The Price of Constitutional Subversion

Former South Korean President Found Guilty of Insurrection

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25.02.2026 doi: 10.59704/92ecdfe11ca5bdbb

On February 19, after more than 14 months of investigation and court proceedings, the Seoul Central District Court sentenced former President Yoon Suk Yeol to life imprisonment for leading an insurrection.[1] The events giving rise to the conviction began with his declaration of martial law on December 3, 2024, which effectively prohibited all political activity and deployed armed forces to bar entry to the National Assembly. This measure was intended to prevent the opposition Democratic Party from stifling his administration's policy agenda. Consequently, he was convicted of leading an insurrection (Article 87 of the Criminal Act) and abusing official authority (Article 123 of the Criminal Act). Recent convictions against officials involved in Yoon's imposition of martial law had led to a widespread anticipation that Yoon would be found guilty of insurrection, while uncertainty remained on whether the Court would impose the death penalty as sought by the prosecution or a lifetime sentence.

The District Court's decision reflects constitutional values and carries implications that stretch beyond the individual case. Its reasoning, read alongside the Constitutional Court's impeachment judgment, underscores that Yoon's actions struck at the heart of democratic order. At the same time, the persistent refusal of his supporters to accept these rulings reveals a deeper challenge: the fragility of democratic legitimacy in an increasingly polarized society.

Blocking the National Assembly to subvert the Constitution

The District Court had to decide whether Yoon's actions last year surrounding the imposition of martial law met the legal requirements for insurrection – namely, whether he had initiated a riot with the specific intent to subvert the constitutional order. In Article 91 Paragraph (2) of the Criminal Act, the specific intent to "subvert the Constitution" is defined as overthrowing government organs established by the Constitution or to render the exercise of their functions impossible by force.

Notably, the Court explicitly rejected the legal interpretation that declaring martial law outside the bounds of legality *as such* constituted the crime of insurrection. According to the presiding judge, such an interpretation would deter the President from lawfully commanding the army in situations of imminent threat to national security. Yoon's declaration of martial law on December 3, 2024, and the following measures only amount to an insurrection when the offense was committed with the specific intent to subvert the constitutional order – which the Court positively affirmed.

The Court repeatedly emphasized that Yoon's decisive act was sending the army to the National Assembly with the intent to impede the functioning of the National Assembly. Yoon obstructed the National Assembly by preventing its members from entering the building and exercising their parliamentary rights. Army and police forces received commands to seal off the premises of the National Assembly and arrest important figures of the Democratic Party. To convict

[1] Decision of the Seoul Central District Court from February 19, 2026 (Case number: 2025Go-Hap129)

for insurrection, the law also requires that the perpetrator initiates a riot with the use of force to a degree that is sufficient to disturb the public peace of a region. Since Yoon deployed fully equipped police and armed forces to restrict access to the National Assembly and the National Election Commission by force, the Court held that these actions amounted to a riot within the meaning of the Criminal Act.

The Court did not base its judgment on the martial law decree alone. Yoon repeatedly stated in and outside of the courtroom that he had felt compelled to warn the entire nation of the "state of emergency" caused by the National Assembly's "anti-state" actions. According to the Court, this proves his intent to paralyze parliamentary activities. The reasoning behind Yoon's claim is that the Democratic Party of Korea, which possessed the majority in the National Assembly back then, had frequently refused to ratify laws initiated by the government and brought about impeachment procedures against numerous figures belonging to the then-ruling People Power Party. In its adjudication on impeachment back in 2025, the Constitutional Court dismissed Yoon's claim to have merely sent a "warning signal" by means of martial law, underlining that a declaration of martial law with the motive of "warning" citizens of a constitutional crisis is not a legitimate ground.

Reflection of constitutional values in sentencing factors

While the question of whether Yoon has committed the crime of insurrection revolves around an interpretation of the Criminal Act, the District Court's sentencing decision reveals a direct link between the President's constitutional duties and the illegality of Yoon's act. The presiding judge made clear that by using the armed forces for political purposes, Yoon violated his constitutional duty to keep the military politically neutral as required by Article 5 and Article 74 of the Korean Constitution. Several other aspects, including extra-legal factors, played a significant role in the Court's decision on Yoon's punishment. During the sentence hearing, the presiding judge explicitly mentioned that Yoon's imposition of martial law and its repercussions had damaged South Korea's international reputation and intensified the existing polarization and animosity between political factions. Extra-legal values such as political reputation and social harmony were considered substantial enough to serve as aggravating factors in determining Yoon's sentence.

The District Court's reasoning aligns closely with the central findings of the Constitutional Court decision in 2025, which upheld Yoon's impeachment by the National Assembly.[2] The Constitutional Court found that Yoon's breaches of the Martial Law Act and the Constitution were serious enough to justify his removal from office. It stressed that his attempt to block the National Assembly with the martial law decree and military force struck at the core of the South Korean constitutional order. Central to the Court's decision to uphold the impeachment was that Yoon's unlawful exercise of presidential power posed a manifest threat to the principle of democracy and the rule of law. The judges also highlighted that Yoon's martial law regime was a recurrence of the historical failings of previous authoritarian governments that have overstepped presidential powers. By refusing to resolve a political gridlock through established institutional procedures and repeating the history of abuse of emergency powers, Yoon triggered severe political turmoil and thus violated his constitutional duty to promote social integration. By taking into account the social fragmentation, political shock, and Korea's experience with authoritarianism, the Constitutional Court signaled that the former President's actions transcended a mere violation of written law.

Addressing anti-democratic narratives

As the significance of Yoon's imposition of martial law far exceeds the legal dimension, it is worth reviewing the statements of former President Yoon and his supporters in order to grasp their political perspective that clashes with core democratic values. Yoon claimed during the recent criminal proceedings, as well as in previous court hearings, that he had felt compelled to declare martial law to prevent the National Assembly

[2] Decision of the Constitutional Court of Korea from April 4, 2025 (2024Hun-Na8)

from obstructing government policies and the normal functioning of the State. At the time of Yoon's declaration of martial law, the oppositional Democratic Party was in fact holding the majority in the National Assembly, forming a gridlock situation in which the government led by Yoon and the National Assembly struggled to reach compromises. During the hearing, the District Court in fact acknowledged that the current Constitution does not provide sufficient institutional measures to break the gridlock and facilitate an orderly legislative process. However, Yoon's claim that the martial law regime was to warn against allegedly "subversive" parliamentary actions rests on anti-democratic premises. The opposition, holding the majority of seats in the National Assembly, merely exercises its lawful rights, including rejecting government bills, and in doing so reflects the outcome of democratic elections and the voters' political will. To characterize the National Assembly's exercise of legislative power as a subversive, anti-state act and attempt to obstruct its function is rooted in a fundamental misunderstanding of parliamentary democracy.

Anti-democratic sentiments drive a categorical rejection of court rulings, particularly when the decisions clash with specific political interests. Such dynamics became apparent following Yoon's conviction, as hundreds of Yoon's supporters gathered on February 19 to protest against the ruling. Yoon's legal representatives and loyal supporters see the Court's findings as a result of a violation of the rule of law, arguing that the decision was purely based on political considerations instead of factual evidence. In his recent public speech following the District Court's decision, the leader of the People Power Party, Jang Dong Hyuk, explicitly rejected cutting political ties with Yoon and openly endorsed Yoon's justification for imposing martial law. He also condemned the National Assembly's blocking of government-sponsored laws in 2024 as a form of "parliamentary dictatorship" and accused the current, "neo-dictatorial" government led by the Democratic Party of "controlling the judiciary" during the trials against Yoon. These statements go beyond political rhetoric. Critical observations of the judiciary's interpretation and application of law should indeed be encouraged, as court decisions are undoubtedly subject to critical reflection. However, by refusing to accept Yoon's conviction, statements such as Jang's result in mobilizing his supporters and antagonizing political opponents rather than controlling and consolidating democratic institutions.

Persistent rejection of the legitimacy of constitutional institutions, such as the judiciary and democratic elections, signals that persistent distrust in these bodies will further exacerbate political division in Korean society. In this regard, it should be borne in mind that courts' adherence to the principles of legality and procedural transparency alone cannot ensure public confidence in the legitimacy of constitutional institutions; the judiciary's broader integrative effects remain inherently limited. Mitigating the political divide and upholding democratic values amidst intense political polarization requires a deliberate, discursive approach that examines the underlying beliefs of political actors and the impact of anti-democratic ideas. As doubts about democratic institutions deepen, the imminent challenge for Korean politics remains to counter perceptions that the judicial system is merely an instrument of political bias.

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SUGGESTED CITATION

Lee, Josephina: The Price of Constitutional Subversion: Former South Korean President Found Guilty of Insurrection, Verfassungsblog, 25.02.2026, doi: 10.59704/92ecdfe11ca5bdbb.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260225-145541-0.