Top court halts capital move

October 22, 2004 — In a near unanimous ruling, Korea’s highest court said yesterday that the Roh administration’s decision to relocate the nation’s capital is unconstitutional, effectively halting the move.
The 8-to-1 ruling by the nine-member Constitutional Court came as a major setback for the government and the governing Uri Party in their bid to carry out their multi-trillion-won campaign pledge to transfer ministries, courts and other facilities from Seoul to the Yeongi–Gongju region of Chungcheong province.
At yesterday’s 30-minute court session, Chief Justice Yun Young-chul declared in a live broadcast to the nation that the relocation project required a revision of the constitution to be lawful. Seoul, the judges said, was the nation’s constitutional capital, even if it was unwritten.
The ruling stunned backers of the plan. The Blue House said it wanted to review the court’s decision before reacting to it. “It is a theory I have never heard of,” Mr. Roh was quoted as saying by Blue House spokesman Kim Jong-min, regarding the Constitutional Court’s ruling. Mr. Kim said the Blue House would take time to figure out what to do next.
The Uri Party expressed astonishment. “We are suffering enormous shock and pain after this unexpected outcome,” Im Jong-seok, the party’s spokesman, said. “We will decide our position after consulting with the government and gathering public opinion.”
The court decision overjoyed the Grand National Party. “The Constitutional Court enlightened us again that our country’s legal system is still alive, despite political turmoil,” the party’s chairwoman, Park Geun-hye, said.
The Seoul city government, which has campaigned against relocating the capital, was also thrilled. “I express my respect for the historic decision,” Seoul Mayor Lee Myung-bak said. “The victory is not only for the Seoulites but for all citizens of our country.”
Last Dec. 29 the National Assembly passed a special law for construction of the new administrative capital by a vote of 167 to 13. Eighty-two lawmakers either abstained or did not vote.
Though the bill was sponsored by the Uri Party, the conservative Grand National Party held the majority of Assembly seats. With the passage, a debate began to grow over the wisdom of the huge project. Vested interests, particularly among property owners in Seoul, but also involving major businesses, strongly complained the plan was costly and ill-conceived.
In July, 169 claimants filed a petition, asking the Constitutional Court to review the constitutionality of the special law.
Seven of the nine judges ruled that the law was inherently unconstitutional and violated mandatory procedures on amending the constitution, particularly the people’s right to hold a referendum on important affairs of state.
In the court’s view, it is inherent in the constitution that Seoul is the nation’s capital. The special law attempted to change that unwritten understanding without going through the process of constitutional change, the court said.
The court pointed to Article 130 of the constitution, which lays out procedures for amending the constitution.
Such action requires at least a two-thirds vote of the total members of the National Assembly to pass a proposed amendment. Then, the revision must be submitted to a national referendum within 30 days and confirmed by more than half of all votes cast by more than half of voters eligible to cast ballots in legislative elections. Only then can an amendment to the constitution be made.

The Uri Party holds only 151 seats in the 299-member National Assembly. Given the determined opposition now from the Grand National Party, it is unlikely that a new effort could be mounted to gather the needed votes.

In addition to the seven judges who joined in halting the capital relocation, Justice Kim Yung-il voiced an opinion that the government’s special law authorizing the relocation had also violated Article 72 of the constitution, which requires a national referendum on an important policy decision directly linked to national security.

The one dissenting justice, Jeon Hyo-sook, sided with the government, saying that no constitutional amendment or national referendum was required. Ms. Jeon is the only justice appointed to the court by the Roh administration.

by Ser Myo-ja

Excerpts from justices’ opinions

Judges argue on legality of capital relocation

Among nine Constitutional Court judges, eight ruled yesterday against the Roh administration’s plan to relocate the nation’s capital; one ruled in favor of the project. These are excerpts from the majority and minority opinions of the constitutional court justices.

1. It is a part of an “unwritten constitution” that the nation’s capital is Seoul, therefore any relocation must undergo constitutional amendment. (Seven Constitutional Court Justices including the head Yun Young-chul)

Under the constitution, there is no written clause that the capital is Seoul. However, it has been legally established that Seoul is the capital of the nation since the beginning of the Joseon Dynasty. It was recorded in the Gyeongguk Daejeon (the founding constitution of Joseon), and the people have long held the conviction, based on history and convention, that Seoul was the national capital before the establishment of the [current] constitution. Although there is no clause in the written constitution of our country establishing Seoul as the capital, it is part of an unwritten constitution, or a customary constitution. In order to abolish the constitutional understanding that our country’s capital is Seoul, it is necessary to amend the constitution based on procedures stipulated in the constitution.

Forming a capital and making a decision on its relocation are basic constitutional issues related to national identity. The people must make their own decision on this based on the constitution. A constitutional amendment can be proposed by a vote of half of the National Assembly or by the president. A proposed amendment requires the concurrent vote of two-thirds or more of the total members of the National Assembly and then has to be submitted to a national referendum, to be confirmed by more than one half of all votes cast by more than one half of voters eligible to vote in elections for members of the National Assembly. Therefore, a referendum always
accompanies a constitutional amendment, and the people have the right to express their opinions over the amendment. The special law, however, did not undergo such a procedure. It is thus in violation of Article 130 of the constitution.

2. The policy to relocate the nation’s capital must be referred to a national referendum. (Constitutional Court Justice Kim Yung-il)

The relocation of a capital is an important policy decision directly linked to the nation’s security in terms of defense and unification, thus claims exist that it must be subject to a referendum under Article 72 of the constitution. The president has discretionary power to make a decision on whether a referendum will be held over a policy or not. But, if the president abuses the discretionary power, he is violating Article 72, which provides the authority. The president’s failure to refer the capital relocation issue to a national referendum has violated the purpose and spirit of the establishment of this article. Therefore, he has unconstitutionally abused discretionary power. If the president wants to exercise his discretionary power properly, he has to refer the relocation issue to a national referendum, and he has such an obligation. Therefore, the people will have the right to vote in the referendum. The special law on the capital relocation, however, made the decision to relocate the capital without a national referendum, affirmatively ruling out the referendum. This is in violation of Article 72 of the constitution.

3. The policy of capital relocation can be decided through the legislation of the National Assembly. (Constitutional Court Justice Jeon Hyo-sook in dissent)

Historically, the location of a nation’s capital has been an important part of a nation’s identity. But our constitution has as its principal purpose the realization of the freedom and rights of the people to the maximum degree by integrating the exercise of power of the nation. Where the capital is located is only a means to realize such a purpose, and it is not an issue that will directly influence the achievement of such a purpose. It cannot be simply concluded that the location of the capital must be determined directly by those establishing and amending the constitution. Although Koreans have long held the view that Seoul is the nation’s capital, it is difficult to say that the people have regarded this as a compulsory legal ground. It is not necessary to revise inherent constitutional understandings through an amendment, as [the latter] is a concept related to a written constitution. If the National Assembly has established such an important law on the capital relocation based on the party’s interest, the people, who have formed the legislature, have to bear the ultimate responsibility. The special law on capital relocation was passed overwhelmingly, and it cannot be concluded that the legislation was not authorized by lawmakers. In conclusion, the change in the unwritten constitution that Seoul is the capital does not require a constitutional amendment. Interpreting the constitution, the change cannot be said to be impossible through the legislature. Therefore, the law does not violate Article 130 on the national referendum.