

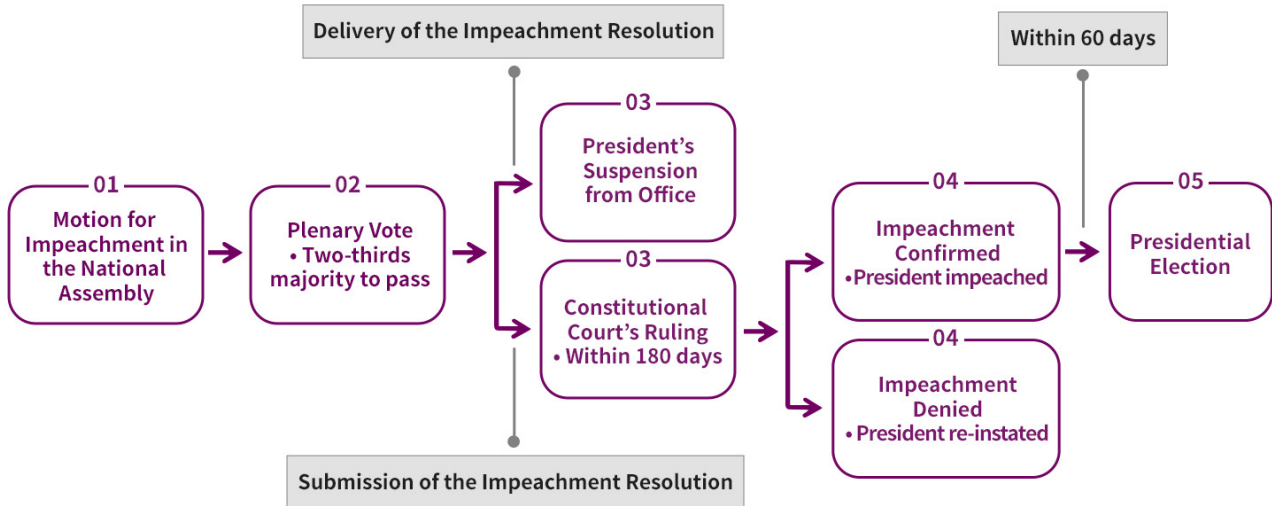
Presidential Impeachment: What Comes Next and What Are the Policy Implications?

December 15, 2024

The National Assembly of South Korea passed the impeachment motion against President Yoon Suk-yeol during a plenary session held on December 14, 2024, at around 5:00 p.m. Of the total 300 votes cast, 204 were in favor, 85 were against, 3 abstained, and 8 were invalid. This was the second impeachment motion introduced against President Yoon in the National Assembly, following a prior motion initiated by the opposition parties that failed to pass on December 7. The impeachment follows a period of political turbulence triggered by the President's controversial declaration of emergency martial law on December 3, which was swiftly nullified by the National Assembly during an emergency session, leading to the lifting of martial law just six hours after its imposition. This marks the third time in South Korea's constitutional history that an impeachment motion against a sitting president has passed the National Assembly. The decision has brought to attention critical questions regarding the scope of the acting president's authority during the suspension of presidential powers, the timeline and procedures governing the Constitutional Court's review of the impeachment to determine whether it should be upheld, and the government's approach to managing state affairs during this interim period.

A. What Comes Next: Procedures Following the Passage of the Impeachment Motion

General Impeachment Process



1. President’s Suspension from Office: What Happens Next?

The President's suspension from office begins when the Office of the President receives the official impeachment resolution. Simultaneously with such suspension, the person designated by the Constitution assumes the role of “acting president.”¹ If the Constitutional Court upholds the impeachment, the acting president continues to serve until the new president's term begins. Conversely, if the impeachment is not upheld, the President is reinstated, and the acting president’s role ends immediately.

An acting president is vested with all constitutional and legal powers of the president, including the command of the armed forces, the authority to declare martial law, and the power to negotiate and ratify treaties, enabling comprehensive management of state affairs. Notably, no constitutional or legal provisions explicitly limit the scope of an acting president's duties. However, the prevailing view is that, unlike an elected president with democratic legitimacy, an acting president's role should be restricted to maintaining the status quo, ensuring the continuity of state functions, and preserving the existing state of affairs. However, the meaning and scope of the “status quo” remains unclear: in the

¹ Pursuant to Article 71 of the Constitution and Articles 12 and 26 of the Government Organization Act, the order of succession for acting president is as follows: the Prime Minister, Ministry of Economy and Finance, Ministry of Education, Ministry of Science and ICT, and Ministry of Foreign Affairs.

absence of explicit limitations, assessing whether a particular action falls within the acting president's duties requires a comprehensive consideration of factors such as the nature of the task, the urgency of the situation, and the political circumstances at the time.²

2. Constitutional Court's Review of the Impeachment Resolution: Key Issues

Whether Review Will Proceed with Only Six Justices on the Bench

The impeachment case arrives at the Constitutional Court of South Korea at a particularly challenging time. The Constitutional Court is currently operating with only six justices instead of the full complement of nine, due to delays in appointing replacements for three retired members. Since the Constitutional Court Act requires six justices to agree to uphold the impeachment, a unanimous decision among the six current justices would be necessary for the impeachment to stand.³

Given the gravity of the impeachment decision, it is likely that the six-justice bench will commence the review process, while additional justices are appointed to the Constitutional Court to enhance the legitimacy of its decision. Once appointed, the new justices will join the proceedings and contribute to the Court's deliberations and final ruling.⁴

During the review proceedings, the Court is likely to focus on the following issues: (1) whether the declaration of martial law qualifies as an act of governance subject to judicial review, (2) whether the circumstances at the time met the criteria for its invocation, such as war, armed conflict, or a comparable national emergency, (3) whether special measures could be taken regarding the powers of the National Assembly or its members under the martial law and (4) whether the special measures taken against the National Election Commission under the declaration of martial law violated the Constitution.

2 During the 2016 impeachment of former President Geun-hye Park, Acting President Kyo-ahn Hwang appointed several officials, including the First Vice Minister of Culture, Sports, and Tourism, members of the Korea Communications Commission, the Ambassador to Belgium and the European Union, and the Vice Chair and Standing Commissioner of the Fair Trade Commission, members of the Korea Communications Commission, a Constitutional Court Justice nominated by the Chief Justice (after the impeachment ruling), and also carried out parole.

3 Under Article 23(1) of the Constitutional Court Act, a quorum of at least seven justices is required for proceedings. However, in October 2024, an injunction was granted to suspend this requirement, allowing the Constitutional Court to proceed with hearings and decisions – including on impeachment cases – with a reduced quorum of six justices.

4 The president's appointment of three vacant positions in the Constitutional Court, which are filled based on recommendations from the National Assembly, is generally regarded as a procedural formality. Moreover, given the necessity of these appointments to restore the Court's core functions, the prevailing view is that the acting president is empowered to make these appointments. However, it currently remains unclear whether the acting president will in fact make these appointments.

Timeline

Article 38 of the Constitutional Court Act stipulates that a decision on a case should be rendered within 180 days of filing. However, the Court has interpreted this timeline as being directive rather than mandatory.⁵ Indeed, in numerous cases, the Court has exceeded the 180-day limit. That said, in presidential impeachment cases, the Court has prioritized swift resolution to minimize the vacuum in national governance, often delivering expedited decisions through intensive hearings.⁶

Certain factors could contribute to the timing of the Court's decision in this case:

- In light of the recent statement by the acting Chief Justice of the Constitutional Court that proceedings will proceed expeditiously and fairly, and also given his and another justice's impending retirement⁷ on April 18, 2025, the Court is likely to act quickly (and possibly render a decision before their departure).
- If a criminal trial is underway for the same reasons as the impeachment trial, the Constitutional Court may suspend the impeachment proceedings under Article 51 of the Constitutional Court Act. However, in this case, given the gravity of the matter and the prevailing public opinion, the likelihood of a suspension appears low, even if criminal proceedings were initiated against the President.

B. Implications for Governing Institutions and Key Sectors

1. National Assembly

The opposition parties are expected to actively continue investigations into issues related to the declaration of martial law through standing committees (such as the National Defense, Interior and Safety, Intelligence and National Assembly Operations Committees), as well as through hearings, parliamentary investigations, and special prosecutor measures. They are also likely to push for the passage of legislative proposals that have been adopted as key priorities within the party platform, as well as bills aimed at appealing to centrist voters.⁸

5 Constitutional Court Decision 2014HunMa433, June 3, 2014.

6 For instance, the Court conducted 63 days of hearings for the impeachment case of former President Moo-hyun Roh and 91 days for former President Geun-hye Park.

7 These justices are two of the three justices that the president has an exclusive authority to appoint.

8 During the suspension of former President Geun-hye Park, the National Assembly held 17 plenary sessions and processed over 380 legislative items.

2. Executive Branch

Vacancies in ministries resulting from the martial law episode, such as the Ministry of National Defense, the Ministry of the Interior and Safety, and the Ministry of Justice, are likely to operate under the auspices of acting vice ministers. Vice ministers may also assume leadership roles in ministries that are headed by ministers who may be under investigation or facing potential impeachment.

Additionally, in the event that an “emergency council” comprising the ruling party, the opposition parties (including the main opposition party), and the government is formed, the council is expected to focus on ensuring stability in the economy and continuity in governance.⁹

3. Economic Sector

Unsurprisingly, the financial and foreign exchange markets experienced peak instability on December 9, 2024, due to the martial law declaration and subsequent political turmoil. However, market conditions began to stabilize the following day with the announcement of plans to pass the national budget and related tax legislation.

Given the unprecedented nature of the current environment, which is more disruptive than the typical lame-duck period at the end of an administration, pursuing new initiatives is likely to be challenging. Crisis management will remain the priority, with a particular focus on stabilizing financial and foreign exchange markets and maintaining external creditworthiness.

The government has not yet announced its 2025 economic policy direction, but its release is anticipated even under the acting presidency, as it serves as an important economic benchmark for key market stakeholders and participants. However, the plan is unlikely to include significant new initiatives, such as amendments to economic laws or the launch of major national projects.

4. Diplomatic Sector

In the wake of the martial law incident, many high-level events have already been canceled or postponed, and there are concerns that this situation may worsen in the near future.¹⁰ In particular, if the government decides to suspend all high-level appointments, this could result in delays in ambassadorial postings, potentially restricting active diplomatic activities for the time being.

⁹ During the suspension of duties of former President Park Geun-hye, a cooperative body comprising the ruling and opposition parties and the government was established to address urgent issues at the time, such as preventing the spread of avian influenza and implementing measures to stabilize prices.

¹⁰ Sweden's Prime Minister Ulf Kristersson, U.S. Defense Secretary Lloyd Austin, and Kyrgyzstan's President Sadyr Japarov all canceled or altered plans involving South Korea due to the recent events.

As for the APEC Summit, which is scheduled to take place in November 2025, no significant scheduling issues are anticipated for Korea to host the event.

Meanwhile, the incoming U.S. administration under President Trump, set to take office in January next year, has signaled a wait-and-see approach to engaging with South Korea until the situation stabilizes. As such, coordination with the United States is expected to be necessary across various security and economic fronts.

5. Regulatory Sector

When considering the precedent set during the impeachment of former President Park Geun-hye, it is likely that key regulatory agencies – such as the prosecution and police, Financial Services Commission (FSC), Financial Supervisory Service (FSS), and Fair Trade Commission (KFTC) – will continue conducting “routine tasks” largely in the same manner as before the acting presidency.

Prosecution and Police:

The role of the prosecution and police is expected to shift to a caretaker role with the passage of the impeachment motion by the National Assembly. The prosecution is unlikely to launch new large-scale investigations into politically sensitive issues or corporate misconduct during this period. Instead, it is expected to focus on cases related to maintaining social order during the impeachment proceedings. Priority is likely to be given to cases that have potential for significant social harm, such as drug-related crimes, gambling, and voice phishing.

As for the police, concerns remain about potential instability within the police force until a new Commissioner is appointed. However, the balance of power is expected to shift toward the National Office of Investigation, with its chief likely leading investigations until around May of next year.

Financial Services Commission and Financial Supervisory Service:

It is likely that most of the current policies of the Financial Services Commission (FSC) will proceed as planned. If individual regulatory actions currently handled by the Financial Supervisory Service (FSS) are referred to the FSC, deliberations and decisions will likely proceed in the usual manner. For instance, during the impeachment of former President Geun-hye Park, there were no significant changes to internal personnel appointments, or in the handling of administrative matters, individual investigations and routine tasks associated with existing policy imperatives. Given the challenging domestic and global economic conditions, as well as the potential for heightened uncertainty in international relations following the inauguration of the Trump administration in the U.S. in January

next year, financial regulatory authorities are expected to steadily carry out necessary tasks to stabilize financial markets and industries. However, new policies that require coordination with other ministries or agencies, as well as leadership appointments in key public institutions, may be delayed.

National Tax Service:

In the past, the National Tax Service (NTS) has tended to operate cautiously during politically sensitive periods, such as refraining from tax audits. It is expected that the same approach will generally be maintained during the current impeachment proceedings. The NTS is likely to focus its administrative resources on routine and immediate tasks, such as the collection of year-end comprehensive real estate taxes and year-end tax settlements at the start of the new year.

However, certain of the planned initiatives and new policies for the next year may remain in flux and require ongoing monitoring, as they are aligned with the policy direction of the current administration. Notably, tax audits have recently intensified due to tax revenue shortfalls, and there is a possibility that the audits will be ramped up again in the latter half of next year, particularly if the political situation stabilizes and alternative policy measures, such as government bond issuance, remain unavailable.

Fair Trade Commission:

The Fair Trade Commission (KFTC) is expected to proceed with deliberations and decisions on ongoing investigations as scheduled. Reported cases will likely be investigated in accordance with established procedures, with existing approaches to handling cases and advancing policies related to major issues – such as corporate group regulations and power imbalance in business relationships – are expected to continue as before. However, the KFTC is likely to exercise restraint in conducting large-scale ex officio investigations and pursuing new policy agenda.

Personal Information Protection Commission:

Given the nature of the Personal Information Protection Commission (PIPC), it is not expected to be significantly affected by the current impeachment proceedings. Most of the cases and policies handled by the PIPC are not politically sensitive in any event. It is anticipated that the PIPC will continue its deliberations and resolutions as usual during the impeachment period. However, the implementation of major policies, such as those related to artificial intelligence and MyData, may experience some delays.

Korea Communications Commission:

The President's impeachment has further complicated predictions about the outcome and timing of the impeachment proceedings against the current Chairperson heading the Korea Communication Commission (KCC). Additionally, the appointment timeline for the currently vacant standing commissioner positions remains unclear. With on-going controversy over the procedural legality of decisions made under the current “two-member system”,¹¹ the normalization of the KCC's operations appears unlikely in the near future. As a result, initiating new investigations or issuing significant decisions and resolutions by the KCC is expected to be difficult during this period.

¹¹ Although the KCC is designed to function with a full panel of five commissioners, recent circumstances have reduced its operation to two members, raising legal challenges and debates over the procedural validity of its decision.

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