

Constitutional Court of Korea
Designated Bench 3
Decision

Case 2020HunMa365 Confirmation of the Constitutionality or the Unconstitutionality of
 Maintaining the Strong Advice against Using Liquid E-Cigarettes

Claimant xxxx Association, A Nonprofit Organization

Representative Chairman xxxx Kim

Counsel: S.O.S Law Firm Co.

Attorneys: Min Lee, Chulhyun Park, Byungjun Kim

Date of Decision: March 17, 2020

The Text of Judicial Decision

The request for adjudication on this case is dismissed.

Reasons

1. Outline of the Case

A. The Claimant is a nonprofit organization established for the purpose of supporting businesses and other activities of small business owners of liquid e-cigarette businesses with members of importers, distributors, specialty store owners, and users of liquid e-cigarettes.

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B. On October 23, 2019, while working on the second interagency countermeasures for the safety management of liquid e-cigarettes, the Government Ministries, including the Minister of Health and Welfare, strongly advised the public to stop using liquid e-cigarettes until they establish the safety management system and complete the hazard verification as lung injuries, deaths, and suspected cases have been reported in Korea and overseas in connection with using liquid e-cigarettes.

C. Later, on December 12, 2019, the Minister of Health and Welfare, etc. released "The Analysis Results of Suspected Harmful Substances in Liquid E-Cigarettes in Korea" and announced that the health authorities will maintain the above strong advice to stop using liquid e-cigarettes until the first half of 2020 when the research results of human toxicity will be made public, taking into account that the further research is required to understand the human toxicity of the substances found in liquid e-cigarettes and that the countermeasures, including advising public to refrain from using liquid e-cigarettes until the causal relationship is determined, are taken in the United States as the cases of lung injuries and deaths from liquid e-cigarettes have been reported (Hereinafter, the part of maintaining a strong advice against the use by the Ministry of Health and Welfare is referred to as "maintaining the advice pertaining to this case").

D. Accordingly, on March 10, 2020, the Claimant filed the Constitutional Complaint to seek the confirmation of the constitutionality or the unconstitutionality, claiming that the Claimant's freedom to carry out the occupation and equal rights are infringed due to the health authorities' maintaining the advice pertaining to this case.

2. Decision

In order to file a Constitutional Complaint pursuant to Article 68 Paragraph 1 of the CONSTITUTIONAL COURT ACT Article 68, Paragraph 1, there must be exercise or non-exercise of the governmental power. The 'exercise of the government power' subject to adjudication on a constitutional complaint should have a direct legal effect on the rights and duties of the people and must be congruent to unfavorably change the legal status of the Claimant (see the CONSTITUTIONAL COURT, August 31, 1994, [92HunMa174](#);

the CONSTITUTIONAL COURT, July 24, 2003, [2002HunMa508](#)).

However, the announcement by the Minister of Health and Welfare, which includes maintaining the advice pertaining to this case, consists of points that the further research is required to understand human toxicity of the substances found as a result of analyzing the substances in the liquid e-cigarettes being distributed in Korea as part of the safety management measures of liquid e-cigarettes, points that the countermeasures, including advising public to refrain from using liquid e-cigarettes until the causal relationship with lung injuries is determined, are taken in the United States as the cases of lung injuries and deaths from liquid e-cigarettes have been reported, and points that they announce to maintain the previously announced strong advice to stop using liquid e-cigarettes until the research results of human toxicity will be made public, taking these into account. In the end, this maintaining the advice pertaining to this case is to advise to stop using liquid e-cigarettes until the hazard verification is completed as the harmfulness of liquid e-cigarettes are suspected and merely intended to create de facto effects through discretionary cooperation of the liquid e-cigarettes users, but does not contain any content that explicitly plans to impose any penalties for failure to comply with maintaining the advice pertaining to this case or otherwise directly intervenes or enforces the users or the sellers of liquid e-cigarettes. Therefore, maintaining the advice pertaining to this case is not construed as coming into a direct legal effect on the rights and duties of the people with a regulatory and binding nature and thus does not fall under the "exercise of the governmental power," which is subject to adjudication on a constitutional complaint.

3. Conclusion

That granted, the request for adjudication on this case is unlawful and, therefore, it is decided to dismiss the case according to the Article 72 Paragraph 3 Subparagraph 4 of the CONSTITUTIONAL COURT ACT as stated in the Text of the Judicial Decision by unanimous consent of all the judges involved.

The Presiding Judge

Judge

Misun Lee

Judge

Seoktae Lee

Judge

Youngjin Lee