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Researching Korean Constitutional Law and The Constitutional Court of Korea

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Abstract

This article introduces Korean legal materials to English speakers wishing to undertake the study of Korean constitutional law and cases. The aim is to highlight relevant material provided by the Constitutional Court of Korea (CCK). Looking back over the last three decades, as the CCK has expanded and stabilized its role in the Korean constitutional system, the basic materials available on Korean constitutional law have grown in volume, partly due to the CCK's efforts. However, there is still room for improvement in the CCK's quest to become a leading court of constitutional adjudication in the Asian region, comparable to the positions of the German Federal Constitutional Court and the US Supreme Court on the world stage. Research on Korean constitutional law and cases will gain in significance once the permanent Research Secretariat of the Association of Asian Constitutional Courts and Equivalent Bodies is established in Seoul in 2017. Therefore, an expansion in available research materials on Korean constitutional law is to be expected in the near future. An overview of the position of the CCK in South Korea's constitutional system provides institutional context. This is followed by a discussion of CCK jurisdictions and their links to the case citation system. Research materials beyond case law are also introduced; finally, an assessment is made of the availability and potential growth of constitutional research material.

Key Words: constitutional court of korea, researching korean law, korean constitutional court cases, legal resource in english, comparative constitutional law, korean constitutional law material, association of asian constitutional courts

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Introduction

The following article introduces Korean legal materials to English speakers wishing to undertake the study of Korean constitutional law and cases. The first part aims to provide the reader with the institutional context of Korean constitutional law by summarizing the history of the Constitutional Court of Korea (CCK) and discussing its relationship with the Supreme Court of Korea. The second part provides a brief sketch of the CCK's jurisdiction, especially the relationship between jurisdictional categories and case citations. Third, available materials on Korean constitutional case law and Korean constitutional law in general are discussed, divided into Korean and English language sources. The fourth part places the available materials in comparative perspective by first highlighting the easy accessibility of the materials in Korea, and then regionally comparing the most accessible resource, the comprehensive CCK website, with those of equivalent institutions in Japan and Taiwan, and lastly, placing the CCK in a global context by examining its efforts in long-term strategic research and shaping constitutional law across borders.

In the last three decades, as the CCK has expanded and stabilized its role in the Korean constitutional system, the basic materials available on Korean constitutional law have grown in volume, partly due to the CCK's efforts. The rise of the Internet in particular has enabled the CCK to provide legal resources to practitioners, scholars, and the interested public across the world. In line with this trend, the number of Korean legal texts, including academic literature on the CCK and constitutionalism in Korea, written in both English and Korean, has also been growing steadily. However, one should keep in mind that even though most of the important cases are available in English, many of the materials, especially important critical literature, remain available only in Korean, often with only an abstract provided in English.[1] There is thus still significant room for

1) Many Korean Internet sites do provide an English language option, but the English pages usually only provide for introductory descriptions of materials or a translation of the table of contents. Also, currently available Korean-English translation software programs are not sophisticated enough to accurately translate legal documents.

improvement in the CCK's quest to become a leading court of constitutional adjudication in the Asian region, comparable to that of the German Federal Constitutional Court or the US Supreme Court.

I. History of the CCK

1. Origins

Even though the Republic of Korea is equipped with a Supreme Court, it nevertheless decided in 1988 to establish a specialized constitutional court. The CCK thus exists today alongside the Supreme Court of Korea. One key reason for the choice of introducing a specialized court dealing with constitutional adjudication, while retaining a central highest court of ordinary jurisdiction, was the founding of the Sixth Republic in 1988. The new Constitutional Court became a key part of the constitutional system of the new regime.

While amending the constitution in 1987, political factions were divided on how to structure the constitutional adjudication system. Eventually, it was agreed that an independent Constitutional Court was to be established and charged with adjudicating all constitutional matters, including review of the constitutionality of statutes and other issues such as impeachment. The Constitutional Court became one of the highest constitutional organs of the Sixth Republic of Korea.

The choice of a specialized body for constitutional adjudication was not without precedent in Korea. Ever since the First Republic (1948–1960) with its Constitutional Committee, the various Republics of postwar South Korea had some form of separate institution dealing with constitutional matters. The constitution of the Second Republic (1960–1961), for example, contained provisions for a constitutional court. Due to the very brief existence of the Second Republic, the envisaged constitutional court was never set up and thus existed only on paper. The Fourth (1972–1981) and Fifth Republics (1981–1988) opted for the model of a constitutional committee. Only the Third Republic (1961-1972) adopted a totally different model of constitutional adjudication, choosing US-style judicial review by the Supreme

Court.[2] Of course, due to Korea's experiences with political turbulence and dictatorship, the effectiveness of these institutions is questionable. It is thus not surprising that before the establishment of the current Constitutional Court, antecedent institutions for constitutional review made only three rulings since 1960. In comparison, the current Constitutional Court has been very active from the start, having given more than 400 judgements in its first 12 months of activity.[3]

The Constitutional Court of the Sixth Republic is in fact modelled closely on continental European constitutional courts, especially the German Federal Constitutional Court.[4] A constitutional court of this type is classified as a concentrated model[5] of strong-form judicial review. The key attribute of this model is the fact that judicial constitutional oversight is concentrated within one organ, typically the Constitutional Court or the Supreme Court. An alternative system is the model of diffuse judicial review by various courts with ordinary jurisdiction, as is practiced in the US.[6] Notably, South Korea has, like Germany, adopted the concentrated model of strong-form judicial review by establishing an independent constitutional court, but unlike Germany, it has also retained a Supreme Court as the apex of a hierarchical system of ordinary jurisdiction. This co-existence of two powerful courts has been a source of friction.

2. The CCK and the Supreme Court

"The constitution of Korea separates judicial functions between the

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2) Dong-Heub Lee, *Introduction to the Constitutional Court of Korea and Its Role in Control of Government Power*, in Constitutional Justice of the Republic of Korea: reaching out to the world [segyelo naaganeun hangug-ui heonbeobjaepan] Vol. 2, Bagyeongsa: Seoul, 1-2 (2015).

3) See "Case Statistics of the Constitutional Court of Korea", especially in the year of 1988 and 1989: http://english.ccourt.go.kr/cckhome/eng/decisions/caseLoadStatic/caseLoadStatic.do (last access: 2016. 12. 10).

4) Chaihark Hahm, *Conceptualizing Korean Constitutionalism: Foreign Transplant or Indigenous Tradition?* 1(2) Journal of Korean Law, 151, 154 (2001).

5) Matthias Jestaedt, *Phänomen Bundesverfassungsgericht. Was das Gericht zu dem macht, was es ist*, in Das entgrenzte Gericht: Eine kritische Bilanz nach sechzig Jahren Bundesverfassungsgericht 106 (Matthias Jestaedt, Oliver Lepsius, Christoph Möllers und Christoph Schönberger, eds., 2011).

6) See Allan Brewer-Carías, Judicial Review in Comparative Law 136 (1989).

ordinary courts and the Constitutional Court by distinguishing between the judicial power of the Supreme Court of Korea, the highest judicial tribunal, and other lower courts in Chapter 5, and that of the Constitutional Court in Chapter 6."[7] The judicial function is thus constitutionally assigned to two institutions: the hierarchical system of ordinary courts with the Supreme Court at its apex and the separate Constitutional Court.[8]

The Constitution's Article 101(1) deals with the judiciary, entrusting courts with judicial power. Courts are to exercise judicial power fully, but only in accordance with the constitution. One major limit to the judicial power of ordinary courts is thus found in Article 111 of the Constitution, which lays down the nature of the Constitutional Court's exclusive jurisdiction. Restrictions on the judiciary related to the Constitutional Court are also found in other articles. For example, Article 107(1) states that "the court shall request for constitutional review from the Constitutional Court when the constitutionality of a statute is at issue in a trial and adjudge the matter in accordance with the decision of the Constitutional Court." Therefore, ordinary courts cannot decide on their own whether a challenged statute is unconstitutional. When the constitutionality of a statute is in question, the ordinary court is to halt proceedings, request review by the Constitutional Court, and then follow the CCK's decision. All courts are bound by a CCK decision to invalidate a statute.[9]

The establishment of the Constitutional Court thus inevitably meant a reduction in the powers of the Supreme Court, especially since the CCK also enjoys a status "comparable to those of other Korean national authorities with the highest level of governmental authority" and therefore "the Chief Justice of the Constitutional Court is not subordinate to the leaders of other branches of the judiciary or government."[10] However, due to various rules of administrative procedure, such as the appointment of CCK judges and responsibility for training the judiciary, the Supreme Court is often

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7) Kang-Kook Lee, *The Past and Future of Constitutional Adjudication in Korea*, in Current Issues in Korean Law, The Robbins Collection 8 (Laurent Mayali and John Yoo, eds., 2014).

8) Dong-Heub Lee, *supra* note 2, at 2.

9) Kang-Kook Lee, *supra* note 7, at 8-9.

10) Ji-bong Lim, *Judicial Intervention in Policy-Making by the Constitutional Court in Korea*, in Current Issues in Korean Law, The Robbins Collection 356 (Laurent Mayali and John Yoo, eds., 2014).

perceived as more significant by the governmental bureaucracy and the judiciary, and the CCK does not enjoy widespread support among these groups.[11] A power struggle between the CCK and the Supreme Court thus developed over the issue of who had the final power to review legal norms, especially since both institutions must justify their continued existence and mandates.

The jurisdictional scope of the Supreme Court was clarified in a legal challenge to the Judicial Scrivener exam. In this case, it was held that even though the CCK retained the power of final judicial review, decision-making power over administrative rules and orders were the purview of the Supreme Court. By thus threatening the position of the CCK, this case did not contribute to alleviating the power struggle between the two courts.[12]

The CCK strongly asserted its position in a case on the constitutional review of judgements of ordinary courts.[13] This case is significant because it was the first occasion on which the CCK struck down a Supreme Court judgement. The CCK relied on the basis that the Supreme Court ruling in question ran counter to an earlier unconstitutionality decision of the CCK. In striking down the Supreme Court case, the CCK made a decision of limited constitutionality, ruling by 6 to 3 that the challenged Article 68(1) of the Constitutional Court Act should not exclude from constitutional review those judgements that applied laws previously invalidated by the CCK. Thus, even though most cases dealt with by ordinary courts remain beyond the CCK's jurisdiction, this decision created a special category of cases in which the CCK can exert its authority over the Supreme Court.

The conflict between the CCK and the Supreme Court has not yet been finally settled; when researching constitutional law and constitutional case law in South Korea, it is thus important to be aware that the CCK may not possess the unquestioned authority that its status might imply. In Germany, for example, a ruling by the German Federal Constitutional Court (FCC) carries great weight and is generally unquestioned by other constitutional actors.[14] While a rivalry does exist in Germany between the FCC and the

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11) *Id.*

12) *Id.*, at 355-356.

13) [9-2 KCCR 842, 96Hun-Ma172, etc., December 24, 1997]

14) For a summary of the "status question" of the German Federal Constitutional Court,

country's highest court of ordinary jurisdiction, the *Bundesgerichtshof* (BGH), this latter institution is only responsible for civil and criminal law. Germany possesses a functionally split legal system, with separate highest courts of appeal for ordinary jurisdiction (civil and criminal law), administrative law, social law, and financial law.[15] The closest rival to the German FCC in Germany is thus not as significant nationally as the Supreme Court is in South Korea, because the Korean Supreme Court is the highest court of appeal for all jurisdictions. Its fractious relationship with the comparatively new CCK in the realm of constitutional law may well continue into the foreseeable future.

II. Jurisdiction

1. Tasks of the Constitutional Court

In order to research constitutional law cases, one must be aware of the categorization of the different jurisdictions of the CCK. The case citation system of CCK cases is based partly on what type of task the CCK is fulfilling in a given judgement. Before focusing on how to research constitutional law cases in South Korea, a brief introduction to the jurisdictional categories of CCK cases is necessary.

First, adjudicating the constitutionality of statutes is a key task of constitutional adjudication. Legislation is reviewed for its compatibility with the constitution and can be nullified if the law in question is deemed to conflict with constitutional provisions. This mechanism serves as a check against potential legislative abuse of power. Constitutional adjudication has thus often been discussed as fulfilling a "counter-majoritarian" function.[16] However, this mechanism is not without its critics; there are countries like the UK where the judiciary is not permitted to question the legal validity of

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see Justin Collings, Democracy's Guardians: A History of the German Federal Constitutional Court 9-14 (2015).

15) German Constitution (Grundgesetz), Art. 95(1).

16) See Barry Friedman, *The History of the Countermajoritarian Difficulty, Part One: The Road to Judicial Supremacy*, 73 N.Y.U. L. Rev. 333, 334 (1998).

legislation and cannot strike down acts of Parliament.[17] However, the South Korean model is based on strong-form judicial review, as found in countries such as the US and Germany, and the ability to nullify statutes on grounds of unconstitutionality is thus firmly established as one of the CCK's mandates.

Second, the CCK deals with the constitutional guarantee of individual rights. If governmental power is deemed to have infringed these rights, the individual whose rights are deemed to have been infringed can file a constitutional complaint, which is a mechanism to enable individual citizens to access the CCK directly by becoming a claimant in the case. This jurisdiction of the CCK forms the core component of rights protection in South Korea, which in turn bolsters democratic progress.

Third, impeachment proceedings against high-ranking public officers are also under CCK jurisdiction. In the South Korean context, the CCK has the final say in this matter, while in other states impeachment proceedings are often a matter for the legislature. There have also been instances in other constitutional systems where besides parliaments or the courts, a separate institution was responsible for impeachment proceedings, for example the "Control Yuan" under the 1947 constitution of the Republic of China.[18] The CCK's exclusive jurisdiction in this matter in South Korea is therefore noteworthy, since it thus hardwired a judicial element into the impeachment process

Fourth, the CCK can adjudicate disputes between state organs regarding their competencies. Such disputes may arise between central and local governments or between different state agencies regarding the scope of their duties and powers. An expansion of powers beyond the originally intended boundaries not only creates a problem for the division of powers, but also risks creating inefficiencies in the machinery of government. In settling competence disputes, the CCK both protects the Constitution and ensures the smooth functioning of the state.

Fifth, the CCK is responsible for the dissolution of political parties. The concept of "militant democracy" aims at making it possible for democratic

17) For a detailed overview of the historical development of the doctrine of parliamentary sovereignty, see Jeffrey Goldsworthy, The Sovereignty of Parliament 22-228 (1999).

18) 1947 Constitution of the Republic of China, Art. 90.

institutions to defend the existing liberal democratic political order through various means, and disbanding political parties that threaten democracy is one such tool. Given South Korea's experience of authoritarianism, it is not surprising that the CCK possesses the power to dissolve political parties. This task is undertaken upon the request of the executive, after deliberation by the State Council. Even though the main aim is to protect the democratic system, this function of the CCK also serves to protect political parties from potentially arbitrary bans by the executive. The involvement of the judiciary in such issues thus provides an important check on executive power.

2. The relationship between tasks and case classification

As in the above description, the tasks of the CCK are usually listed in a particular order: constitutional adjudication, constitutional complaint, impeachment proceedings, competence disputes, and dissolution of political parties. This order determines the classification abbreviations used in case citations. When researching constitutional cases, one inevitably will find several abbreviations. For non-Korean speakers, this classification is not easy to understand at first sight, but each refers to one of the different jurisdictions described above.

The acronyms are the following: Hun-Ka, Hun-Ba, Hun-Ma, Hun-Na, Hun-Ra, and Hun-Sa. "Hun" stands for the Korean word for constitution. The letters following "Hun" indicate the CCK jurisdiction with which a case is concerned: Ka, Ba, Ma, Na, Ra, and Sa. They refer to the first six letters of the Korean alphabet. The review of the constitutionality of statutes can in fact be filed as an individual constitutional complaint, thus technically providing a further category of jurisdiction in addition to the five categories already mentioned.

The case codes simply signify what jurisdiction the reader of the case is dealing with: constitutionality cases referred by ordinary courts according to Art. 41 of the Constitutional Court Act (Hun-Ka); constitutionality cases filed by an individual in the form of a constitutional complaint according to Art. 68(2) of the Constitutional Court Act (Hun-Ba); constitutional complaints regarding constitutional rights filed by individuals according to Art. 68(1) of the Constitutional Court Act (Hun-Ma); impeachment cases

submitted by the National Assembly according to Art. 48 of the Constitutional Court Act (Hun-Na); cases involving competence disputes between government agencies filed according to Art. 61 of the Constitutional Court Act (Hun-Ra); and cases concerned with various motions (Hun-Sa). The dissolution of a political party falls into the Hun-Da category, but there has been only one case in this category to date, in 2015. Therefore this category is rarely found in the official list of categories of jurisdictions in case publications prior to 2015. The listing of Hun-Da can be safely anticipated in future case collections. A minor category is Hun-A, which deals with special cases such as re-adjudication. The abbreviation of categories is demonstrated as follows: "96 Hun-Ka 2" refers to a constitutionality case referred by an ordinary court. The numeral "2" refers to docket number No. 2. The numerals "96" refer to the year, which in this case is 1996.[19)]

III. Research

1. CCK cases as sources of law

As a country that has been strongly influenced by the continental European civil law system, South Korea's key sources of law are by definition legal codes, as are individual legislative acts and statutes. In comparison to common law countries, case law is relatively less significant, but the judgements of the CCK are very influential since they aim to establish final settlements to constitutional disputes in a variety of contexts. It is thus also very noteworthy that almost all CCK case law has been systematically translated into English, which is a vital step in opening up South Korean constitutional jurisprudence to greater international scrutiny. Therefore, even though CCK cases are strictly speaking not directly sources of law since "cases are not treated as precedent as under the common law system,"[20)] they offer an easy way to understand constitutional law in South

19) Dong-Heub Lee, *supra* note 2 at 23.

20) Young-Hee Kim, *Introduction to Korean Legal Materials*, 2(1) Journal of Korean Law 125, 152 (2002).

Korea due to their impact and accessibility.

2. The CCK and resources in English

It should be noted that not all CCK cases are translated into English. However, landmark cases and other cases deemed to be of special constitutional importance are available in English. They can be found via the English language section of the CCK's website. Important CCK judgements are also available in English in print at the CCK itself. These consist of roughly 30 to 40 cases a year, published in one volume, with hundreds of copies distributed to public and research libraries. These volumes are made available in print to libraries abroad upon request, while at the same time also being accessible free of charge in digital format on the CCK website. As a comparison, in recent years approximately 1,700 cases are being filed every year and around 70-100 cases with lengthy arguments are selected and published in Korean every year in the *Korean Constitutional Court Report* (Honpopchaepanso Pallyejip).[21] The judgements published in English are structured as follows, using an example of constitutionality review: introduction of the case, subject matter under review, arguments of the complainants, review on the merits, review on the constitutionality of the provisions at issue, conclusion, and concurring and dissenting opinions, if any.

Apart from providing systematic translations of CCK case law in print and online, the CCK also provides a variety of other publications in English. They include annual case publications and official histories of the CCK. In 2018, the CCK will celebrate its 30th anniversary, and detailed publications are available about its first and second decades. It is expected that 2018 will see publication of a review of the third decade's work. The volume published in celebration of the CCK's 20th anniversary contains the following chapters: an introduction of constitutional adjudication to Korea and its later transformation; a 20-year review of the functioning of the CCK; and summaries of up to 100 of the most important cases. This volume runs to approximately 600 pages and serves as a significant resource for non-

21) About various Korean resources which are available from the CCK in print form, see the following section in this paper ("C. The CCK and resources in Korean").

Korean speakers. It is available free of charge on the CCK website. The CCK also provides shorter information brochures of up to 30 pages that give an overview of the CCK, including the backgrounds of the Justices, the organization of the CCK, and the history and current state of constitutional adjudication in South Korea. Interestingly, the relationship between the CCK and the Korean Supreme Court is also explained.[22)]

International interest in the South Korean system of constitutional adjudication has grown in recent years, especially in a comparative context. Examples include academic works on South Korean constitutional adjudication which compare it to a limited number of other jurisdictions (Ginsburg)[23)] or by including the Korean experience within key chapters of textbooks on constitutional developments in Asia (Yeh and Chang).[24)] Scholars from Taiwan publishing in English play an especially interesting role. This is because Korean constitutionalism is not only subjected via English publications to international academic analysis, but is also specifically being analyzed by Asian constitutional law scholars and being compared specifically with another case study on the growth of constitutionalism in Asia. South Korea and Taiwan are often the subject of comparative case studies[25)] because their democratic and constitutional movements began roughly at the same time (the late 1980s) and both have arguably transitioned from authoritarian rule to functioning constitutional democracies over the last three decades.

Unfortunately, an up-to-date and authoritative volume on the Korean Constitution is lacking. Hart Publishing has published a series of volumes, each of which deals with a national constitution and provides contextual analysis. In the face of the active role of the CCK, it is remarkable that no volume on South Korea is currently available in this series, whereas volumes

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22) Official CCK brochure in English (2013), available at http://library.ccourt.go.kr/en/bbs/Extend.Detail.ax?bbsID=8&articleID=46 and http://library.ccourt.go.kr/site/conlaw/download/publications/1338546386275.pdf. (last access: 2016.10.15).

23) Tom Ginsburg, Judicial Review in New Democracies (2003).

24) Jiunn-rong Yeh, Kevin YL Tan, Li-ann Thio, and Wen-Chen Chang, Constitutionalism in Asia: Cases and Materials (2014).

25) For example, David S. Law, Judicial *Comparativism* and Judicial Diplomacy 163 U. Pa. L. Rev. 927 (2015); Tom Ginsburg, *supra* note 23.

on the constitutions of China, Japan, and most recently Taiwan[26] have appeared. However, the Korean Legislation Research Institute has published a volume on Korean law, which includes a substantial chapter on Korean constitutional law.[27] Such publications may help compensate for the lack of comprehensive, updated English volumes on Korean constitutional law.

C. The CCK and resources in Korean

The Constitutional Court's official website (http://www.ccourt.go.kr), provides the most easily accessible information on new and important decisions in abstract form. The latest information can be found at *Recent Decisions and Proceedings* (Choegeun Seongo Byeonlon Sageon). Statistical information are available under the section *Statistics of Constitutional Adjudication* (Heonbeobjaepan Tong-gye) of the CCK homepage, including a statistics chart of pending, decided and dismissed cases. Selected decisions finding unconstitutionality by the CCK can also be found on the CCK website. Searches can be performed via various categories, such as by keyword, date, case number, name of case, or name of act by using various Boolean operators. Information can be retrieved most efficiently by searching keywords or names of acts. The site provides the full text of selected decisions, which are indicated by a purple star. New decisions can be downloaded as HWP files or PDFs.[28]

Various Korean resources are also available from the CCK in print form. The *Korean Constitutional Court Gazette* (Honpopchaepanso Kongbo) has

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26) See Qianfan Zhang, The Constitution of China: A Contextual Analysis (2012); Jiunn-rong Yeh, The Constitution of Taiwan: A Contextual Analysis (2016); Shigenori Matsui, The Constitution of Japan: A Contextual Analysis (2011).

27) Jongcheol Kim, *Constitutional Law*, in Introduction to Korean Law 31-84 (KLRI, ed., 2013).

28) It is noteworthy that Internet Explorer possesses a firm lead in the internet browser market of South Korea, especially in the context of government institutions. Other browsers at times do not perfectly function. The dominance of Internet Explorer can be partly traced back to a law passed in the late 1990s to facilitate ecommerce security. See Chico Harlan, *South Korea is stuck with Internet Explorer for online shopping because of security law*, Washington Post (November 5, 2013) https://www.washingtonpost.com/world/asia_pacific/due-to-security-law-south-korea-is-stuck-with-internet-explorer-for-online-shopping/2013/11/03/ffd2528a-3eff-11e3-b028-de922d7a3f47_story.html (last access: 2016.9.15).

been issued since 1993 and monthly since 1999 (it had been issued bimonthly from 1996 to 1999, and issued five times per year till 1995). Volumes of the *Korean Constitutional Court Report* (Honpopchaepanso Pallyejip) have been published annually since 1993, with one volume annually before that year. One can view the full text of selected decisions in these volumes. Each volume includes a Table of Contents and a Table of Decisions. The *Korean Constitutional Court Abstract Report* (Honpopchaepanso Pallye Yojijip) has been issued since 1999 in loose-leaf binding format. A commentary series by former and current Constitutional Research Officers on decided cases has also been published as "*Commentaries of Constitutional Court Decisions* (Heonbeobjaepanso Gyeoljeong Haeseoljib)" since 2002. At the Constitutional Research Institute (CRI) of the CCK, one research officer is usually responsible for a specific study and has to complete one report for a selected subject every six months. Even though these publications do not necessarily represent the official position of the institution, they are significant because they often serve as a basis for public discussion in the relevant subject area. These reports are subject to high quality control, since they go through at least three rounds of internal discussion at the CRI before publication.

IV. Significance in comparative perspective

According to Tom Ginsburg, the CCK makes a valuable case for further research:

> The Constitutional Court of Korea has just celebrated its twentieth anniversary, a significant milestone. Of the five designated constitutional courts in East and Southeast Asia (the others being found in Indonesia, Taiwan, Thailand and Mongolia) it is arguably the most important and influential, and therefore deserves close scrutiny as a case study in judicialization of constitutional politics in Asia.[29)]

29) Tom Ginsburg, *The Constitutional Court and the Judicialization of Korean Politics*, in New Courts in Asia 145-57 (Andrew Harding and Penelope Nicholson, eds., 2009).

Thus the available material to research constitutional law in South Korea as provided by the CCK in its most accessible form, its online presence, should be put in comparative perspective in order to assess its current significance.

1. The domestic level

Numerous important decisions are currently being handled by both the Constitutional Court and the Supreme Court. These are not only widely discussed among the legal community but also by the wider public.[30] The CCK "has processed thousands of complaints from ordinary citizens, and has no doubt helped give ordinary Koreans a sense of rights they had lacked for so many decades under various forms of authoritarian rule."[31] The role of the Internet has also become increasingly important in facilitating access to legal resources, and these "phenomena are expected to balance the sense of responsibility and the sense of right in Korea."[32]

The CCK is regularly ranked as one of the most trusted and effective institutions by the Korean public.[33] According to Ginsburg, a "gradual judicialization of Korean politics" has thus occurred, "in which major social and political questions are increasingly determined in the courtroom rather than the more conventional political institutions."[34] Therefore, the use of judgements of the Constitutional Court and relevant literature not only gives an overview of current legal issues in Korea, but also provides valuable additional background to the political and social conditions and changes that shape constitutional law in Korea.[35] Engaging directly with

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30) Kuk Cho, Litigation in Korea 214 (2010).

31) Ji-Bong Lim, *The Korean Constitutional Court, judicial activism, and social change*, in Legal Reform in Korea 18 (Tom Ginsburg, ed., 2004).

32) Kuk Cho, *supra* note 30.

33) Kang-Kook Lee, *supra* note 7, at 3; also see http://www.lawissue.co.kr/news/articleView.html?idxno=23292 (last access: 2016. 12. 10)

34) Tom Ginsburg, *supra* note 29, at 146..

35) For example, the adultery case decision of CCK (Decision of Feb. 26, 2015, 2009Hun-Ba17 · 205 (Consolidated). For more details, see the Seokmin Lee, *Adultery and the Constitution: A Review on the Recent Decision of the Korean Constitutional Court on 'Criminal Adultery'*, 15(2) Journal of Korean Law 325-53 (2016)

cases of constitutional adjudication is of great significance to Korean and non-Korean scholars.

Since CCK judgements provide final settlements of constitutional conflicts, they are frequently referred to by scholars, legal professionals, journalists, and the wider public. The accessibility of this case law is provided in part by an Internet database and in part by a traditional library. The CCK homepage offers a search engine of its judgements, including English terms. The CCK library was established in 1988, the year of the CCK's foundation, and serves as the largest library of public law in Korea. It provides a full range of legal information services to support the CCK's constitutional adjudication and research. The library is open to the general public and thus offers all citizens easy access to high-quality information related to constitutional and public law; it holds approximately 130,000 volumes of publications and a variety of electronic resources, including academic databases.[36] Databases on offer include domestic databases and international legal databases such Lexis-Nexis, Hein-Online, Westlaw, and Juris. In the past, these databases only contained very limited information on Korean law,[37] but journal publications on Korean constitutional law are increasing.[38]

Apart from materials from Korea, the library provides legal resources from other jurisdictions such as Japan, Germany, France, Austria, the UK, and the US.[39] Up to 595 different law journals can be accessed, of which 181 are from other countries.[40] Beyond facilitating the conduct of research in English, the library also provides IT services for users with disabilities. Remarkably, in order to expand the CCK's potential audience, twenty-five landmark cases are explained in comic strip form, accessible online and in print in Korean and English.[41]

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36) http://library.ccourt.go.kr/en/bbs/Extend.Detail.ax?bbsID=8&articleID=44 (last access: 2016. 10. 15).

37) See Young-Hee Kim, *supra* note 20, at 155-156.

38) See for example *supra* note 24.

39) http://library.ccourt.go.kr/en/bbs/Extend.Detail.ax?bbsID=8&articleID=41 (last access: 2016. 10. 15).

40) *Id*.

41) For example, see http://english.ccourt.go.kr/cckhome/eng/decisions/landmarkcases/landmarkList.do (last access: 2016. 10. 15).

2. The regional level

The efforts of the CCK to make materials regarding constitutional adjudication public and thus easily accessible, especially in English, are an important step from a comparative point of view. According to Asian authors such as Chang and Yeh, in East Asia "Japan, South Korea, and Taiwan are the most recognizable as constitutional democracies."[42] Some important differences relevant for researchers of constitutional law can be pointed out when comparing the South Korean CCK website to the respective websites of Taiwan's Judicial Yuan and the Japanese Supreme Court.

In Taiwan, the institution responsible for constitutional adjudication is the Judicial Yuan (JY). Its online presence provides various tools for constitutional research. Especially useful are the bilingual glossary, a list of the latest amended laws, a search engine for JY interpretations (judgements), and statistics on the procedural handling of cases. However, when compared to the CCK's online presence, there is a notable lack of additional downloadable publications regarding the JY itself. Given that it is the oldest constitutional court in East Asia,[43] one may have expected to find substantive publications on the JY's history and performance over the years. The institution's origin and development are both described, but only in relatively short sections. In general, the information on the powers and functions of the JY are rather brief. Thus, even though it is easy to find case summaries, the background to this important institution in the development of Taiwan's democracy is difficult to discern from its own online presence and the materials it makes available.

Japan's Supreme Court also provides a search engine for its cases. However, one major drawback for non-Japanese readers is the following statement on the search engine website: "All of the translations of judgments on this website are unofficial. The Supreme Court of Japan assumes no responsibility for the accuracy of the translations." This is

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42) Jiunn-rong Yeh and Wen-chen Chang, *The Emergence of East Asian Constitutionalism: Features in Comparison*, 59(3) The American Journal of Comparative Law 805, 807 (2011).

43) Yeh et al., *supra* note 24, at 310.

problematic, since it can be argued that case law which is not translated to the highest quality is generally difficult for counsel to rely on.[44] By analogy, the above statement on Japan's Supreme Court website may thus inadvertently discourage non-Japanese speaking scholars of comparative law from using the Supreme Court's unofficial English case translations when conducting research. The process of obtaining other translations, or at least the verification of the unofficial translations, possibly present an additional burden for researchers.

3. The international level

A discussion of the significance of the CCK and its case law at the international level raises three main issues: the existence of an in-house think tank in the form of the Constitutional Research Institute (CRI); the CCK's pioneering engagement in regional judicial cooperation; and the CCK's aim to link up with networks of constitutional justice in other world regions.

By comparison to other jurisdictions around the world, the CCK'S CRI is a remarkable institution. It is one of the first of its kind, with the aim of providing a constitutional court with the capability to conduct "mid- to long-term strategic research" on constitutional issues. This is a departure from the usual perception of the judiciary as a purely reactive branch of the state. By contrast, the existence of the CRI has the potential to elevate the CCK to a position where innovative solutions to legal problems are provided internally rather than obtained from outside consultants such as legal academics based at universities or rapporteur judges. The CRI can be understood as a think tank of the CCK, whose mandate is to conduct foundational research on constitutional matters, rather than simply case-focused research in order to solve a particular issue that has to be decided by the court.

The CCK's ambition is to become a globally leading constitutional court that may one day gain a status similar to the German Federal Constitutional

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44) Julius Melnitzer, *Court decisions may be lost in translation*, Financial Post (July 17, 2012 1:01 PM ET) http://business.financialpost.com/legal-post/court-decisions-may-be-lost-in-translation (last access: 2016.10.15).

Court, at least in the Asian region.[45] This ambition has been made clear in its proactive role in the Association of Asian Constitutional Courts and Equivalent Bodies (AACC), since the latter's formal establishment in 2010; for example, the CCK held the first AACC presidency.[46] The member states decided unanimously in August 2016 that the research arm of its new permanent secretariat will be based in Seoul.[47] The argument that the CCK is already well equipped and sufficiently experienced in the conduct of strategic research in constitutional matters, especially due to the CCK's CRI, played a major role in that decision.[48]

Being the first member from East Asia to join the Venice Commission, an advisory body to the Council of Europe on constitutional issues,[49] offers further evidence that the CCK is aiming to be not only a leading regional institution of constitutional justice, but also recognized on the world stage for its initiatives. It thus hosted the 3rd Congress of the World Conference on Constitutional Justice (WCCJ). During the closing ceremony, President Park of the CCK gave further impetus for regional cooperation in the field of constitutional justice by asking for renewed efforts to establish an Asian Human Rights Court. This initiative has received support from the Venice Commission.

The CCK's proactive international networking, coupled with the wealth of English materials provided online and the existence of its own think tank in the form of the CRI, together offer extensive research materials on Korean constitutional law to an international audience of researchers and the interested public.

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45) Maartje De Visser, *We All Stand Together – The Role of the Association of Asian Constitutional Courts and Equivalent Institutions in Promoting Constitutionalism*, 3(1) Asian Journal of Law and Society 1, 4 (2016).

46) Date and venue: May 20-24, 2012 in Seoul, Theme: Present and Future of Constitutional Justice in Asia Participants: a total of 92 participants from 29 countries and 2 international bodies. Source: http://www.aaccei.org/ccourt?act=history (last access: 2016. 10. 15).

47) Yonhap News Agency, *S. Korea to host secretariat of Asian constitutional courts association*, Yonhap News (Aug 10, 2016, 17:20) http://english.yonhapnews.co.kr/national/2016/08/10/0301000000AEN20160810010000315.html (last access: 2016. 10. 15).

48) http://ri.ccourt.go.kr/eng/ (last access: 2016. 10. 15).

49) http://www.venice.coe.int/WebForms/pages/?p=01_Presentation (last access: 2016.12.10).

Conclusion and Outlook

When conducting research on constitutional law in Korea in English, materials provided by the CCK online presence is a valuable starting point. This is to be placed in the context the Korean government's development of legal information databases on the Internet in furtherance of its drive to develop a national information network and technology infrastructure. As such, research should begin by accessing official legal sites such as those maintained not only by the CCK and the CRI, but also by the Supreme Court, the Ministry of Legislation, and the National Assembly. Substantive volumes available on these websites can help the researcher obtain an overview of constitutional adjudication in Korea and be of assistance when reviewing critical literature in academic journals and other material.

Research on Korean constitutional law and cases will gain in significance once the permanent AACC Research Secretariat is established in Seoul in 2017. This is because one of the official languages of the AACC is English,[50] and research officers seconded from overseas member institutions, most of whom are unlikely to possess Korean language skills, will need to familiarize themselves with the constitutional system of the host state. By capitalizing on the existing research capabilities of the CCK, this new development can only strengthen the discipline of comparative constitutional law in Asia by producing relevant materials in English, building a solid basis for the functioning of the AACC. Korean institutions such as the CCK, CRI, and leading universities will no doubt be part of a valuable network for this new venture. Therefore, a significant expansion in research materials available on Korean constitutional law is to be expected in the near future.

50) Originally, English was the only official language. However, an amendment to the AACC statute in 2016 added Russian as another official language.See https://aacc.mahkamahkonstitusi.go.id/public/fileupload/document/statute_aacc_en_amendment.pdf

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