DISCUSSIONS ON "THE RIGHT FOR SECURITY" IN KOREA - CONSTITUTIONAL AMENDMENT PROPOSAL BY THE GOVERNMENT AND INTERPRETATION OF THE CURRENT CONSTITUTION

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Abstract

The distrust of the current disaster management system has led to the debate to stipulate "the right for security" in the Constitution. When the Sewol ferry sank, the conventional disaster response system did not work properly and missed the golden time for rescue. The disaster led to a discredit in the system. People began to doubt that the state would not help even if they were in a dangerous situation. This disbelief, along with the need for readjustment of the current system, led to discussions of constitutional amendment.

In February 2018, the Korean government announced a constitutional amendment proposal that includes "the right to live safely". The enactment of the right to live safely includes a variety of issues. Most of all, the question from point of view of public law whether the right can have direct effect on the people. It is difficult for this new constitutional right to have direct legal effect, It is speculated that it will have symbolic meaning.

What position does "security" hold within the current Constitution? Even if the current Constitution does not explicitly stipulate security, it enjoys legal protection as elements of individual fundamental rights (ex. right of life, property).

In addition, the protection of basic rights under the Constitution is not limited to the rights listed in individual articles. Unlisted rights will also be protected, when required by the current situation and necessity. The Constitutional Court recognizes new rights when there exists (1)special necessity for its protection and (2) clarity of protected areas by the new right Taking that into consideration, it may be possible to interpret the current Constitution so as to protect the "right for safety from disaster" to a certain extent, whereas "the right for safety in general" would be beyond the realm of constitutional interpretation

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