, etc.,(consolidated),October 21, 2004]*

## Background of the Case

- **As one of the election pledges, Roh Moo-Hyun, who was then the presidential candidate of the New Millennium Democratic Party, announced the plan to relocate the administrative function of the capital that 'the Blue House and the governmental ministries will be moved to the Chungcheong area as a curb on the concentration and overpopulation at the capital and a solution for the lagging local economy.'**

# Unwritten Constitution

## Background of the Case

- Roh Moo-Hyun was elected as the President at the 16th presidential election held on December 19, 2002.
- Subsequently, the bill for the Special Act on the Establishment of the New Administrative Capital to transfer the administrative function of the capital to the Chungcheong area, which was proposed by the administration, was enacted at the National Assembly, and the Special Act on the Establishment of the New Administrative Capital was promulgated on January 16, 2004.

# Unwritten Constitution

## Background of the Case

- **The complainants in this case, who are Korean citizens domiciled across the nation, filed the constitutional complaint in this case on grounds that the above Act was unconstitutional in its entirety as it was an attempt to relocate the nation's capital without revision of the Constitution, and that the Act violated the right to vote on referendum and the right of taxpayers.**



**Seoul**

**Sejong City**

**Gwangju**

**Busan**

**Jeju Island**

# Unwritten Constitution

## Rationale

- Our nation has a written constitution, and, as such, fundamentally, the source of law for our constitutional law is the text of the Constitution of the Republic of Korea.
- However, notwithstanding the existence of a written constitution, it is impossible to completely provide without omission for all constitutional law matters in the written constitution, and, in addition, the Constitution pursues succinctness and implication as the basic law of the nation.

# Unwritten Constitution

## Rationale

- Therefore, there is room for recognizing certain matters though not written out in the formal code of the Constitution as unwritten constitution or customary constitutional law.
- Especially, there may be certain circumstances where no express provision is necessarily included in the text for those matters that are self-evident or presupposed or that are general constitutional principles at the time of the establishment of the written constitution

# Unwritten Constitution

## Rationale

- However, not all practices or conventions formed concerning constitutional law matters may be recognized as customary constitutional law.
- Instead, strict elements should be satisfied in order for the recognition thereof as the constitutional norm with legal enforceability, and, only those customs satisfying such elements have the same legal force as the customary constitutional law as that of the written constitution.

# Unwritten Constitution

## Holding

- **The Special Act on the Establishment of the New Administrative Capital that intended to relocate the capital of the Republic of Korea by constructing a new capital for administrative function in the Chungcheong Province area was unconstitutional.**

## Unwritten Constitution

# Aftermath of the Case

**As the Special Act on the Establishment of the New Administrative Capital was held unconstitutional by the Constitutional Court, as an alternative reflecting the decision of the Constitutional Court and realizing at the same time the division of powers and the purpose and the intended effect of relieving overpopulation in the capital area, a new special act of the Special Act for the Construction of an Administrative-Function Hub City in the Yeongi-Gongju Area as a Countermeasure to the New Administrative Capital was enacted on March 2, 2005 and promulgated on the 18th of the same month,**

## Unwritten Constitution

# Aftermath of the Case

to establish an administrative-function hub city in the Yeongi and Gongju area of South Chungcheong Province and to relocate thereto all administrative institutions of the central government with the exception of six government ministries of the Ministry of Unification, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the Ministry of National Defense, the Ministry of Government Administration and Home Affairs, and the Ministry of Gender Equality and Family.

# Unwritten Constitution

## Aftermath of the Case

- **A separate constitutional complaint was filed on April 27, 2005 and has been decided constitutional, because the subsequent Act doesn't split the capital in two, thereby not causing temporal and geographical inefficiency in the administration of national affairs and decrease in national competitiveness.**

# Sejong Special Self-governing City



## □ City Government

- First of its kind in Korea
- Established on July 1, 2012
- Incorporating Yeongi, parts of Gongju and Cheongwon

Sejong	465 sq km
MAC	73 sq km







# The Role of Local Cities in Protecting Their Citizens

The Realization of Citizen-Autonomy:  
Establishment of a Basic Plan in  
Protecting and Enhancing Citizen's  
Life with ordinances

**The Korean Constitution provides local self-governing bodies with a legislative power, the competence to legislate ordinances;**

# The Role of Local Cities in Protecting Their Citizens

## Article 117(1) of the Constitution

provides that Local governments shall deal with administrative matters pertaining to the welfare of local residents, manage properties, and may enact provisions relating to local autonomy, within the limit of acts and subordinate statutes.

## The Role of Local Cities in Protecting Their Citizens

While the issues regarding civil liberties and equal rights should largely be regulated by the National Assembly with law, the work of human rights protection can be considered to have been achieved through the principle of separation of powers, by delegating to ordinances the matters which can be adequately regulated at the level of local self-governing bodies.

## The Role of Local Cities in Protecting Their Citizens

Accordingly, local cities have the competence to legislate ordinances so long as they do not contravene legislations of the National Assembly.

The Constitution, in particular, stipulates that the work of local self-governing bodies as dealing with “administrative matters pertaining the welfare of residents,” and therefore the work on the welfare of the local citizens that consists of social rights is included in the task to be carried out by the local cities.

## The Role of Local Cities in Protecting Their Citizens

At present, cities such as Seoul, Gwangju, Gwangmyung, Sungbuk Gu, and Ulsan Dong Gu have established or are in the process of establishing a basic plan for human rights protection based on the ordinance.

# The Role of Local Cities in Protecting Their Citizens

Gwangmyung city Anyang and Moggam Creek  
Cycling and Walking Road – Walking Right or  
Passenger's Right



# The Role of Local Cities in Protecting Their Citizens

**In the case of Sungbuk Gu in Seoul, the basic ordinance on human rights protection has been legislated to devise a basic plan for human rights protection in every 4 years, and the following are to be included in the plan:** (1) the status and development strategy on human rights protection for individual areas, (2) the policy to improve the awareness of human rights and to invigorate the participation of local people, (3) the protection of human rights of vulnerable groups such as women, children, adolescents, elders, persons with disabilities, migrant workers, and marriage migrant women, (4) the development and implementation of a human rights indicator, (5) building the cooperative system for human rights protection, etc [the Ordinance Art.6(20)]

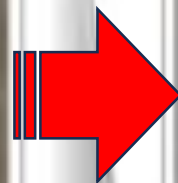




# The Role of Local Cities in Protecting Their Citizens

**Article 6 of the Ordinance regarding the human rights protection and promotion of Youngdeungpo Gu in Seoul also provides the basis for the establishment of the basic plan.**

The development of the basic plan in every 5 years is a special feature. Each basic plan should include an analysis and evaluation of the previous basic plan, the general direction and objectives of human rights protection and promotion, the task and implementing strategy for individual areas, the means to raise fund for the execution of program, and other issues concerning the human rights protection and promotion of citizens.





# The Role of Local Cities in Protecting Their Citizens

N.B. Despite the fact that a self-governing on its own may contribute towards human rights protection, various factors in reality may lead to the opposite outcome, and as circumstances require, the effort to maximize the human rights protection could become incapacitated.

**From that perspective, the roles that the central government should play for human rights protection are the establishment of a NAP and the function of proposing, observing, and monitoring the guideline on improving the level of human rights protection, and it would be desirable to have local cities take a role in developing and enforcing a human rights implementing strategy that ensures the maximum participation of local citizens.**

# The Role of Local Cities in Protecting Their Citizens

## Developing tasks for local cities

With respect to the freedom of movement and residence local cities shall i ) widely implement a barrier-free certification system, ii) increase the proportion of low-floor buses and special transportation (for example, on-call taxis for the physically challenged), iii) create pedestrian-first zones in order to enhance convenience of transportation for those who have difficulty using transportation.



▲ 머리주의

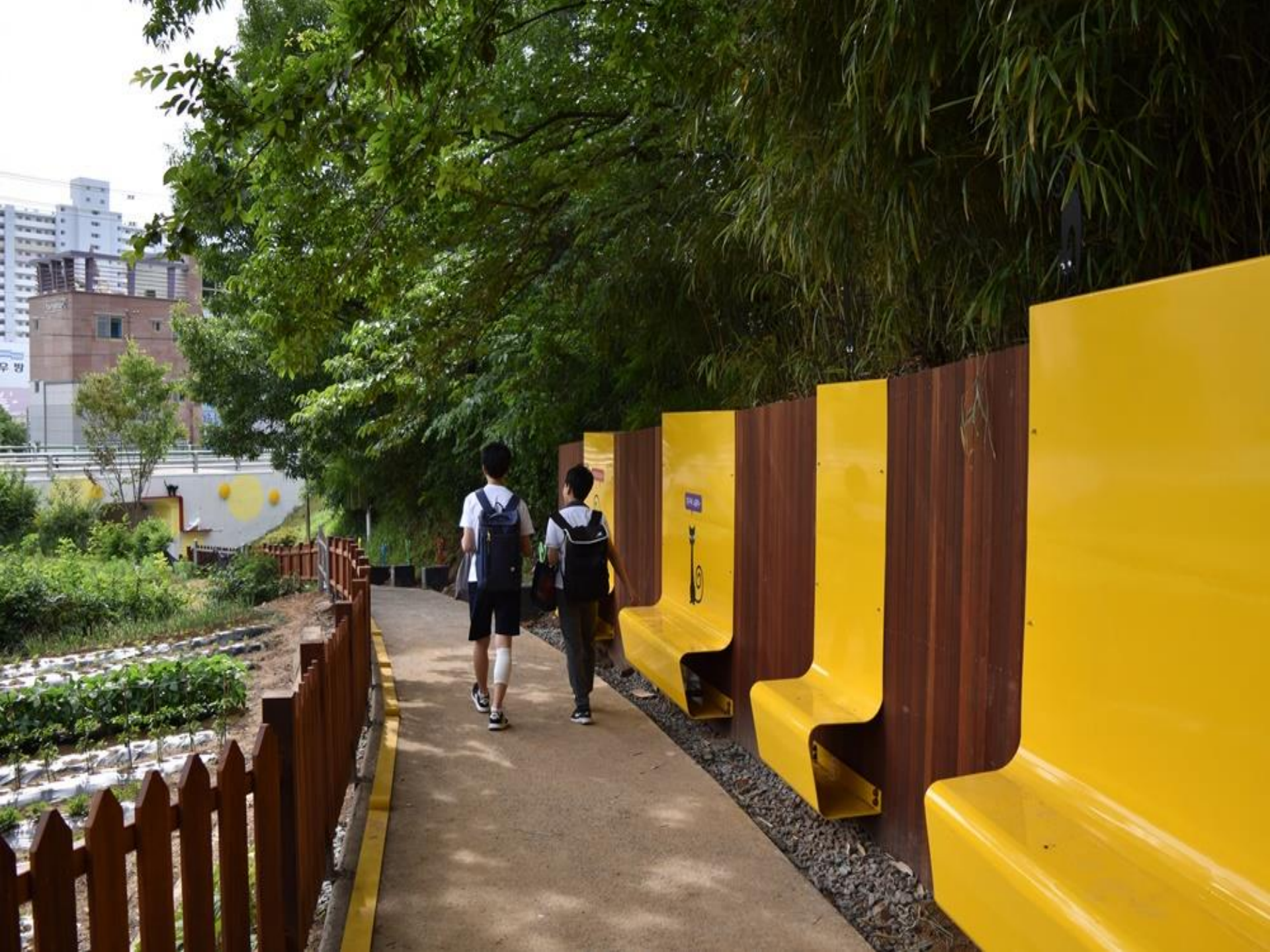
서울시 장애인 콜택시



# The Role of Local Cities in Protecting Their Citizens

## Developing tasks for local cities

Further, local cities are expected to promote and protect economic, social, cultural rights and therefore with respect to the right to education i) shall provide children from low-income families with funds and infrastructure for education, ii) support the continuing education of disabled adults, and iii) secure funds and promote the need for providing services to disabled persons, and iv) they **shall improve the condition of school neighborhoods and redefine school facilities.**



# The Role of Local Cities in Protecting Their Citizens

## Developing tasks for local cities

Concerning the right to health, welfare and environment, the local cities shall i) establish a system for comprehensively managing and supporting elderly persons with dementia, ii) create plans for strengthening sex education in schools, and iii) **education programs for preventing smoking and alcohol consumption.** Also, local cities shall iv) increase education and promotion for preventing drug use, and v) create and implement measures to deal with climate change such as greenhouse gas effects.

보건복지부 지정 알코올전문병원

중독자의  
인간다움 삶과  
생명을 지키는  
카프성모병원

카프성모병원



합계 보건복지부  
알코올 교육 프로그램

상: 회복자의 가족, 알코올 문제에 관심 있는 분  
시: 매우 원만한 모습

# The Role of Local Cities in Protecting Their Citizens

## Developing tasks for local cities

With respect to the right to culture and art, local autonomous entities shall i) create public libraries and readily accessible, small sized libraries, ii) build one cultural center per local autonomous entities, iii) and support culture and arts education for marginalized residents.



# The Role of Local Cities in Protecting Their Citizens

## Developing tasks for local cities

As for the right to family life, local cities shall i) develop and provide child-care services and ii) child care support services for families with disabled children. Local autonomous entities should protect and promote human rights of the socially vulnerable and minorities.



# The Role of Local Cities in Protecting Their Citizens

## Developing tasks for local cities

Moreover, local cities should i ) enhance its responsibility to care and protect children, ii ) strengthen basic health and wealth services for children, iii) enhance child care and benefits for education, and iv) **protect children's right to participate.**



# The Role of Local Cities in Protecting Their Citizens

## Developing tasks for local cities

Local cities must i ) provide services for migrant workers' stable sojourn, ii) support social integration of the inter-country marriage families, iii) support foreign women victims of sexual trade, iv) prevent violence against migrant women and provide support and assistance to the victims, and v) establish facilities for support for recognized refugees and social welfare assistance to them, and protect human rights of sexual minorities.



# 다문화가족지원센터 개소식

2010. 1. 29(오류2시)

가정군



15년



한국어 교실

한국어교육원



# Conclusion

Once the central government establishes such a framework the local cities shall be able to create resident friendly and resident participatory action plans for citizens and thereby improve the level of their life and realize a human rights friendly city.

# Conclusion

**Local cities need to continuously seek ways to promote human rights by initiating programs such as resident town hall meetings, human rights grievance programs, including resident members in the human rights center, and by running a human rights experience center.**



Tnews

# Conclusion

**In short, by sharing a cooperative and organic relationship the central government and local cities will contribute to the enhancement of the overall quality of the people's life and human rights and reduce the gap in human rights protection.**



**Thank you very much!**