

Abstract

The Meaning and Content of Article 22,  
Paragraph 2 of the Constitution  
as a Standard for Constitutionality Review

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Article 22, Paragraph 2 of the Constitution stipulates that "the rights of authors, inventors, scientists, and artists are protected by law." Despite being a provision that has continued since the Constitution's establishment, there has not been enough discussion in the constitutional academic community regarding its normative meaning and function, relationship with other fundamental rights, especially property rights, and concrete criteria for constitutionality review. Recently, in a case in which the Court reviewed the constitutionality of Article 9 of the Copyright Act, Article 22, Paragraph 2 of the Constitution was applied. As a result of this decision, discussions on the normative meaning of Article 22, Paragraph 2 of the Constitution and its standard for constitutionality review were triggered in the constitutional law academia. These discussions are mostly related to whether Article 22, Paragraph 2 of the Constitution has a unique meaning and performs an independent function, its normative meaning, and the concrete standard for constitutionality review. However, many ambiguous aspects remain. Therefore, this article examines the normative contents of Article 22, Paragraph 2 of the Constitution. The composition of this article is as follows. First,

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as a starting point, the meaning and limitations of the decision of the Court are examined. Second, by examining the US Supreme Court's doctrine about the copyrights clause and related discussions, this article seeks applicability of it to the interpretation of the Korean Constitution. Third, based on this, it critically reviews the recent discussions in constitutional law academia and offers the contents of Article 22, Paragraph 2 of the Constitution as a standard for constitutionality review.

### Keywords

Article 22(2) of the Constitution, standard for constitutionality review, copyrights, intellectual property provision in the US Constitution, *Eldred v. Ashcroft*