

Basic Rights Under the North Korean Constitution and Related Legal Systems*

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Abstract

North Korea is united by collectivism in terms of ideology, which has led to a greater emphasis on North Korean socialism within the broader ambit of the socialist order. This fundamental nature of North Korean society is reflected in the basic rights under the Constitution and related legal systems. The Constitution has many provisions that enable the restriction of basic rights. The basic rights are not adequately guaranteed legally because the remedies for its infringement are not prepared properly in the legal system. However, the basic rights stipulated in the Constitution operate as higher principles that must be embodied in the process of implementing statutes, given the supremacy of the Constitution.

KEYWORDS: constitution, North Korea, basic right, socialism, legal system

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I. Introduction

According to the socialist legal theory leading up to Marx and Lenin, the law is a higher structure that reflects a new relations of production created by the Socialist Revolution and is a tool to protect socialist relations of and interests of the proletariat based on it. With Stalin, the law was established in socialist countries to play a creative and constructive role in actively coordinating and planning social relations and economic productivity and modifying human thought and emotion while moving beyond merely reflecting the lower structure.¹⁾ Based on the socialist legal theory, North Korean law is recognized as a tool to solidify the proletarian dictatorship further in the transition toward communism and as a weapon to protect the spoils gained from this revolution.²⁾ In a North Korean-style socialist constitutional state, the law is the rule for all actions that reflect the working masses' will and its fundamental mission is to carry out the proletarian revolution pioneered by the Leader.³⁾ As the primary means for social and state management, the law aims to realize the *Juche* and military-first ideologies under the leadership of the Workers' Party of Korea (Articles 3 and 11 of the Constitution).⁴⁾ Therefore, the party's leadership is recognized as the fundamental core and lifeblood of the constitutional state. The North Korean Constitution is placed under various norms that guide it, including Kim Il-sung and Kim Jong-il's legacies, the ten principles for establishing the party's unique ideology, party rules and instructions, and orders by the chairman of the State Affairs Commission. Thus, according to

1) Myung-Bong Chang, *Gongsangwon heonbeobe gwanhan yeongu: bukanui sahoejuuiheonbeobeul jungsimeuro* [A Study on the Constitution of the Communist Countries: Focusing on the Socialist Constitution of North Korea] 27 (1984) (Ph.D. dissertation, Seoul National University) (on file with author) (In Korean).

2) Hyo-Won Lee, *Bukanui hyeongsabeopgwa hyeongjipaengjedo* [North Korea's Criminal Law and Criminal Execution System], 3(1) KOR. J. CORR. DISCOURSE 63, 63 (2009) (In Korean).

3) Jeong Won Park, *Bukanui ingwonmunjee daehan beopjedojeok jomang* [The Legal and Institutional Illumination of Human Rights Issues in North Korea], 15 ILKAM L. REV. 127, 131 (2009) (In Korean).

4) Eui Jeong Hwang, *Gimjeongeun sidae bukansik sahoejuui beopchiui uimiwa hangye* [The Meaning and Limitation of the North Korean-style Socialist Law of the Kim Jong-un Period], 12(3) NE. ASIAN L. RSCH. 109, 117 (2019) (In Korean).

the so-called “supremacy of orders” theory, the law is criticized for being nominal or decorative.⁵⁾

North Korea has consistently stipulated the basic rights and duties of the people under the Constitution, since this has endured right from the 1948 Constitution “Chapter 2, Basic Rights and Duties of Citizens” to the recently revised Constitution in June 2019. According to the theory mentioned above regarding North Korean law and its evolution, these basic constitutional rights are not guaranteed in reality, only having decorative and nominal intentions. However, even if the normative effect of the Constitution in North Korea ranks below that of the instructions, given North Korea’s position wherein the orders and the Constitution are unified, it would be fragmentary to think that the Constitution is merely formal or ineffective, and has no normative power.⁶⁾ The Constitution establishes the achievements of the Socialist Revolution, solidifies them legally, and guides the people in bringing about socialism; it is a basic law that provides directions and standards for enacting all other laws and regulations in the country.⁷⁾ According to the socialist legal theory, basic human rights are substantial and general democratic rights that the state must grant to the people; these rights are confirmed through state legislation and have legal significance.⁸⁾ Therefore, apart from political and economic sectors, basic constitutional rights in North Korea, at least within the legal system, are realized by embodying sub-norms such as sectoral laws, regulations and detailed rules. The legislators’ task is to organize these various laws.⁹⁾

This paper examines the effect and meaning of basic rights regulations

5) Yongtae Kwon, *Gyosiuwiron-gwa bukanbeobui gyubeomnyeok [Supremacy of orders theory and regulatory power of North Korean law]*, 21 *STUD. ON N. KOR. L.* 171, 178 (2019) (In Korean).

6) *Id.* at 202-204.

7) Seung-Taek Lee, *Bukan heonbeopsang gibongwon gyujeongui teukseonggwa byeoncheon [The Characteristics and Transformation of Basic Human Rights Regulations under the North Korean Constitution]*, 86 *DONG-A L. REV.* 1, 8 (2020) (In Korean).

8) Franciszek Przetacznik, *The Socialist Concept of Protection of Human Rights*, 38(2) *Soc. RSCH.* 337, 338 (1971).

9) The view that it is necessary to actively reorganize the entire legal system and social order using this as the principle of social order to guarantee basic rights beyond the socialist legal theory is recognized as the objective value theory of and the state’s obligation to protect basic rights in German law and our Constitution. See DIETER GRIMM, *CONSTITUTIONALISM: PAST, PRESENT, AND FUTURE* 194-196 (2015).

within the legal system by reviewing the system of basic rights regulations and subordinate statutes passed under the ambit of North Korea's Constitution. The subordinate statutes that specify basic rights show that constitutional regulations are guaranteed in the legal system, and this is meaningful because it forms the basis for evaluating the normative power of the Constitution in North Korea. Precedent studies have focused on the amendment history, characteristics, and nature of the basic rights under North Korea's Constitution; however, concerning the legal system to guarantee specific basic rights, the focus has mainly been on criminal law and procedure, and the judicial system,¹⁰⁾ and it is difficult to find a comprehensive review of relevant subordinate legal systems. Thus, this paper will first examine the nature of basic rights under the North Korean Constitution, which is a general discussion of basic rights. It then summarizes the legal provisions on the basic rights in each area and examines the degree to which they are implemented. The subordinate statutes in North Korea's legal system are difficult to access; thus, this review is limited to sectoral law, which corresponds to South Korea's law.¹¹⁾

II. The System and Characteristics of North Korea's Constitutional Basic Rights

The 1948 North Korean Constitution was the "People's Democratic Constitution," which was enacted in 1936 under the influence of Stalin's Constitution. It was recognized as reflecting the political victories and changes in economic life that had been achieved until then at the stage before socialist state construction was completed. Later, stating that "We

10) Myung-Bong Chang, *Bukanui gibongwonbojangui jodojeok munjejeom [Institutional Problems in North Korea's Guarantee of Basic Rights]*, 3(2) KOR. UNIFICATION STUD. 169, 169 (1994) (In Korean); Park, *supra* note 3, at 127.

11) Hereinafter, North Korea's constitution and individual laws are based on the following material: CHOESINBUKANBEOMNYEONGJIP [LATEST COLLECTION OF NORTH KOREAN LAWS AND REGULATIONS] (Myung-Bong Chang ed., N. Kor. L. Rsch. Soc'y, 2013) (In Korean); TONGILBEOMMUGIBONJARYO – BUKANBEOPJE [BASIC DATA ON UNIFICATION LEGAL AFFAIRS – THE NORTH KOREAN LEGAL SYSTEM] (S. Kor. Ministry of Just. ed., 2018) (In Korean); 1 & 2 BUKANBEOMNYEONGJIP [NORTH KOREAN LAW COLLECTION] (S. Kor. Nat'l Intel. Serv. ed., 2020) (In Korean).

have achieved great results in the Socialist Revolution and the construction of socialism, and drastic changes have occurred in politics, the economy, and culture,” North Korea revised the Constitution to the “Socialist Constitution” in 1972 to reflect these changes.¹²⁾ The *Juche* ideology was added to the Constitution’s basic theory, Marxist-Leninism in 1972 (Article 4 of the 1972 Constitution). The latter was replaced by the “military-first ideology” in 1992 (Article 3 of the 2009 Constitution). During Kim Jong-il’s reign, the *Juche* and military-first ideologies were established as the basic principles of the Constitution. On April 11, 2019, an amendment named these basic principles the “Kim-il-sung-Kim-jong-il-ism” (Article 3) and has been maintained to this day. Contrary to these changes in the regulations on basic principles of the Constitution, regarding fundamental rights, North Korea has maintained Article 49 of the 1972 Constitution unchanged, which declared “the rights and duties of the citizens of the Democratic People’s Republic of Korea are based on the collectivist principle of ‘one for all and all for one.’” This article defined the principle of collectivism as the basic principle for guaranteeing fundamental rights. Since 1998, the North Korean Constitution has specified this by stipulating that “Citizens must firmly safeguard the people’s political and ideological unity and solidarity. Citizens must value organizations and the collectives, and exercise a spirit of hard work for society and the people” (Article 81).

Socialist theory opposes the view that basic human rights are universally based on natural law theory and argues that such metaphysical, natural, and ahistorical concepts cover up the injustices caused by classes in reality. This view presupposes that humans can be adequately understood only under social relations and conditions instead of as abstract and isolated individuals. Consequently, it supposes that political and civil rights are recognized based on socio-economic rights and equality so that the two cannot be distinguished.¹³⁾ North Korea’s collectivist principle is based on socialist anthropology and human rights theory. According to this view,

12) Chang, *supra* note 1, at 43-46. The constitutional change at this time manifested as a constitutional amendment. However, the source of North Korea’s current constitution is the 1972 constitution, as it formally treated it as a “constitutional enactment” given that it was a new constitution that reflected the completion of socialism at the time.

13) Paul Betts, *Socialism, Social Rights and Human Rights: The Case of East Germany*, 3(3) HUMAN. 407, 408 (2012).

humans are social beings, and individuals, nations, and societies have consistent interests rather than being at odds with each other. Citizens' rights are social rights that are realized and guaranteed in the collective and society, and the rights enjoyed by citizens recognized by the proletarian dictatorship correspond to the positive rights granted by the state.¹⁴⁾ As interests of collective and society take precedence over those of individuals according to the principle of collectivism, rights do not belong to individuals and do not have a defensive nature that excludes the state's infringement. However, rights are established as sacred rights and obligations to subjugate individuals to the state and society.¹⁵⁾ Therefore, the constitutional guarantee of citizens' rights only means a 'possibility' of being substantially guaranteed by the state.¹⁶⁾ Eventually, the possibility of making individual's basic rights nominal in the name of society and state is normatively inherent.¹⁷⁾

On the other hand, the North Korean Constitution stipulates under Article 64 (1), as a general principle of guaranteeing basic rights, that "the state substantially guarantees genuine democratic rights, liberties as well as the material and cultural well-being of its citizen." If this article is a comprehensive basic rights regulation, it can be interpreted that there is a basis for interpretation to derive basic rights such as freedom of conscience, which are not listed explicitly from specific basic rights guaranteed by the Constitution. Clause 2 of the same Article stipulates that "in the Democratic People's Republic of Korea, the freedom and rights of citizens are amplified with the progress of the socialist system," leaving room for the possibility of recognizing additional basic rights through interpretation. Nevertheless, these provisions, which are premised on the principle of collectivism, cannot be considered to function in the same way as Article 10 of the South Korean Constitution on human worth and dignity, and the right to pursuit of happiness, which confirms the universality and inclusiveness of freedom

14) Jong-Ik Chon, *Tongilheonbeobui gibongwon chegye [Basic Rights System of the Unification Constitution]*, 61(2) KOR. LAW. ASS'N J. 152, 164 (2012) (In Korean).

15) Jaehyun Cho, *Bukanheonbeop gaejeongui baegyeonggwae teukjinge gwanhan heonbeopsa yeongu [Research on Constitutional History on the Background and Characteristics of the North Korean Constitutional Amendment]*, 29(3) STUD. ON AM. CONST. 273, 280 (2018) (In Korean).

16) Park, *supra* note 3, at 138.

17) Chon, *supra* note 14, at 165.

and rights on the premise of the God-given rights and natural rights theories,¹⁸⁾ or the provisions guaranteeing basic rights not listed under Article 37 (1). The judgment of recognizing new basic rights by interpretation is demanded when there is a problem regarding whether the actions of the legislative and other governmental powers can be considered unconstitutional based on these comprehensive regulations, even if it does not violate other constitutional provisions. North Korea's constitutional basic rights are guaranteed only to the extent that they are guaranteed in the Constitution or concretely realized by legislation, as they are positive rights in keeping with socialist legal theory and collectivist principles. There is no room for the systematic recognition of individual basic rights by interpretation alone and the declaration of governmental power as unconstitutional when legislative, and other governmental powers do not violate the Constitution. Therefore, although Article 64 (2) of the North Korean Constitution foresees the expansion of basic rights, it should be viewed as allowing only the expansion of basic rights by constitutional or legislative amendment on the premise of the "solid progress of the socialist system."

According to the stance that considers North Korea's constitutional basic rights as positive rights rather than God-given or natural rights, the subject of basic rights is consistently defined as "citizens." In the 1948 Constitution, North Korea did not impose any limitations regarding sovereignty, stating that sovereignty belongs to the "people," but limited the subject of basic rights to "citizens." Article 7 (1) of the 1972 Constitution stated that sovereignty belonged to "workers, peasants, soldiers, and working intellectuals" and in Clause 2 that "the working people exercise sovereignty through their representative bodies, the Supreme People's Assembly and local people's assemblies," stipulating that sovereignty belonged to the working people. The subject of basic rights has been consistently defined as "citizens" since 1948; some of the regulations mentioned above had some changes in particular expressions, which are preserved until today. An example of locating state sovereignty in the

18) YOUNG-SUNG KWON, HUNBEOPAGWOLLON [PRINCIPLES OF CONSTITUTIONAL THEORY] 309-311 (2010) (In Korean); TSCOLSU KIM, HUNBEOPAKSILLON [NEW THEORY OF CONSTITUTIONAL STUDIES] 309-310 (21st ed. 2013) (In Korean).

working people and defining the subject of basic rights as “citizens” can be found in the 1936 Constitution of the Soviet Union.¹⁹⁾ Such stance means that basic rights are not universal but are enjoyed by citizens who are members of society, that is, citizens recognized by the proletarian dictatorship, which makes possible the interpretation that those against the system do not have basic rights.²⁰⁾ The current North Korean Constitution clarifies this intention by stipulating that “the sovereignty of the Democratic People’s Republic of Korea resides in the working people, including workers, peasants, soldiers, and intellectuals”(Article 4) and that “the state advocates the interests of the working people, including workers, peasants, soldiers, and intellectuals who have been freed from exploitation and oppression and become owners of the state and society, and respects and protects their human rights”(Article 8(2)). Therefore, not all people are sovereign in North Korea. Only the working people, such as workers, peasants, soldiers, and intellectuals, are sovereign, and the state is only obliged to protect their rights, which makes the other people unable to be recognized as subjects of basic rights.

If basic rights are understood this way, the North Korean Constitution does not having a general statutory clause such as Article 37 (2) of the South Korean Constitution cannot be seen as a firm guarantee of basic rights. This does not indicate that the North Korean Constitution guarantees basic rights without restrictions or reservations but that there is no restriction on legislation limiting basic rights, which makes it difficult to judge it as unconstitutional. This becomes clearer in light of the fact that the South Korean Constitutional Court frequently uses the violation of the ‘anti-overrestriction principle’ as the standard of determining unconstitutionality regarding the infringement of basic rights.

The fact that North Korea’s Constitution emphasizes the realization and guaranteeing of basic rights rather than the right to defend against the state is reflected in the 1972 Constitution, which stipulated the principle of collectivism, “rights and duties of citizens” after politics, the economy, and culture chapters, and the basic rights’ system that expressly stipulated

19) THE CONSTITUTIONS OF THE USSR AND THE UNION REPUBLICS: ANALYSIS, TEXTS, REPORTS 76, 94-95 (F. J. M. Feldbrugge ed., 1979).

20) Chang, *supra* note 1, at 104-105.

social basic rights and duties of citizens' than liberty rights and right of claim. The latter shows that the rights and obligations of citizens are guaranteed in the political, economical, cultural, and national defense order of the entire nation and are of relatively low importance. According to the former, the North Korean Constitution accentuates basic rights, especially economical and material guarantees of human living. This inherited the Socialist Constitution tradition, which continued since the 1936 Soviet Constitution and is based on the stance that basic human rights such as liberty and social rights are interrelated and should be realized and guaranteed by the proactive actions of the state. In addition, since the state's legal system realizes the rights of citizens, the need to guarantee various rights of claims to the state is inevitably relatively low. Moreover, since humans are social beings, it is natural that state-and-society-imposed various obligations get emphasized. Thus, the North Korean Constitution has many regulations on social rights and basic obligations compared to regulations on liberty rights, ownership, and political rights and does not have separate stipulations for various claims against the state, such as the right to request a fair trial. Looking at the list and system of basic rights, such characteristics mentioned above began with the 1948 North Korean Constitution and continue until today despite some changes in the 1972 Constitution. Since the 1936 Soviet Constitution greatly influenced the 1948 Constitution, it can be said that the influence of the Soviet Constitution remains in the area of basic rights.²¹⁾

21) The following is a list of citizens' rights under the 1936 Soviet Constitution: the rights to work, guarantee compensation and jobs corresponding to the quantity and quality of labor (Article 118), rest and seven hours of work per day (Article 119), receive material coverage in old age, disease, or loss of labor force, the social insurance system (Article 120), and receive education, compulsory education for eight years, through the free education system (Article 121); equal rights for women (Article 122), and in all areas of economic, national, cultural, and socio-political life, regardless of ethnicity and race (Article 123); separation of religion and state to guarantee freedom of conscience and of education from church, and freedom of religious events and from anti-religious propaganda (Article 124); freedom of media, publication, assembly and meeting, of street marches and demonstrations in keeping with the interests of the working people and the goal of strengthening the socialist system (Article 125); rights of trade unions, various social organizations, and the Communist Party's right to associate (Article 126); and non-violation of the human body and prohibition of arrest without permission from the court or prosecutor (Article 127) and of housing and confidentiality of correspondence (Article 128). The basic rights under the North Korean Constitution follow

III. Guarantee of Individual Basic Rights under the North Korean Constitution

1. Liberty Right, Equal Right, and Ownership

A. Cognitive Liberty and Freedom of Speech

Although the Socialist Constitution values social rights from among other basic rights, it still guarantees so-called “civil rights” such as liberty and equal rights. The North Korean Constitution stipulates the freedom of press, assembly, association, and demonstration (Article 67), belief (Article 68), science and literary and artistic activity (Article 74), residence and travel (Article 75), personal liberty, housing, and confidentiality of correspondence (Article 79). Basic constitutional rights are guaranteed only to the extent established by the Constitution, and basic rights such as freedom of conscience, thought, and occupation, which are not mentioned, are considered not guaranteed.

The North Korean Constitution stipulates ideological uniformity and ensures that freedom of thought is not recognized, as seen in Article 3 of the Instructional Regulations of the Kim-il-sung-Kim-jong-il-ism, Article 39 of the Socialist Cultural Regulations, and Article 43 of the Principles of Realizing Socialist Education.²²⁾ This ideological uniformity becomes even more apparent in the “Ten Principles for the Establishment of a Monolithic Ideological” (June 19, 2013), which is normatively recognized as more supreme. This principle declares in Article 4 that “one must arm oneself with the revolutionary ideas and the implementations of it: the party’s orientation and policies, formulated by the great leader comrades Kim Il-sung and Kim Jong-il,” and must make the “Kim-il-sung-Kim-jong-il-ism” one’s flesh and bones and one’s conviction in order to put them into practice, and suggests that “it should be made a guideline and creed for business and life, and that everything should be measured and thought and

these rights. On the provisions of the Soviet Constitution of 1936, see Feldbrugge ed., *supra* note 19, at 94-102.

22) Chon, *supra* note 14, at 171.

acted everywhere and all the time, as by a ruler.” Article 4 (6) states that “while reporting, discussing, giving a lecture, or writing for a publication, one should always quote the Supreme Leader’s teachings, the words of the Marshall General, and the party literature, develop contents based on them, and never speak or write against them.” Clause 8 states: “One should never overlook antiparty acts of slandering or opposing the party’s revolutionary ideology, the party’s orientation, and policy, one should sharply oppose all kinds of antiparty and antirevolutionary ideologies, including bourgeois ideology and toadyism, and thoroughly adhere to the truthfulness and purity of the Kim-il-sung-Kim-jong-il-ism.” Thus, the North Korean Constitution specifies its ideological uniformity and clarifies that expressions of intent such as the press, assembly, and demonstration should be conducted within those limits. Such ideological restrictions are incorporated in Article 62 of the North Korean Criminal Act to address “anti-state propaganda and agitation,” which imposes re-education through labor for anti-state propaganda and agitation. The provisions addressing “Mass Disturbance” punish people who fails to follow the direction of a state agency and cause mass disturbance (Article 209 of the Criminal Code), “Fabrication and Dissemination of False Rumors” punish those who fabricate or disseminate rumors that can create distrust in the state and cause societal confusion (Article 211 of the Criminal Code), and “Illegal International Communication” punish those who illegally communicate internationally (Article 222 of the Criminal Code). These regulations guarantee ideological uniformity and restrict the liberty rights, such as the freedom of speech.

Meanwhile, under the terms of the North Korean Constitution, freedom of religion is limited to “freedom of belief,” which is freedom of conscience, and limited freedom of religious action. The North Korean Constitution stipulates that “it is guaranteed by allowing religious buildings or religious ceremonies”(Article 68 (2)), making it clear that other religious practices are not recognized. Originally, freedom of religion, along with freedom of belief, is a freedom of religious action and includes freedom of religious ceremony, assembly, association, propagation, and education.²³⁾ Thus, the

23) Jong-sup Chong, HUNBEOAGWOLLON [PRINCIPLES OF CONSTITUTIONAL THEORY] 577-584 (12th ed 2018) (In Korean).

North Korean Constitution recognizes the freedom of religious events, a portion of freedom of religion, in a significantly limited sense. Article 68 (3) states that “one cannot use religion to attract foreign powers or harm the national social order,” allowing state interference in religion in some instances. This can be seen as promoting general national security or public welfare, but it can also be interpreted as a declaration of the state’s non-neutrality concerning religion in that this article can serve as a basis for preferential treatment of or discrimination against a specific religion. These regulations on religious freedom are based on traditional socialist views on religion. In North Korea, the Workers’ Party of Korea and the government must “teach how society arises and develops, and the origin and role of religion, so that the working mass may have a broad scientific worldview,” “schools must educate young people not to be obsessed with any religious prejudices, but to believe in their own power and the collective power of workers,” and emphasize the importance of the so-called socialist scientific worldview in contrast to religion.²⁴⁾ According to this view, freedom of religion is recognized only to be consistent with the socialist worldview. The Constitution’s position on religious freedom is specified in Article 256 of the Criminal Act, which stipulates that “a person who receives money or goods and commits superstitions” is to be punished and “if someone teaches superstition to several people or causes severe consequences thereby” is to be punished, allowing the state to prohibit and punish certain religious acts as superstitions.

B. Personal Liberty and Freedom of Residence

Article 79 of the North Korean Constitution states: “Inviolability of the human body and housing, and confidentiality of correspondence are guaranteed to citizens. Citizens cannot be imprisoned or arrested, and a house cannot be searched without a legal basis.” The “Criminal Procedure Act” specifies the procedures for arrest, imprisonment, and search to ensure personal liberty and freedom of residence, such as the inviolability of the body and housing. According to the Criminal Procedure Act,

24) JOSEONMINJUJUUIINMINGONGHWAGUK SAHOEJUUIHEONBEOP [CONSTITUTION] 1955 (N. Kor.); Chon, *supra* note 14, at 170-171.

investigators first detect crimes and hand them over to preliminary trial (Article 145 (1)), can arrest the suspects or criminals without the prosecutor's approval in the case of *In flagrante delicto*, and they can be investigated for ten days before being handed over to the preliminary trial if approved by the prosecutor within 48 hours of arrest (Article 143 (1)). The preliminary trial, which takes over the suspect, determines the suspect and investigates the criminal conduct (Article 147). Arrest or detention may be imposed if a suspect is expected to be sentenced to limited or life-long re-education through labor, or the death penalty has the possibility to avoid the preliminary trial or judicial trial or interfere with the investigation of the criminal case (Article 178). An arrest occurs when the preliminary examiner sends the application for issuance of the writ of arrest to the prosecutor (Article 180), and imprisonment occurs when the preliminary examiner gets the written decision approved by the prosecutor (Articles 184 and 185). The period of detention for the suspect for the preliminary trial cannot exceed two months and cannot exceed ten days regarding a criminal case expecting the sentence of labor training (Article 186). However, in the case of complex criminal cases, the detention period can be extended by one month with the approval of the head of the city or provincial police office and can be extended by two more months with the approval of the head of the supreme police office. In the context of a criminal case deserving labor training, it can be extended to five days (Article 187). Search and confiscation are also proceeded by the preliminary examiner with the prosecutor's approval (Article 216).

Thus, arrest, imprisonment, confiscation, and search under the Criminal Procedure Act are proceeded by the preliminary examiner with the prosecutor's approval. The prosecutor plays a decisive role in guaranteeing basic rights such as personal liberty. In North Korea, the prosecution is an agency that executes the state's authoritative directives to check whether all institutions, enterprises, organizations, and citizens accurately abide by and enforce the law (Article 1 of the Prosecutors' Monitoring Act). Prosecutors can monitor citizens, as well as the People's Security Institutions, investigative and preliminary trial agencies; trials, arbitrations, and execution of judgments; and other decisions of state agencies (Articles 8-15 of the Prosecutors' Monitoring Act), and hand over detected illegal acts to preliminary trial or regenerate perpetrators of state law through social

re-education (Articles 35 and 36 of the Prosecutors' Monitoring Act). The prosecutor may intervene in judicial affairs, by remonstrating against the court's judgment or filing an emergency appeal (Article 37 of the Prosecutors' Monitoring Act). Thus, the prosecution, which has absolute authority such as overall investigation and surveillance under the Criminal Act, is given the authority to imprison, confiscate, and search. In contrast, there are no separate means to control the prosecutor's exercise of such authority, which raises concerns over systematic abuse. In particular, since the prosecutor enforces administrative power as the subject of investigation and monitoring, he or she is not neutral in determining whether compulsory investigations, such as personal arrest, are necessary. Compared to allowing coercive investigation through specific judgments by judges of an independent judiciary, North Korea's system, which grants prosecutors the right to coercive investigation and controls illegal activities by the People's Security Institutions or preliminary agencies, is highly likely to be arbitrarily restricted concerning personal liberty and more by the administration.

C. Equal Right

Article 65 of the North Korean Constitution declares that "citizens enjoy equal rights in all spheres of State and public activities." In addition to stipulating general principles of equality, Articles 66 and 77 also emphasize anti-discrimination and gender equality regarding political rights. Article 66 of the North Korean Constitution presents political rights as an area in which discrimination is especially prohibited and stipulates that "gender, ethnicity, occupation, period of residence, property status, education, party affiliation, political views, and religion" must not be standards for discrimination in particular. Accordingly, the "Act for Electing Representatives of the People's Assembly" ("Election Act") stipulates in Article 2 (2) that "all citizens aged 17 years or older have the right to vote and to be elected irrespective of gender, ethnicity, occupation, period of residence, property status, education, party affiliation, political view or religion." Article 3 affirms this by articulating the principle of equal election, one vote per person, and equal vote.

Article 77 of the North Korean Constitution stipulates that "women are

accorded an equal social status and rights as men” and that gender should not be a basis for discrimination. Accordingly, gender equality is specified in each area of individual laws, just as Article 18 of the Family Act stipulates equal rights between husband and wife in family life, and the special law “Women’s Rights Guarantee Act” is separately established to guarantee equal rights for women and men in all spheres. The Women’s Rights Guarantee Act aims to “strictly guarantee women’s rights in all areas of social life and further enhance women’s status and role” (Article 1) and stipulates the “guarantee of equality between men and women and the prohibition of any kind of discrimination against women” as a fundamental principle (Article 2). Women’s rights must be guaranteed in all areas, specific areas such as the duties of institutions, enterprises, and organizations (Article 5), local people’s committees at each level (Article 6), labor organizations (Article 7), and legal bodies (Article 8) are stipulated separately. The Act specifies state responsibilities to prohibit discrimination and protect women’s equal rights by subdividing the areas of these rights into sociopolitical, educational, cultural, public health, labor, personal body, property, martial and familial rights. It also stipulates active measures to realize equality for women, such as increasing the proportion of female representatives at all levels of people’s assemblies (Article 12) and deliberately training and hiring female executives at institutions, enterprises, and organizations (Article 15). Article 9 emphasizes international cooperation by stipulating that “the state shall enhance exchanges and cooperation with other countries and international organizations in guaranteeing women’s rights.” This regulation was specified after North Korea joined the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 2001 and submitted implementation reports.

D. Private Ownership and Economic Activity

In the North Korean Constitution, the property ownership system is based on the ownership of the state and social cooperative organizations (Article 20), and what the state owns belongs to the entire people without any restrictions; however, all the natural resources, railroads, air transportation, communication organs, major factories, enterprises, ports,

and banks are owned by the state (Article 21). The property of social cooperative organizations belongs to the collective property of working people within organizations concerned, and social cooperative organizations can possess such property as land, agricultural machinery, ships, small-medium sized factories, and enterprises (Article 22). Aside from this, private ownership is guaranteed under the Constitution. It is limited to citizens' ownership for personal and consumption purposes and consists of a socialist distribution of the result of labor and additional benefits of the state and society (Article 24 (1) and (2)). Products from individual sideline businesses, including kitchen garden economics, and income obtained through other legal business activities also belong to the individual (Article 24 (3)); thus, the accumulation of property through individual profit-making is partially recognized. Clause 4 of this Article stipulates that "the state protects private property and legally guarantees the right to inherit it," clarifying that private ownership and inheritance are basic rights recognized by the state.

Article 58 of the Civil Act recognizes, in addition to the socialist distribution mechanism, additional benefits, and products from individual sideline businesses, including kitchen garden economics as stipulated under Article 24 of the Constitution as "property purchased, inherited, or received by citizens," and "property that has been created on other legal grounds," thus legally enabling the expansion of the scope of personal ownership. The Civil Act also specifies the "ownership for personal and consumption purposes" listed under Article 24 of the Constitution and limits the objects of private ownership to "houses, various household goods necessary for family life, cultural goods, and other daily necessities and machines like cars." Article 63 of the Civil Act stipulates that privately owned property is subject to inheritance. Article 13 of the Inheritance Act stipulates that in addition to properties that can be constitutionally inherited, "houses, books, currency, savings, household goods, cultural goods, daily necessities, and wheeled vehicles such as cars (No. 4)," various property claims and liabilities (No. 5)," and "other legally acquired property, such as property received from other citizens (No. 6)," may also be inherited. This shows that all these assets can be owned privately.

Concerning such privately owned property, the Civil Act stipulates that family property is recognized as jointly owned by family members (Article

61 of the Civil Act), and individual citizens can exercise their right to possess, use, dispose of, and return their own property (Articles 60 and 62 of the Civil Act). However, these ownerships can be exercised under the “socialist standards of life and consumption purposes” (Article 60 (2) of the Civil Act), which imposes limitations on ownership and enables the imposition of broad restrictions by governmental power. In North Korea, privately owned property is subject to inheritance, and both legal inheritance and inheritance by will are possible (Article 63). It has a separate “Inheritance Law” to stipulate the details of inheritance, gift, and execution of inheritance. The Civil Act governs passenger transport contracts (Articles 193-199) regarding freedom of residence and travel (Article 75 of the Constitution); therefore supports the realization of the freedom of residence and travel as economic activities.

As an individual’s economic activities such as kitchen garden economics and sideline businesses are partly recognized, and ownership of private property accumulated from there is legally recognized, relevant commercial laws have also been enacted and implemented. Specific examples include the Commercial Banks Act for the establishment and operation of commercial banks specializing in deposits, loans, and payments and the Insurance Act for insurance businesses to prepare for damage caused by natural disasters or accidents. Intellectual property rights are guaranteed through the Industrial Design Act, the Invention Act, the Trademark Act, the Copyright Act, and the Computer Software Protection Act, with respect to freedom of scientific and cultural, and artistic activities.

The North Korean Constitution partially recognizes private ownership and inheritance as basic rights with state and social cooperatives as the basis and supports economic activities based on this through law, leaving room for the business activities among individuals to take place based on legislative policy and operation. However, given that private ownership is exceptionally recognized based on the socialist economic order, and the basic rights necessary for economic activities such as freedom of occupation or contract are not guaranteed by the Constitution and can be denied through the law, it is undoubtedly different from a constitutional system that guarantees free economic activity.

2. *Political Rights*

Under the North Korean Constitution, sovereignty resides in the working people, including laborers, peasants, soldiers, and intellectuals; they exercise sovereignty through their representative bodies the Supreme People's Assembly, and local people's assemblies (Article 4). To this end, the Constitution stipulates the principles of universal, equal, and direct suffrage by secret vote concerning the composition of these sovereign bodies (Article 6) and the principles governing the election of representatives of the Supreme People's Assembly and local people's assemblies (Articles 89 and 138). Therefore, all citizens aged 17 years and above are guaranteed the right to vote and to be elected regardless of gender, ethnicity, occupation, period of residence, property status and education, party affiliation, political views, and religion. One has the right to vote and to be elected even while serving in the armed forces, to ensure that they are not disadvantaged by military service (Article 66 (1) and (2)). However, exceptional cases are listed in the Constitution for which suffrage is not recognized include those disenfranchised by a court decision and mental illness (Article 66 (2)). This is listed in a limited way in the Constitution, which grants residents the right to recall deputies by stipulating that "electors may recall the deputies they have elected if the latter loses trust" (Article 7 (2)).

However, it is doubtful whether the suffrage regulation under the Constitution is appropriately implemented. For example, by law, voting is done anonymously, and no one can enter or look into the polling rooms (Articles 64 (1) and 65 of the Election Act), which on the surface emphasizes compliance with the principles of secret vote. However, looking at the voting method, constituents who agree do not make any marking, and those who disagree strike out the name of the candidate (Article 64 (2) of the Election Act), which not only does not assume multiple candidates but also one can tell whether someone agreed or disagreed based on the time spent in the voting room. This implies that "secret vote" was legislated in a difficult form to follow.

It is essential for the election management organization to be independent, transparent, organized, and fair for elections to be held

equitably. Election management can proceed without political preferences or bias only when it is free of the influence and direction of government authorities, specific individuals, and political parties and is not influenced by power.²⁵⁾ However, under the North Korean Election Act, the election management organization is structured so that the Standing Committee of the Supreme People's Assembly organizes the Central Election Commission, the relevant provincial people's committee organizes the provincial election committee, and the city and county people's committee organizes the city, county, and district election committees (Article 19 of the Election Act). It is bound to be influenced by existing deputies and political parties that constitute the people's committee at various levels. As the election committees at various levels are organized with members recommended by the party and social organizations (Article 21 of the Election Act), election management by existing political power is considered natural.

When restrictions on election campaigns become combined with the problem of election management organizations' composition, the possibility of unjust elections increases. In principle, freedom of electioneering is recognized under the Election Act but only can be enjoyed within the scope of the law (Article 49 of the Election Act), and electioneering is carried out only under the organizational guidance of the election committees at various levels (Articles 48 and 49 of the Election Act). Assembly, demonstration, and propaganda organization for elections must all have approval from the election committee (Article 53 Nos. 3 and 4 of the Election Act), and in particular, the incitement of "opposition votes" is specified among the prohibitions of electioneering (Article 53 No. 1 of the Election Act), which only allows electioneering for agreement. Therefore, partisan elections are inevitable, given what the law states.

There are many institutional problems in terms of the right to be elected. First, to become a candidate for deputy of the people's assemblies at each level, one must be recommended jointly or alone by the voters, the part or social organizations (Article 35 (1) of the Election Act), and must pass a qualification deliberation at a meeting of more than 100 constituent

25) SEUNG-HWAN SEUNG, HUNBEOPGWA SEONGEOWALLIGIGU [THE CONSTITUTION AND ELECTION MANAGEMENT ORGANIZATIONS] 80 (2015) (In Korean).

sorganized by the district election committee (Article 36 of the Election Act). Constituent meetings for deliberating on the qualifications are done in residential area or institutions, businesses, cooperative farms, schools, and military units, and candidates for deputies can also participate. The meeting provides data on the candidate's name, gender, age, place of residence, party, social organization, position at work, and career, and decides, with the approval of a majority of the participants, by deliberating on whether they are "qualified as representatives of the people" (Articles 37 and 38 of the Election Act). It seems that there is no problem getting recommendations from constituents or the party to run for an election. However, requiring recommendations from the party when the Constitution stipulates the leadership of the Workers' Party of Korea means that the party will eventually determine the candidates. Also, deliberation by the constituent meeting based on an abstract ground of "qualification as a representative of the people" is a significant legal restriction on the right to be elected. Moreover, the district election committee, which organizes the constituent meeting, is organized by the city and county people's committee (Article 19 of the Election Act), which eventually has a structure in which incumbent deputies decide on the qualification deliberation, and this leaves space for the imposition of severe restrictions on the constitutional right to be elected.

There is only one regulation restricting the right to vote under the Election Act, which is restrictions by the judgment of the court (Article 2 (4)). The Act stipulates principles of equal and direct suffrage, and the prohibition of proxy voting (Articles 3 and 4). Also, the state must cover all election expenses (Article 6). Thus, it is hard to say that the electoral system violates the principles of universal, equal, and direct suffrage, or the right to vote. However, as discussed earlier, voting rights are severely restricted in terms of the structure of the election management organization, freedom of electioneering, and secret vote. The right to be elected is severely restricted by legal recommendations and the qualification screening system. Finally, there is no legal system that could implement the residents' right to recall.

This way, it can be stated that North Korea's election-related legislation severely restricts the constitutionally guaranteed rights to vote and to be elected, as well as the residents' right to recall. Since the election system is a tool for realizing the "guidance by the Workers' Party of Korea" under the

Constitution, suffrage is guaranteed only to this extent. Consequently, a pre-determined candidate runs alone following the intentions of the Workers' Party of Korea to organize sovereign institutions at various levels, and constituents only expresses agreement or disagreement on the candidate. In terms of election management and campaigns, the system is designed to ensure that the party's will is fulfilled so that elections are insignificant in the composition of state agencies.

3. Social Basic Rights

The North Korean Constitution regulates social basic rights according to the basic principles of socialism. As civil rights, the Constitution addresses labor rights, the right to rest and leisure, to receive free treatment, material assistance for the weak, and education. Chapters 2 and 3, which focus on the economy and culture, contain many provisions on the state's obligations and principles arranging the legal system to ensure the basic right to live. Hence, the guarantee of living worthy of human being is realized by the active policies and actions of the state rather than being recognized as an individual right.

First, the North Korean Constitution stipulates labor rights under Article 70 (1) and reveals the basic socialist principles of labor and distribution, such as "occupation selection based on one's wishes and talent," "guarantee of stable jobs and working conditions," and "work based on one's ability and distribution based on the quantity and quality of one's labor." Article 71 stipulates the right to rest and leisure, guarantees it based on working hours, public holidays, paid leave, fixed recuperation by state expenses, and cultural facilities, and Article 30 restricts working hours to eight hours per day. Article 31 prohibits child labor under 16 years of age. Article 56 stipulates the reinforcement of the overall free medical treatment, section doctor system and preventive medicine systems, and improvement of material health security projects in the health sector. Article 72 declares the rights to free medical treatment and material assistance for the disabled, the old, and children and stipulates a free treatment system, medical facilities such as hospitals and sanatoria, and the national social insurance and social security systems. Article 73 stipulates the right to receive universal education. Detailed state obligations for

education are stipulated, such as a comprehensive 11-year compulsory education program, including compulsory one-year preschool education (Article 45), free education for all students and regulations on scholarships of university and college students (Article 47), reinforcement of social education and guarantee of learning conditions for all workers (Article 48), and state and social support for daycare centers and kindergartens for children under school age (Article 49). The state's responsibility is stipulated for the expansion of maternity hospitals, daycare centers, and kindergarten networks for mothers and children (Article 77) and preparation of cultural and hygienic environments and working conditions for the people by preserving and promoting the natural environment and preventing environmental pollution (Article 57).²⁶⁾

North Korea provides many laws to specify these constitutional social rights. First, in the field of labor law, the "Socialist Labor Act" stipulates the basic principles and obligations of labor, the socialist by labor, technological revolution, and technological improvement, declares the principle contents about the national and social benefits for workers, such as labor protection, working hours and relaxation, housing and food, daycare centers, kindergartens, and industrial accident insurance, pensions, vacations, free medical treatment, in order to ensure safe and cultural hygienic working conditions. The "Labor Protection Act" is a special law safeguarding labor safety and working conditions.

The "Social Security Act" was enacted as a general law to govern social security in the social welfare area. There are several special laws for those in need of particular forms of protection. First, there is the "Women's Rights Guarantee Act" to protect women, and the "Elderly Protection Act," which stipulates the obligation of family, society, and the state to support those aged over 60 years, and facilities and organizations to ensure good health, and cultural aesthetical life, and social activities. To promote maximum children's rights and interests, the "Children's Rights Guarantee Act" provides for children's equal rights, right of life, development, to receive care, free and compulsory education, develop hope and talent, rest and leisure, cultural and aesthetical life, and free medical treatment. It also

26) The contents of the above paragraph modified and supplemented Chon, *supra* note 14, at 176.

guarantees children's rights at home and in the field of justice and various facilities and organizations to guarantee such rights. The "Persons With Disability Protection Act" stipulates the state's obligation to invest in relevant areas to protect the disabled and prevent the occurrence of disability. It also provides rehabilitative treatment, education, guarantee cultural life, and labor protection.

In the field of public health, the "People's Public Health Act" specifies basic principles to govern both free medical treatment and the preventive health system. Regarding education, the "Education Act" provides comprehensive free and compulsory education. Further, the constitutional right to receive education has been guaranteed under the "Childcare and Education Act" as the state is expected to operate childcare systems for children in the form of daycare centers and kindergartens. The "Universal Education Act" provides free compulsory education at the elementary and secondary school levels. These legislations are significantly related to the human rights conventions that North Korea has signed, such as the Convention on the Rights of the Child in 1990 and the Convention on the Elimination of All Forms of Discrimination against Women in 2001. In 2010, North Korea enacted the Children's Rights Guarantee Act and the Women's Rights Guarantee Act to implement these two conventions. The content of the reports of the conventions is mainly about the enactment and implementation of these laws.²⁷⁾

The Disabled Persons Protection Act was enacted in 2003, whereas North Korea signed the Convention on the Rights of Persons with Disabilities in 2013. Although there are differences in the order of incidents, the main details of the Convention reports contain the implementation of this Act.²⁸⁾ North Korea joining such international human rights

27) In-ho Song & Boseon Kang, *Bukanui adong gwallyeon beopjewa siltae daehan gochal: bukanui tyuenadonggwollihyeobyak ihaenge daehan je5cha gukgabogoseotreul jungsimeuro* [A Review on the Legal Regulations and Status of Children in North Korea: focusing on North Korea's '5th National Report on the Implementation of the UN Convention on the Rights of the Child'], 59 KANGWON L. REV. 81, 94-105 (2020) (In Korean); Jae-Chun Won & Soyoung Park, *UN yeoseongc habyeolcheolpyehyeobyak ihaengbogoseoe natanan bukanyeoseongingwon* [North Korean Women's Human Rights Seen in the Implementation Report of the UN Convention on the Elimination of Discrimination against Women], 61 KANGWON L. REV. 253, 262-274 (2020) (In Korean).

28) In-ho Song, *Bukanui jangaein gwallyeon beopjewa siltae: bukanui tyuen jangaeingwollihyeobyak ihaeng choechobogoseotreul jungsimeuro* [North Korea's legal system and

conventions corresponds to the specific realization of the clause that develops exchanges and cooperation with other countries and international organizations in each field of guaranteeing rights common to the Women's Rights Guarantee Act, Children's Rights Guarantee Act, and the Disabled Persons Protection Act. A study noted that the purpose was to induce support from the international community, while also responding to external criticism and propaganda.²⁹⁾ However, even the evaluation of this study is acknowledged, these Acts are actually implemented for the concrete realization of constitutional regulations; thus, a positive evaluation is possible because the system of protecting children, women, and the disabled is maintained at least in a legal sense.

The "Environmental Protection Act" seeks to realize the constitutional principles of environmental protection. There are many related laws such as the "Air Pollution Prevention Act," the "Water Resources Act," the "Ocean Pollution Prevention Act," and the "Radioactive Pollution Prevention Act." However, the Constitution calls for the provision of a "cultural and hygienic living environment and working conditions" not as individual rights but as a state obligation. Thus, these environmental laws take the form of regulating statutory offenses regarding environmental pollution rather than guaranteeing individuals' rights to the environment.

North Korea has many regulations on basic constitutional rights, state obligations, and principles regarding the field of social rights. Several related laws have been provided to support them. The legal system seems to guarantee a wide range of social basic rights, including the right to lead a life worthy of human being. The South Korean Constitution also has many provisions on social basic rights and obligations and the state's duty to implement them; based on these provisions, it is clear that the South Korean Constitution accepts the principles of social states to achieve

status related to the disabled: focusing on North Korea's 'First report on the implementation of the UN Convention on the Rights of Persons with Disabilities'., 29(1) YONSEI L. REV. 123, 125-126 (2019) (In Korean).

29) Kyu Chang Lee, *Bukan jangaeinui gwolli sinjangeul wihan beopjedojeok gwaje: bukanui jangaeingwollihyeobyak seomyeongeul gyegiro* [The legal and institutional task for enhancing the rights of the disabled in North Korea: on the occasion of North Korea's signing the Convention on the Rights of the Disabled], 25(2) KOR. UNIFICATION STUD. 1, 5-7 (2013) (In Korean).

freedom and equality.³⁰⁾ Historically, economic and social rights were called second-generation rights and were based on the growth of socialist ideology in the 19th and early 20th centuries and the rise of European labor protests.³¹⁾ In the case of Germany, where the so-called “social state principle” was originated, social basic rights were demanded as the rights of human workers of the working class in the early socialist movement, and it remained within the state constitutions after being accepted into the Weimar Constitution through the Gotha and Erfurt Programs implemented by the Social Democratic Party,³²⁾ it cannot be denied that the regulations of social basic rights in the two Koreas have common ideological origins. South Korea’s Constitution recognizes social basic rights with liberalism and the market economy as its basic constitutional order. North Korea’s regulations are based on collectivism and a socialist-controlled. The latter does not have the same function and meaning as the former. The North Korean Constitution has clear limitations in that the guarantee of social basic rights and the actual guarantee of freedom are related.

Social basic rights require active state involvement and benefits, and the level of guarantee may vary based on the state’s financial capacity limitations.³³⁾ According to specific circumstances such as North Korea’s economic situation and limited available resources, the devastating reality regarding constitutional social rights has prevailed since earlier periods.³⁴⁾ Whether these rights are realized in the field of social basic rights should be reviewed separately from the laws and regulations.

30) Hunbeobjaepanso [Const. Ct.], May 28, 1998, 96Hunga4 et al. (consol.) (HUNJIP 10(1), 522, 533-544); Hunbeobjaepanso [Const. Ct.], Dec. 18, 2002, 2002Hunma52 (HUNJIP 14(2), 904, 909); Hunbeobjaepanso [Const. Ct.], Oct. 28, 2004, 2002Hunma328 (HUNJIP 16(2), 195, 204).

31) MATTHEW C.R. CRAVEN, *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT* 8 (1995).

32) ERNST-WOLFGANG BÖCKENFÖRDE, *CONSTITUTION, STATE, FREEDOM: A STUDY ON CONSTITUTIONAL THEORY AND STATE THEORY* 207-208 (Hyo Jeon Kim trans., 1992).

33) SOOWOONG HAN, *HUNBEOPAK [CONSTITUTIONAL STUDIES]* 961 (9th ed. 2019) (In Korean).

34) Geun Sik Kim, *Bukanui sahoegwon siltaewa gaeseonbanghyang [The Status and Improvement Direction of North Korea’s Social Rights]*, 18 NE. ASIAN RSCH. 49, 58-65 (2013) (In Korean).

IV. Infringement of Basic Rights and Its Remedy

Even if the Constitution guarantees the basic rights, these rights are inevitably infringed upon by the abuse of state power or the arbitrary actions of people.³⁵⁾ Therefore, to prevent the infringement of basic rights in advance, substantial protection can only be achieved when remedies are prepared afterward, such as preparing precautionary measures and excluding infringement in preparation for the infringement of basic rights.³⁶⁾ State agencies mainly cause the infringement of basic rights through the legislative, judicial, and administrative branches. It can also occur by the acts of ordinary individuals. The remedies available against the infringement of basic rights by state agencies include the constitutional review of laws and statutes by the Constitutional Court, adjudication on a constitutional complaint, administrative trials and litigation, and state and loss compensation claims. When the basic rights of an individual or private organization are infringed, such infringement may be remedied through civil compensation, criminal complaint, (criminal) prosecution, or administrative sanctions. Since the judicial trial is the most common form for seeking remedy for the infringement of basic rights, it is imperative to ensure that the judiciary is designed to independently judge the power of the legislature and the administration regarding guaranteeing basic rights. Especially, the administrative agency can directly infringe on the freedoms and rights of the people in State activities.³⁷⁾ Thus, whether the administrative litigation system, which is a remedy for various acts by the administrative agency, is appropriately established is important in assessing whether remedies for infringement on basic rights are in place.

The North Korean Constitution guarantees the “judicial independence of trial” by stating that the court is independent of the trial and requires trials to proceed under the law (Article 166), and stipulates the “protection of the people's constitutional rights, life, and property” (Article 162 No. 1) as the court's obligation, making it clear that the judiciary performs its

35) Chong, *supra* note 23, Jeong Jong-seop, *op. cit.*, p. 403.

36) NakIn Sung, Hunbeopak [Constitutional Studies] 1058 (20th ed., 2020) (In Korean).

37) *Id.* at 1064.

duties as a final remedy for infringement of basic rights. The open court principle and the defendant's right of defense in court are also stipulated in the Constitution (Article 164). Article 2 of the Attorney Act stipulates that the "guarantee of human rights" is the lawyer's duty. This guarantees the right to defense in criminal trials. However, looking at the legal system and specific trial system related to the composition and responsibility of the judiciary, it is questionable whether the judiciary can adequately perform the function of remedying infringement of basic rights by the legislature and administration.

North Korea's judiciary comprises the Central, Provincial, City (District), Military Civil, and Special Courts (Article 158 (1) of the Constitution). The Special Courts include the Military, Railroad, and Governor's Courts (Article 3 of the Court Composition Act). As the Supreme court, the Central Court oversees all trials, and the Higher courts oversee and control the Lower courts' trials (Article 167 of the Constitution and Article 20 of the Court Composition Act). Thus, North Korea's judiciary is a hierarchical organization, and the Higher courts supervise and control the lower courts' trials, so the higher courts can control the judges of the Lower courts and influence the trial itself. This creates a problem of intra-court independence not being guaranteed.

One judge and two lay judges conduct the trial, and the court comprises three judges only in exceptional cases (Article 162 of the Constitution). The court of first instance comprises a presiding judge and two lay judges, and the court of second instance comprises three judges (Articles 9 and 14 of the Court Composition Act). The Supreme Court (Article 167 of the Constitution), which is the Central Court, comprises a Chief Justice, Deputy Chief Justice, and Judges (Article 16 of the Court Composition Act). The judges and lay judges are elected. The Chief Justice of the Central Court is elected at the Supreme People's Assembly (Article 91 No. 12 of the Constitution), and the judges and lay judges of the Supreme Court are elected at the Standing Committee of the Supreme People's Assembly. Elections for Provincial, City, and Military Civil Courts are held at the applicable People's Assembly (Article 4 of the Court Composition Act). Thus, judges are elected at the People's Assembly, and lay judges,³⁸⁾ who are non-standing and non-legal professionals elected at all levels, can participate in the trials on par with judges,³⁹⁾ so the trial cannot be free from

the influence of the People's Assembly.

The term of office of the Central Court's Chief Justice is the same as that of the Supreme People's Assembly, and the judges' and lay judges' terms are the same as that of their People's Assembly (Article 159 of the Constitution). The judges and lay judges are dismissed when recalled by the agency that elected or appointed them (Article 8 of the Court Composition Act). For example, the Chief Justice of the Central Court may be recalled by the Supreme People's Assembly (Article 91 No. 12 of the Constitution). In particular, the "socialist system, state, and social cooperatives' property" are specified along with the sovereignty of the Democratic People's Republic of Korea, the constitutional rights and life and property of the people as subjects to protect through trial, which one of the court's duties stipulated in the Constitution. The court also has an obligation of ensuring that "all institutions, enterprises, organizations, and citizens abide the laws of the state accurately, opposing against the enemies of class and all kinds of lawbreakers, and actively fight them" (Article 162, Nos. 1 and 2 of the Constitution), which shows that the reasons for dismissal by summoning a judge may include cases where the trial does not correspond to the socialist policies of the party and government. The relationship between the judiciary and the People's Assembly is confirmed by the court's responsibility regulations, which state that the rendition of judgment is declared in the name of the Democratic People's Republic of Korea (Article 158 (2) of the Constitution), the Central Court is accountable to the Supreme People's Assembly and the Standing Committee of the Supreme People's Assembly during its recess (Article 167 of the Constitution), and each court is accountable to the Supreme People's Assembly and the relevant people's meeting (Article 19 of the Court Composition Act). Given that Article 244 of the North Korean Criminal Act sentences judges who rule unjust judgment or adjudication to one year or more of labor training and allows up to five years of 're-education through

38) Lay judges belong to an agency, business, or organization, and receive living expenses, remuneration, and expenses for the period of participation in the trial. Those who do not work for agencies, businesses, or organizations are paid for the period of participation in the trial before the relevant court (Article 13 of the Court Composition Act).

39) The judgment of the court is adopted by a majority vote of the judges and lay judges in the trial (Article 17 of the Court Composition Act).

labor' if the circumstances are dire, there is a possibility of investigative agencies influencing trials. "Unfair judgment" also includes violating the party's policy; there is a possibility of incurring criminal responsibility and not just political responsibility for such trials. By examining the structure and composition of the court and how judges are appointed comprehensively, it is difficult to say that individual judges can be free from the influence of the party, the government, and the People's Assembly and independently remedy the infringement of citizens' rights caused by governmental powers.

It is evident that specific dispute procedures for citizens whose constitutional rights are restricted by the action of governmental power are not adequately organized to guarantee basic rights. First, since the Constitutional Court system is not stipulated in the Constitution, there are no legal proceedings that can remedy the infringement of basic rights by the legislation of the People's Assembly. Furthermore, administrative litigation measures that can contest the illegality of the government's administrative actions and infringement of rights are not recognized by law. Article 21 of the Court Composition Act stipulates, "Those who violate this Act and cause severe consequences in resolving criminal and civil cases shall be held accountable administratively or criminally according to the circumstances," and clarifies that the court's trial work are limited to resolving criminal and civil cases.

The "filling of a complaint" is a civil rights remedy system that is unique to the North Korean Constitution. Filling of a complaint can be filed by citizens, group of citizens, state agencies or organizations that call on the relevant institution or higher-level state agency to recover or prevent the interests of oneself or society that have been or may be infringed due to illegal activities of state agencies or public officials, or bureaucracy or administrative delay,⁴⁰⁾ and is a constitutional right of citizens guaranteed since 1948 by Article 25 of the North Korean Constitution. According to Article 69 of the current North Korean Constitution, filling of a complaint

40) Jong-il Kim, *Gonghwaguk sinso cheongwon jedoui saengseong mit baljeon [The Creation and Development of the Republic's Appeal and Petition System]*, 1 COLLECTION OF LEGAL PAPERS COMMEMORATING THE 10TH ANNIVERSARY OF 8.15 LIBERATION 127 (Nat'l Institute of Sci. of N. Kor. ed., 1955) (In Korean).

and petitions is a citizen's right, and the state has an obligation to deliberate on it and fairly deal with it. The "Filling of a Complaint and Petition Act," which was enacted consequently, defines filling of a complaint as "an act of demanding the prevention of infringement of one's rights and interests or the restoration of the infringed rights and interests" (Article 2) and clarifies that it is a remedy against the infringement of rights by the administrative agency by having citizens go to the relevant agency, business, or organization to file an filling of a complaint by writing (Article 10). The Filling of a Complaint and Petition Act states that filling of a complaint and petition are the voice of the people and a reflection of public sentiment (Article 4 (1)) and stipulates detailed processing procedures. Agencies, enterprises, and organizations are obliged to register filling of a complaint (Article 3), must guarantee confidentiality (Article 6), create an filling of a complaint and petition department, investigate and evaluate relevant facts (Articles 16, 27, and 28), discuss and decide after sufficient consultation on the process, and notify the petitioner of the results of the process at the right time (Articles 33 and 36). Finally, when filling of a complaint or petition is processed, the institution, business, or organization that has received the notification must execute it as indicated in the document and report the results (Article 35).

Some believe that the filling of a complaint system under North Korean law is similar to South Korea's administrative litigation because it aims to address the infringement of rights caused by the governmental power of administrative agencies through corrective measures within the administrative agency.⁴¹⁾ Administrative litigations are basically administrative actions as a declaration of intent by the administrative agency. However, they are also similar to trials in that an independent judgment committee recognizes the facts of the dispute and applies the law to deliberate on and judge the case. South Korean Constitution clarifies the nature of the judgment by stipulating under Article 107 (3) that "administrative trials must apply judicial procedures." Thus, administrative litigations are distinguished from petitions, filling of a

41) Seong-taek Lim, *Bukanui haengjeonggujejeolcha(sinso· cheongwon)e daehan geomto [Review of North Korea's administrative remedy procedures (appeal and petitions)]*, 13 N. KOR. L. RSCH. 137, 139 (2011) (In Korean).

complaint, and the grievance procedure.⁴²⁾ Filing of a complaint is governed by each relevant agency in principle (Article 22 of the Appeal and Petition Act); only investigations, consultations, and discussions within the administration are stipulated as the processing procedure, rather than procedures such as judicial action. Also there is no separate appeals proceedings and in the event of a re-filing of a complaint regarding the same matter, it is required to be conducted by higher positioned workers (Articles 13 and 25 of the Filing of a Complaint and Petition Act), in this way, it should be considered an objection or complaint to determine whether the disposition agency has made any illegal or unfair decisions, rather than a judicial administrative action. Therefore, it is inappropriate to regard it equivalent to judicial action as a remedy for the infringement of basic rights by administrative agencies.

North Korea also has a legal system to control acts that infringe on the rights of citizens through illegal actions of administrative agencies. Through the Administrative Punishment Act, North Korea prevents the commission of illegal acts by imposing sanctions by the administrative law on agencies, businesses, organizations, and citizens who have committed illegal acts. Articles 36 to 331 of the Administrative Punishment Act list 300 illegal acts committed by administrative agencies. These include the violation of acts such as national defense, economic management, cultural management, general administrative, and social common life order. Administrative punishment includes re-education through labor, fines, compensation, confiscation, and suspension (Articles 332 to 341) for violations detected by the socialist legal life guidance committees; the cabinet; prosecuting agency, adjudicating agency, People's Security Institutions, arbitral institution, censorship supervisory, and qualification awarding agencies; businesses; and organizations at all levels; and the above agencies and citizens may file administrative punishment by submitting violation data documents to the relevant administrative punishment agency (Article 343). Administrative punishment shall be deliberated and determined by the socialist legal life guidance committee and the workers association responsible for each agency, and petition or

42) Dong Hui Kim, HAENGJEONGBEOP I [ADMINISTRATIVE LAW I] 653-654 (24th ed. 2018) (In Korean).

deliberation of the relevant agency (Article 346) is proceeded in the judicial or mediating agency. Administrative punishment under North Korean law can be considered a mixture of our disciplinary and administrative penalty considering that obligations stated in the administrative law are imposed not only on administrative agencies but also on ordinary citizens, and administrative sanctions are imposed on contraventions. It is clear that such administrative punishment induces effective compliance with administrative laws and regulations when the administrative agency executes governmental power. However, compared to administrative lawsuits such as administrative trials and litigation, an individual whose rights have been infringed cannot directly contend with the actions of an administrative agency and be remedied; thus, the infringement of individual rights cannot be remedied.

North Korean law does not adequately provide a remedy for the infringement of basic rights as various rights to petition, like the right of access to courts and claim national compensation are not considered basic rights. This can be explained by the standpoint that North Korea considers basic rights not as an inviolable interest granted to individuals but as something that is realized and guaranteed in the collective and society and is a state-given positive right to construct and maintain socialist laws and systems. As the rights of citizens are granted by the state, it is difficult to think that it is violated by the action of governmental power, and citizens are not in a position to dispute over this. Therefore, if the action of governmental power has proceeded out beyond the scope prescribed by the law, aside from imposing sanctions on actors, it is not necessary to establish a legal system in which citizens can directly contest against it or receive compensation.

V. Conclusion

The North Korean Constitution is a fundamental law that provides the direction and standards for all other laws and regulations in the state. Legislators have the duty to specify and realize the constitutional provisions through legislation. Therefore, whether or not to guarantee basic rights, which are the rights of citizens stipulated in the Constitution, can

only be determined by examining whether specific legal systems effectively guarantee basic rights. In particular, North Korea's basic rights focus on its realization and guarantee by the state, not on defense against the state, following the collectivist principle, the need to examine the guarantee under subordinate laws is even more significant because it places more importance on the social basic rights according to the tradition of the Socialist Constitution.

The North Korean Constitution guarantees political rights including: the right to vote, to be elected, and political recall, and guarantees liberty and equal rights such as: freedom of assembly, association and demonstration, belief, residence, travel, the right of personal liberty, housing and the confidentiality of letters, and guarantees a range of social rights such as: private ownership, inheritance, labor rights, the right to rest and leisure, the right to receive free medical treatment, material assistance, and education. The Constitution imposes multiple restrictions following the rule that the party is the only leading source of guidance and the basic principles constituting the Kim-il-sung-Kim-jong-il-ism. There is a high possibility of arbitrary infringement of the physical integrity and freedom of residence as there are no other systems to restrict abuse of the authority and the authority for forced investigations such as arrest, imprisonment, confiscation, and search under the Criminal Procedure Act is concentrated on prosecutors. There are no other systems to restrict the abuse of authority. Private ownership and inheritance rights are recognized for specific properties under the Constitution, and related legal systems such as civil and inheritance laws are established, so, individuals' business activities can be carried out freely based on legal management. In the case of suffrage, the principles of universal, equal, and direct suffrage by secret vote are stipulated in the Constitution, and there are no separate restrictions. However, it can be seen that there are considerable restrictions by law in terms of the candidate's recommendation and examination processes, methods of conducting elections, and the neutrality of election management organizations under the Election Act, as well as restrictions on election campaigns. Equal rights are recognized as a general principle in the Constitution, and concerning basic social rights, there are not only rights but also detailed constitutional principles and state obligations, along with many laws specifying equal rights, so it seems to be well organized

by law.

Although basic rights are recognized to some extent in the North Korean Constitution, there are only a few routes to obtaining remedies regarding infringement of basic rights due to the action of state power. Constitutional review do not exist. Institutionally, trials by individual courts are structured so that they are encumbered by external influences such as the people's assemblies and internal influences by hierarchical organizations. The judiciary's trials are limited to criminal and civil trials, and there is no administrative litigation system that can investigate and adjudicate upon the exercise of power by administrative agencies, which is the most frequent cause of infringement of basic rights. Thus, the remedy for the infringement of basic rights cannot be carried out sufficiently. The only available method is the filling of a complaint, but it corresponds to raising an objection or petition for grievance and cannot be considered a proper remedy.

North Korea emphasizes socialism of its kind based on the socialist order. It is a society unified with collectivism in terms of ideology. The fundamental nature of North Korean society is reflected in its basic constitutional rights and related legal systems, so it has the possibility of many restrictions. Basic rights are not sufficiently guaranteed by law, as remedies for the infringement of basic rights are not adequately established. However, in terms of the supremacy within the legal system of the Constitution, it cannot be denied that the basic rights specified in the Constitution operate as higher principles that must be implemented in the process of subordinate statutes.

The study of North Korean law is significant for preparing for Korean reunification. The enactment of a unified Constitution or revision of the Constitution is inevitable in the reunification process. This requires research on the North Korean Constitution, specifically how its regulations are realized in North Korean society and how its residents react to it. Thus, studies on North Korean law cannot avoid comparison with the South Korean Constitution and other legal systems. However, if North Korean law is grasped prematurely by comparing with the South Korean legal system, functions, roles, and actual meanings of North Korean society and its Constitution cannot be understandable and may only focus on the differences and deficiencies. To evaluate and criticize North Korea's legal

system and institutions, it is necessary to examine whether the provisions and principles of the North Korean Constitution are properly implemented, rather than merely applying North Korea's constitutional theory or comparing it with the constitutions of other countries. A more in-depth understanding of North Korean law will be possible if the enforcement of subordinate laws to realize the Constitution is examinable. For this purpose, it is necessary to examine precedents in North Korea. However, it is still difficult to find such data, so there is a limitation of not being able to reach a practical understanding of North Korean law.

