Recent Trends of Law & Regulation in Korea

Focusing on Business and Investment

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Ministry of Justice at a Glance
- Seasonal Worker Program

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Law and Regulation
04 Enactments and Amendments of Law
10 Court Decisions

Recent Events
28 Electronic Securities System, Opening a New Era of Innovation and Fairness
29 Korea Prevailed in ISDS Claim Touching on Redevelopment Brought by a US Investor

Policies of the Ministry of Justice
30 Domestic violence offenders cannot invite foreigners for marriage purposes
32 Ministry of Justice Planning to Implement the Pre-declaration System for Voluntarily Departing Foreigners

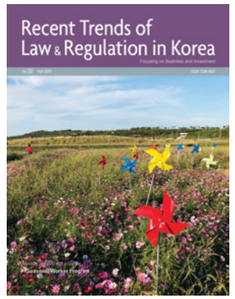
Ministry of Justice at a Glance
34 Seasonal Worker Program

Law in Your Daily Life
38 Protection of Consumer Rights

Living in Korea
42 "Food Delivery Revolution": The Rising Popularity of Food Delivery Apps in Korea

List of Useful Organizations
44 Government Departments

47 Readers Survey



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Enactments and Amendments of Law

NOTE: The translation is NOT official. It only serves as a guideline.

01 North Korean Refugees Protection and Settlement Support Act

Act No. 16223, Jan. 15, 2019, Partial Amendment

Legislative Intent

To strengthen the protection and support the settlement of residents escaping from North Korea through considering the gender of residents escaping from North Korea in establishing the criteria for determining the protection and support, clarifying the legal basis of the Director of the National Intelligence Service in having authority over the provisional protection measures and the establishment of provisional protection facilities, extending the application period for the protection of North Korean refugees from one year to three years after entering the Republic of Korea, providing assistance for housing even to those who are declared ineligible for protection due to having spent more than ten years in their respective countries of sojourn or applied for protection after three years have elapsed since their entry into the Republic of Korea, providing applicable provisions for the reduction of settlement money and goods, setting the personal protection period for the place residence as five years but allowing extension of this period through the review of the Consultative Council when the subject of protection expresses such need or, there is a need for continuous personal protection, etc.

Main Contents

Ⓐ Consideration of gender in determining the criteria for protection and support of residents escaping from North Korea (Article 5(1)).

Ⓑ The Director of the National Intelligence Service will take a necessary investigation to declare applicant for protection as eligible for protection and provide provisional protective measures etc., and without delay inform the Minister of Unification the result and establish operate facilities for the purpose of investigation and provisional protective measures (Article 7).

Ⓒ For residents escaping from North Korea, the period to apply for protection will be extended from one year to three years after entering the Republic of Korea and for those who have been declared ineligible for protection because they have earned their living for more than ten years in their respective countries of sojourn or filed application after three years have elapsed since their entry into the Republic of Korea, they can receive protection for their place of residence (Article 9).

Ⓓ Prioritized purchase company requirements are to be eased from 'companies that have hired employment protection subjects' to 'companies that have hired residents escaping from North Korea' (Article 17-5 is newly inserted).

Ⓔ Providing applicable provisions for providing settlement money and goods to persons eligible for protection (Article 21).

Ⓕ Setting the period of protection for the place of residence as five years and if the persons eligible for protection raises concern or there is a continuous need for personal protection, there can be an extension of protection period through the review of the Consultative Council (Article 22-2 is newly added).

02 Special Act on Remedy for Damage Caused by Humidifier Disinfectants

Act No. 15717, Feb. 15, 2019, Partial Amendment

Legislative Intent

The current law defines victims of humidifier disinfectants as only those who are recognized by the Minister of Environment as a sufferer of health damages caused by humidifier disinfectants containing toxic chemicals and these victims have the right to establish organizations and request information to claim compensation from humidifier disinfectant suppliers, etc.

However, for those who have health damages that are unclear on whether or not it is caused by humidifier disinfectants cannot be recognized as victims thus cannot exercise such rights.

For this reason, the remedy account management committee must base their judgment on epidemiological investigation, the degree of exposure to humidifier disinfectants etc. and consider those who need assistance equivalent to remedial benefits as victims and allow them to establish organizations and request information from humidifier disinfectant suppliers.

In addition, according to the result of the survey of applicants for recognition on environmental exposure on conditions of using humidifier disinfectants, period of using humidifier disinfectants and the humidifier disinfectants itself, the following are to be done: people who have been exposed to them can organize a relevant group, these people can request for information related with recognition of health damage to the humidifier disinfectant supplier etc., victims' organization can conduct research study of humidifier disinfectants and memorial project of victims, and an organization that is implementing a project under Presidential Decree can partially receive support of expenditure that is necessary for the project from the Special Remedy Account run by the Minister of Environment.

Also, for a wider scope of payment of remedial benefits, the content stating that remedial benefits will be paid on condition of subrogating a right to claim compensation is to be deleted, the Minister of Environment's article on subrogating a right to claim compensation for damages is to be modified from mandatory provisions to voluntary provisions, contributions from the government is to be added to secure finances for Special Remedy Account, extinctive prescription of the right to claim compensation for damages which is currently stated as twenty years from the day that damage occurred shall be changed to thirty years so that victims can gain more support and partial deficiencies of existing law can be supplemented; for example, people who were

victimized in the mid 1990s when humidifier disinfectants were first released can also claim compensation for damages.

Main Contents

Ⓐ Besides a person that is recognized by the Minister of Environment as someone who has died or suffered damage to health due to humidifier disinfectants, a person who has gone through deliberation of remedy account management committee and who is deemed as a person that needs assistance equivalent to remedial benefits shall be added to victim of humidifier disinfectants (Article 2-(4)b).

Ⓑ Victims' organization shall be allowed to conduct researches, studies, and projects related to humidifier disinfectants and when doing a project prescribed by Presidential Decree, Minister of Environment may partially reimburse necessary expenses for the project with Special Remedy Account (Article 9).

Ⓒ When exposure to humidifier disinfectants is confirmed by the survey of applicants for recognition on environmental exposure, a related organization can be created, and it can request information to humidifier disinfectants supplier etc. for recognition of health damage (Article 9-2).

Ⓓ When paying remedial benefits, the content stating that the benefits will be paid on condition of subrogating a right to claim compensation is to be deleted, and the Minister of Environment's article on subrogating a right to claim compensation for damages is to be modified from mandatory provisions to voluntary provisions (Article 12, Article 25).

Ⓔ The Minister of Environment can establish and operate Special Remedy Account for health damage caused by humidifier disinfectants, and contributions from the government are to be added to secure finances for Special Remedy Account (Article 31).

Ⓕ Humidifier Disinfectants Help Center is to be changed to Help Center for Victims of Humidifier Disinfectants, and it is to be installed and operated at the Korea Environmental Industry and Technology Institute that was established pursuant to the Korea Environmental Industry and Technology Institute Act (Article 40).

Ⓖ The Minister of Environment may allow institutions prescribed by Environmental Decree such as national & public research institutes, schools under Article 2 of the Higher Education Act, hospitals etc. to be established and operated as the Health Center for Victims of Humidifier Disinfectants (Article 40(3)).

Ⓗ Monitoring business of victims of humidifier disinfectants, which was conducted by Help Center for Victims of Humidifier Disinfectants, is to be conducted by Health Center for Victims of Humidifier Disinfectants (Article 40(4)1).

Ⓘ Extinctive prescription of the right to claim compensation for damages is to be extended from twenty years to thirty years from the day that the damage incurred (Article 41).

03 Act on Labeling and Advertising of Foods

Enforcement Date Mar. 14, 2019; Act No. 15483, Mar. 13 2019, New Enactment

Legislative Intent

Integrating regulations on labeling·advertising of foods that are dispersed in the Food Sanitation Act, the Health Functional Foods Act, and the Livestock Products Sanitary Control Act, and enacting main contents of standards of labeling a food, etc. as law can facilitate business entities relevant to food·health functional food·livestock products·imported foods, etc. to easily understand main contents of labeling·advertising regulations, can prohibit unfair labeling·advertising that noticeably violates public order or social ethics by fostering a speculative spirit or by using obscene expressions, which is done by business entities to provide accurate information on foods, etc., and can abolish preliminary deliberation of functionality's labeling and advertising pursuant to the Food Sanitation Act and the Health Functional Foods Act, and prepare grounds for food-related organizations being able to operate a board that voluntarily reviews unfair labeling·advertising.

Main Contents

Ⓐ Codification of main contents related to labeling standards of foods, etc. into Act (Article 4)

Main contents of labeling of food, food additives, apparatus, and containers·packages which is decided by a public notice of the Minister of Food and Drug Safety, will be enacted as an Act so that business entities related with food·health functional food·livestock products·imported food, etc. can easily figure out and understand main contents of labeling·advertising regulations.

Ⓑ Expansion of prohibition types of labeling and advertising foods, etc. (Article 8(1)8)

These are the types that are excluded from the categories of labeling·advertising of foods, etc. which are currently banned by the Health Functional Foods Act, the Food Sanitation Act, and the Livestock Products Sanitary Control Act, and types of labeling·advertising that noticeably violate public order or social ethics by fostering speculative spirit or using obscene expressions shall be added.

Ⓒ Substantiation of claims in labeling or advertising foods, etc. (Article 9)

To have a person who labels or advertises a food, etc. substantiate claims made in the labeling or advertising. In addition, where deemed necessary to substantiate claims for a food, etc. on the grounds that the labeling or advertising of the food, etc. is false, this article allows the Minister of Food and Drug Safety to request the person who advertised such food, etc. to submit substantiating information.

Ⓓ Voluntary review of labeling·advertising foods, etc. (Article 10)

Preliminary inspection system pursuant to current the Health Functional Foods Act and the Food Sanitation Act shall be abolished, and any person who operates an organization to prevent false labeling or advertising a food, etc. within a trade association established under the Food Sanitation Act, the Korea Food Industry Association, and an organization established under Article 28 of the Health Functional Foods Act shall register its operation to the Minister of Food and Drug Safety.

04 Road Traffic Act

Enforcement Date Jun. 25, 2019; Act No. 16037, Dec. 24 2018, Partial Amendment

Legislative Intent

Even though social damages caused by driving while intoxicated are increasing, it is pointed out that punishment according to current legislation is light compared to the seriousness of violation act, and taking the opportunity of driving while intoxicated that occurred in Busan, people are speaking out for strong punishments of drunk drivers.

Therefore, administrative measures such as blood alcohol concentration for the state of intoxication, standard for statutory punishment, cancellation of driver's license, etc. are to be strengthened, and when driver's license is cancelled, a limited period of re-acquirement of the license is to be extended.

Main Contents

Ⓐ The threshold for the state of intoxication at which anyone is prohibited from driving a motor vehicle shall be reinforced from 0.05 percent to 0.03 percent (Article 44(4)).

Ⓑ Extension of disqualification period related with driving while intoxicated (Article 82(2))

When driver's license is cancelled due to killing a person by driving while intoxicated, the disqualification period of driver's license is to be five years, and when driver's license is cancelled due to causing a car accident and the disqualification period is three years, the number of times of car accidents is to be reinforced from three times or more to two times or more.

Ⓒ Through this amendment, a driver's license shall be revoked when a person drives a motor vehicle, etc. while intoxicated at least not three times (current law) but two times (Article 93(1)2).

Ⓓ Reinforcement of penal provisions of driving while intoxicated (Article 148-2)

1) Driving while intoxicated two times or more shall be punished by imprisonment with labor for not less than two years but not more than five years or a fine of not less than ten million won but not exceeding twenty million won, instead of current act that punished driving while intoxicated three times or more by imprisonment with labor for not less than one year but not more than three years or a fine of not less than five million won but not exceeding ten million won.

2) A person who is deemed to be intoxicated refuses the breath test required by any police officer shall be punished by imprisonment with labor for not less than one year but not more than five years or a fine of not less than five million won but not exceeding twenty million won, instead of current act that punished him/her by imprisonment with labor for not less than one year but not more than three years or a fine of not less than five million won but not more than ten million won.

3) Where the blood alcohol content of an intoxicated driver is not less than 0.2 percent shall be punished by imprisonment with labor for not less than two years but not more than five years or by a fine not less than ten million won but not exceeding twenty million won, blood alcohol content not less than 0.08 percent but less than 0.2 percent shall be punished by imprisonment with labor for not less than two years but not more than five years or a fine of not less than five million won but not exceeding ten million won, blood alcohol content not less than 0.03 percent but less than 0.08 percent shall be punished by imprisonment with labor for not more than one year or a fine not exceeding five million won.

05 Labor Standards Act

Act No. 16270, Jan. 15, 2019, Partial Amendment

Legislative Intent

A Consequence of bullying in the workplace has been serious, even causing the death of coworkers. Since bullying in the workplace not only has a bad influence on the mental and physical health of employee but also incur a burden of expenses on the company, a countermeasure is needed.

On the other hand, since Korea is under criticism for being passive in improving the labor rights of a foreign worker, which does not befit its economic scale and international position, the partial amendment is for the countermeasure.

Main Contents

Ⓐ No employer or employee shall cause physical or mental suffering to other employees or deteriorate the work environment beyond the appropriate scope of work by taking advantage of superiority in rank, relationship, etc. in the workplace (hereinafter referred to as "workplace harassment"); and anyone who has learned the occurrence of workplace harassment may report such fact to the employer (Chapter 6-2 is newly inserted).

Ⓑ The rules of employment added matters pertaining to the prevention of workplace harassment and the measures to be taken in cases of occurrence of workplace harassment (Article 93-(11) is newly inserted).

Ⓒ Where an employer constructs and operates a dormitory attached to the workplace, he/she shall meet the guidelines on the matters like the structure and facilities of the dormitory, the location of the dormitory, and creation of a residential environment in and surrounding the dormitory, etc. as prescribed by Presidential Decree (Article 100).

Ⓓ With regard to a dormitory, the employer shall take measures for the maintenance of health, protection of privacy, etc. of employees (Article 100-2 is newly inserted).

Ⓔ No employer shall dismiss employees who report the occurrence of workplace harassment, victimized employees, etc., or treat them unfavorably, and if a person does so, he/she shall be punished by imprisonment with labor for not more than three years or by a fine not exceeding 30 million won (Article 109(1)).

06 Act on the Promotion and Support of Commercialization of Autonomous Driving Motor Vehicles

Act No. 16421, Apr. 30, 2019, New Enactment

Legislative Intent

Autonomous driving motor vehicles are one of the representative technologies of the 4th industrial revolution and several domestic or global companies are promoting research and development for the commercialization of autonomous driving motor vehicles. However, current the Motor Vehicle Management Act only prescribes the rough definition of an autonomous driving motor vehicle and grounds for the permission of the temporary operation, lacking legal basis that is necessary for the commercialization, such as operating area and safety standards.

Therefore, the enactment ultimately aims to response to 4th industrial revolution proactively and to improve the living of the citizen by establishing a legal basis for promoting commercialization of autonomous driving motor vehicles and infrastructure for the operation and ensuring research and trial run for its commercialization, such as granting an exception from the regulations.

Main Contents

Ⓐ Require the Minister of Land, Infrastructure and Transport to establish a basic plan for autonomous driving transport logistics every five years for the introduction and expansion of autonomous driving motor vehicles, and the development of transport logistics based on the autonomous driving and to conduct an annual survey on the status of research and development, or operation and utilization of transport logistics based on the autonomous driving and autonomous driving cooperation system (Article 4 and Article 5).

Ⓑ In consideration of infrastructures to support the operation of autonomous driving motor vehicles, have the Minister of Land, Infrastructure and Transport designate safety zones out of exclusive roads for motor vehicles for safe autonomous drivings (Article 6).

Ⓒ The Minister of Land, Infrastructure and Transport Minister shall designate a zone for a trial run of autonomous driving motor vehicles and City/Do that has jurisdiction of the designated a zone for a trial run shall be prescribed by ordinance on requirements needed for the operation (Article 7 and Article 8).

Ⓓ Prescribe special cases concerning commercial transport of passengers that allow providing or leasing autonomous driving motor vehicles at a cost that are non-commercial motor vehicles as transportation of passengers in a designated zone for a trial run, despite the Passenger Transport Service Act that prohibits commercial transport by non-commercial motor vehicles (Article 9).

Ⓔ Prescribe special cases concerning trucking transportation business that exempt one who transports autonomous driving motor vehicles at a cost in a designated zone for a trial run from applying permission procedures of the truck transport service provided under the Trucking Transport Business Act but apply permission procedures that are expressly provided in this act (Article 10).

Ⓕ Prescribe special cases concerning safety standards of motor vehicles under the Motor Vehicle Management Act that allow autonomous driving motor vehicles that are difficult to meet the safety standards of motor vehicles and the safety standards for parts because of its structural characteristics such as steering system, brake system, and seating, to operate in a designated zone for a trial run when approved by the Minister of Land, Infrastructure and Transport (Article 11).

Ⓖ Prescribe special cases concerning standards of intelligent transportation system under the National Transport System Efficiency Act and allow a person who runs an intellectualization business of a transport system in a designated zone for a trial run to use new technology which is neither enacted nor noticed as standards of the intelligent transportation system (Article 12).

Ⓗ Special cases shall be prescribed with regard to the Road Act, such as allowing road works, maintenance and management of roads of roads necessary for autonomous driving in designated zones for trial runs to be open to those other than the road management authority (Article 13).

Ⓘ Anyone who intends to operated autonomous driving motor vehicles in designated zones for trial runs may request confirmation of applicability and interpretation of acts and subordinate statute regulating the operation to the Minister of Land, Infrastructure and Transport and the Minister shall confirm the regulation within his authority, and in case where it is under the jurisdiction of another administrative agency, the Minister or the representative of the relevant agency shall return an answer of the consideration results to the individual that made the request within 30 days from when the request was made (Article 14).

Ⓙ Anyone who conducts research or trial runs of autonomous driving motor vehicles in designates zones shall take out insurance to compensate for human or material damages that could occur due to the research or trial runs (Article 19).

Ⓚ If any information is in anonymity so that certain individuals are no longer recognizable, it is not subject to the Personal Information Protection Act, even if the personal information and the personal whereabouts collected in the course of operating an autonomous motor vehicle are redacted or replaced in parts or as a whole so as to combined with other information (Article 20).

Ⓛ Prescribe matters regarding administrative and financial support for introduction and proliferation, etc., of autonomous driving motor vehicles plans and promotions for supporting policies to promote technology development, fostering of professionals, and supporting overseas expansion and international cooperations (Articles 23 to 26).

Court Decisions

NOTE: The translation is NOT official. It only serves as a guideline.

01 Supreme Court Decision 2013Da61381 Decided Oct. 30, 2018
Damages

Main Issues and Holdings

[1] Interpretation of the Treaty

[2] The case of decision that the right to claim for damages asserted by A etc. is not subject to 'Agreement Between Japan and the Republic of Korea Concerning the Settlement of Problems in Regard to Property and Claims and Economic Cooperation', in the case where A etc. who were compulsorily mobilized and forced to labour in Nippon Steel & Sumitomo Metal, a key munitions industry, under Japanese occupation, claimed payment of compensation against Nippon Steel Corporation which was newly established after dissolution of the company above.

Summary of Decision

[1] The treaty should be thoroughly interpreted according to common connotations of the words of the treaty, in recognition of contexts of the treaty and the subjects to and purposes of the treaty. The context here includes not only the treaty itself (including preambles and annexes), but also consultations between the two countries concerned in relation to the contract of the treaty, etc., and in cases where the meanings of the words of the treaty are ambiguous or vague, etc., the meaning should be determined by complementally taking into account records of negotiation of the treaty and the circumstances at the time of contract, etc..

[2] [Majority Opinion]

The case of decision that the right to claim for damages asserted by A etc. against Nippon Steel is not subject to Claims Agreement, regarding the case where A etc. who were compulsorily mobilized and forced to labour in Nippon Steel & Sumitomo Metal, a key munitions industry, under Japanese occupation, claimed payment of compensation against Nippon Steel Corporation (hereinafter 'Nippon Steel') which was newly established after the dissolution of the company above, given the points, such as, that the right to claim for damage of A etc. is a right to claim for compensation of compulsory mobilization victims against Japanese companies (hereinafter 'right to claim for compensation of compulsory mobilization'), under premises of unlawful acts against humanity of Japanese companies which are directly connected to the unlawful colonial occupation of and the execution of war of aggression against the Korean peninsula by the Japanese government; that Claims Agreement, seemingly, was not an agreement made to claim compensation for unlawful colonial occupation by Japan, but one fundamentally made to resolve financial and civil claim-obligation relationships of both countries with basis on Treaty of San Francisco Article 4, through political consultations, according to the process and context of contract of 'Agreement Between Japan and the Republic of Korea Concerning the Settlement of Problems in Regard to Property and Claims and Economic Cooperation' (Treaty 172, hereinafter Claims Agreement); that it is not clear whether the money for economic cooperation, which the Japanese government paid to the Korean government according to the Claims Agreement Article 1, could be regarded to be having legal compensational relations with resolution of problems concerning rights of Article 2; that it is hard to view the right to claim for compensation of compulsory mobilization as included within the subject of Claims Agreement, in a situation where the Japanese government wholly denied legal compensation for compulsory mobilization, not acknowledging the illegality of colonial occupation, and the two countries concerned resultingly could not arrive at an agreement about the nature of Japanese occupation of the Korean peninsula, in the process of negotiation for Claims Agreement; etc..

[Dissenting Opinion by Justice Lee Ki-Taek]

The remanding judgement had already decided "the right to claim for damages of A etc. is not subject to application of Claims Agreement, and even if it were, this individual right to claim itself is not rightly lapsed just by Claims Agreement and it is just the right to diplomatic protection of the Korean government about the according right to claim that is discharged by the establishment of Claims Agreement," and the original sentence followed it exactly after remand.

Court whose sentence was returned from the Supreme Court is bound to the factual and legal decision which the Supreme Court stated as the reason to remand while judging that case. This binding force of the remanding judgement affects the re-appeal in principle. Therefore the assertions of grounds of appeal against the binding force of the remanding judgement cannot be accepted.

[Dissenting Opinion by Justice Kim So-Young, Justice Lee Dong-Won, Justice No Jung-Hee]

Given words of Claims Agreement and the memorandum of understanding on it, etc., the process of Claims Agreement contract or intents of both parties inferred at the time of contract, following measure according to the contract of Claims Agreement, etc. and other multiple circumstances, it is reasonable to conclude that right to claim for damages of forced mobilization victims is subject to Claims Agreement.

However, given that there is no adequate nor clear grounds to assume that there was an agreement about lapse of individual right to claim between the intents of both Korean and Japanese government in Claims Agreement, it cannot be assumed that individual right to claim of A etc. itself is discharged rightly by the establishment of Claims Agreement, and it is only the right to diplomatic protection of the Korean government about that right to claim that is discharged by the establishment of Claims Agreement. Therefore A etc. can still exercise their rights against Nippon Steel by charge in Republic of Korea.

[Dissenting opinion by Justice Kwon Soon Il, Justice Cho Jae Yeon]

As Article 2 of the Agreement clearly targets the Korean people and the Japanese people's right to claim for damages against the other country and their people, it is difficult to interpret the Agreement as a treaty that requests the two States to relinquish their diplomatic protection to each other regardless of the individual rights of the people.

It is reasonable to interpret the meaning of the 'settled completely and finally' or 'no claims shall be made' stipulated in Article 2 of the Agreement as meaning that the Korean people are restricted from exercising their rights by claiming against Japan or Japanese people, if not the complete nullification of the right of individual claims.

In conclusion, although it is not valid to assume that the Korean people's individual right to claim against Japan or the Japanese people was nullified or relinquished by the Agreement, since exercising the right by litigation was restricted by the agreement, it is reasonable to deem that Party A and others' right to claim damages in Korea against New Nippon Steel Corporation, which is the Japanese people, for forced labor is restricted.

02 Supreme Court en banc Decision 2016Do10912 Decided November 1, 2018
Violation of the Military Service Act

Main Issues and Holdings

[1] Legal nature of "justifiable cause" as defined by Article 88(1) of the Military Service Act (held: grounds for exclusion of constituent elements) and matters for consideration when determining the existence of justifiable grounds

Whether the so-called conscientious objection to military service constitutes "justifiable cause" as defined by Article 88(1) of the Military Service Act (affirmative with restriction)

Whether the matter of acknowledging conscientious objection as justifiable grounds under the foregoing Article is in a logically consequential relationship with the existence or absence of alternative military service for conscientious objectors (negative)

Meaning of "genuine conscience" as referred to in conscientious objection, and method of proof as to whether "genuine conscience" constitutes justifiable grounds

Allocation of the burden of proof as to the nonexistence of justifiable grounds (held: prosecutor)

[2] In a case where the Defendant, a Jehovah's Witness, was indicted on the charge of violating the Military Service Act when he did not enlist due to a religious reason even after the lapse of three days from the enlistment date upon receiving a notice of enlistment in active service under the name of the head of a regional military manpower office, the case holding that: (a) in light of overall circumstances, the Defendant's act of refusal to enlist was based on his genuine conscience, thus leaving room to deem as constituting "justifiable cause" under Article 88(1) of the Military Service Act; (b) nevertheless, the lower court, without

examining whether such conscientious objection fell under "justifiable cause" of the foregoing Article, convicted the Defendant by reasoning that the same does not constitute justifiable grounds; and (c) in so doing, it erred by misapprehending the legal doctrine

Summary of Decision

[1] [Majority Opinion] 1. Article 88(1) of the Military Service Act is a penalty provision for those who evade the duty of military service without justifiable cause upon receiving a notice of enlistment in active service or a written draft notice, thereby suppressing evasion and securing armed forces. Pursuant to the foregoing provision, nonperformance of such military service duty may be punishable if there exists a justifiable cause. Here, "justifiable cause" refers to grounds for exclusion of constituent elements and is distinctive from a "justifiable act" (grounds for exclusion of illegality) or "impossibility of occurrence of an illegal act" (grounds for exclusion of responsibility) under the Criminal Act.

Justifiable cause is an indefinite concept that ought to be individually determined by the judiciary on a case-by-case basis, thereby preventing unreasonable outcomes that may arise from the rigid application of positive law and realizing well-grounded reasonableness. Determination of whether there exists justifiable cause as prescribed by the aforementioned Article 88(1) should consider such factors as the purpose and function of the Military Service Act, impact of the performance of military service duty on the overall legal order including the Constitution, social reality, and change of time, not to mention the specific and individual circumstances of a defendant.

Even as to matters not considered in the process of imposing the duty of military service, if a specific and individual circumstance of the person, who is obligated to serve in the military but refuses to do so, results in disabling said person from coping with the challenges associated with military service, such circumstance ought to be deemed as constituting "justifiable cause" as stipulated in Article 88(1) of the Military Service Act. The same holds true even where such circumstance is not simply temporary or does not occur among others.

2. Refusal to perform the duty of military service on moral or religious grounds (so-called "conscientious objection") refers to an act of refusing to participate in military training or bear arms based on a conscientious judgment established by a religious, ethical, moral, and philosophical motive or other motives similar thereto. That is, a person chooses to object to performing the duty of military service on grounds that one cannot participate in military training or bear arms going against his conscience and that doing so would be inviting the destruction of the value of existence as a human being. Ultimately, conscientious objectors are willing to endure any and all restraints that result from not being able to go against his moral or religious conscience and self-destroy the value of existence as a human being.

Article 88(1) of the Military Service Act provides that any person who fails to enlist in the military shall be punished by imprisonment with labor for not more than three years. In actual trials, without considering the individual circumstances of conscientious objectors, the judiciary uniformly sentences a conscientious objector to imprisonment with labor for at least one year and six months, which applies to persons subject to enlistment in wartime labor service as prescribed by Article 136(1) Subparag. 2(a) of the Enforcement Decree of the Military Service Act. Despite the prevalence of such criminal punishment, there are quite a number of instances where a father and son or male sibling are all serving a prison sentence, and an average of roughly 600 conscientious objectors each year refuse to serve in the military.

The Constitution's sacred duty of preserving national security and defending our homeland as well as the duty of national defense imposed on all citizens cannot be emphasized enough. This is because the nonexistence of a State shakes the very foundation of guaranteeing fundamental rights. Having materialized the citizen's duty of national defense through the Military Service Act, the duty of military service ought to be faithfully performed and military administration should be fairly and rigidly executed. The foregoing value should not be neglected just because the Constitution guarantees the freedom of conscience.

Therefore, whether to permit conscientious objection is a normative clash, and requires coordination, between constitutional provisions, i.e., Article 19 (provision on basic rights such as the freedom of conscience) and Article 39 (provision on the duty of national defense).

Article 39(1) of the Constitution stipulates that "All citizens shall have the duty of national defense under the conditions as prescribed by Act." That said, the specific method and details of performing the duty of national defense are matters to be decided by law. Accordingly, the duty of military service is specified in the Military Service Act and Article 88(1) of the same Act punishes nonperformance of such duty while, at the same time, has a provision on "justifiable cause" and subsequently allows the legislator to resolve conflicts that are difficult to enumerate in detail. Thus, the issue of normative clash and coordination as to conscientious objection ought to be resolved through the literal construction of "justifiable cause" as defined by Article 88(1) of the Military Service Act. This interpretative method is not only a way to tackle conflicts head on but also accords with the purport of the Military Service Act.

As seen above, the restriction of the freedom of conscience formation by passive omission may either excessively restrain the freedom of conscience or undermine the inherent substance of the same. Conscientious objection to perform military service falls under such conscience formation by passive omission. Conscientious objectors do not deny the duty of national defense itself under the Constitution; provided, however, they merely refuse to perform such duty materialized by the Military Service Act that stipulates the method of performing military service, i.e., participating in military training or bearing arms.

As a system for guaranteeing fundamental rights, the Constitution should be construed and applied to realize such rights to the fullest. Article 10 of the Constitution declares, "All citizens shall be assured of human worth and dignity and have the right to pursuit of happiness. It shall be the duty of the State to confirm and guarantee the fundamental

and inviolable human rights of individuals." The freedom of conscience is an essential condition to maintain the dignity of humans as a moral, spiritual, and intellectual being.

In light of the current status of conscientious objection as seen earlier along with Korea's economic power and national defense power and the public's high level of security awareness, etc., permitting conscientious objection cannot be necessarily deemed as impeding efforts toward preserving national security and strengthening national defense. Therefore, forcing genuine conscientious objectors to perform military service accompanied by participation in military training and bearing arms and punishing the same for nonperformance may be excessively restricting the freedom of conscience or distorting the inherent substance of such freedom.

Free democracy functions according to the principle of majority, but the same can be justified only when premised on the embracement and tolerance of the minority. On the ground that consent was not obtained from the majority of the public, a State cannot forever neglect the existence of conscientious objectors who inevitably refuse to enlist in the military to preserve one's value of existence as a human being even at the risk of being subject to criminal punishment. The fact that the issue of normative clash is insolvable based on uniformly imposing criminal punishment has been verified through the passage of time. Albeit readily consenting to such belief is improbable, the time has come to embrace and tolerate conscientious objectors.

In short, sanctions, such as criminal punishment, should not be imposed on a person who does not perform the duty of military service involving participation in military training or bearing arms on the ground of one's inner-formed conscience. Uniformly forcing the performance of military service against conscientious objectors and imposing criminal punishment for nonperformance are not only unreasonable in light of the constitutional system that guarantees fundamental rights, such as the freedom of conscience, and the overall legal order, but also contravene the spirit of free democracy pertaining to the embracement and tolerance of the minority. Accordingly, should the performance of military service were to have been refused due to a genuine conscience, then such refusal ought to constitute "justifiable cause" as prescribed by Article 88(1) of the Military Service Act.

3. Whether to acknowledge conscientious objection as a justifiable cause under Article 88(1) of the Military Service Act is not in a logically consequential relationship with the existence or absence of alternative military service, which may serve as a means to resolve the issue of equity regarding the duty of military service that may arise when conscientious objection is acknowledged. That is, alternative military service is premised on the recognition of conscientious objection. Thus, albeit alternative military service is currently not in place or is likely to be introduced in the future, a defendant, who is standing trial upon being indicted for violating Article 88(1) of the Military Service Act, should not be punished if justifiable cause under Article 88(1) is acknowledged.

4. Deliberating and determining whether conscientious objection may be

recognized as a justifiable reason is a critical issue. Here, conscience refers to a devout, firm, and sincere belief. Being devout means deeply committed or devoted to a belief that has an overall impact on one's thoughts and actions. An individual's entire, not partial, life should be under the influence of such belief. Having a firm belief means that such belief is neither fluid nor variable. Although it does not necessarily mean eternal, such belief possesses an obvious substance that does not tend to easily change. Sincere belief means that no falsehood exists and that such belief is neither conciliatory nor tactical depending on circumstances. Even if a conscientious objector were to have a devout and firm belief, if he were to act differently from his belief depending on circumstances, then such belief cannot be deemed as sincere.

In a specific case pertaining to the violation of the Military Service Act, should a defendant assert conscientious objection, the foremost thing to do is to distinguish whether such moral or religious belief is devout, firm, and sincere as seen above. Inasmuch as directly and objectively proving a human being's inner conscience is improbable, the matter ought to be determined by way of proving indirect facts or circumstantial evidence in light of the nature of things (de rerum natura).

Key determinants as to the assertion of conscientious objection to military service based on a religious belief are: (i) the religious creed the conscientious objector believes in; (ii) whether refusal of military service is ordered by that religious dogma; (iii) whether such believers are actually objecting military service; (iv) whether said religion recognizes the defendant (conscientious objector) as an official member; (v) whether the defendant is familiar and complies with the basic tenet; (vi) whether the defendant's assertion of conscientious objection solely or mainly follows such religious doctrine; (vii) the motive and developments surrounding the defendant's vanguarding of the religion; (viii) if the defendant converted to said religion, the background and reason thereof; and (ix) the defendant's period of having that religious belief and performing actual religious activities. Repeated instances where people possessing conscientious belief identical to that of the defendant are already serving a prison sentence on the ground of conscientious objection can serve as an affirmation element for consideration.

Furthermore, in the foregoing determination process, the defendant's overall life ought to be examined, namely, family environment, childhood, school life, and social experience. This is because a devout, firm, and sincere belief is formed through a person's entire life, and is expressed in any form through that person's actual life.

A prosecutor shoulders the burden of proof as regards the nonexistence of justifiable grounds given that it is a constituent element of a crime. Provided, that proving the nonexistence of a genuine conscience is similar to proving the nonexistence of a fact that has not materialized in an unspecified temporal and spatial setting. Such proof of a vague fact is impossible in light of generally accepted notions, whereas it is easier to assert and prove the existence of such fact. Therefore, such circumstance needs to be considered when determining whether a prosecutor fully performed the duty to prove a case. Doing so can enable (a) the conscientious objector (defendant) to present prima facie evidence that one's conscientious objection is of a desperate and concrete nature (i.e., going against his conscience would be a self-destruction of the value of existence as a human being) and that such conscientious belief is devout, firm, and sincere, and (b) the prosecutor to prove the nonexistence of genuine conscience by way of impeaching the credibility of the evidence presented. The prima facie evidence that the conscientious objector is required to present should be substantive to the effect that the prosecutor can base the same to prove that no justifiable ground exists.

[Concurring Opinion by Justice Lee Dong-won] Taking account of the overall circumstances Korea's military size; the number of conscientious objectors on the ground of religious belief in Korea; practical likelihood of utilizing such objectors as military manpower; degree of hardship in establishing military evasion preventive measures through a fair and objective screening process and by ensuring equity between active military service and alternative military service; and characteristics of modern warfare portraying an information warfare or network centric warfare even if permitting alternative military service of conscientious objectors, deeming that it might weaken the nation's defense power and thus place national security at risk is difficult in the current security environment. Moreover, the Constitutional Court recently handed down a constitutional nonconformity decision as regards Article 5(1) of the Military Service Act that does not stipulate alternative military service as a type of military service, and urged the National Assembly to introduce the alternative military service system by December 31, 2019. That said, legislation is likely to be soon passed.

Against such backdrop, as was done in the past, forcing conscientious objectors to enlist in active service and imposing heavy burden to the point that they are unable to cope in light of their religious belief contradicts the principle of proportionality with respect to the restriction of fundamental rights under the Constitution. Therefore, in cases of refusing military service according to a religious belief, such refusal ought to be deemed as constituting justifiable cause as prescribed by Article 88(1) of the Military Service Act.

Provided, that permitting alternative military service, as seen earlier, should be premised on that doing so would not impede the preservation of national security. Therefore, if the preservation of national security is at risk upon permitting alternative military service with regard to those objecting to perform military service on the ground of religious belief, taking the necessary measures, such as subjecting the conscientious objectors to enlist in active service, should also be deemed as permissible.

[Dissenting Opinion by Justice Kim So-young, Justice Jo Hee-de, Justice Park Sang-ok, and Justice Lee Ki-taik] 1. The reasonableness of the legal doctrine presented in Supreme Court en banc Decision 2004Do2965 Decided July 15, 2004, purporting that the majority opinion should be overruled, still holds true in light of Korea's overall normative system and the periodical and societal context. That being said, the same legal doctrine should also be applied as is to this case.

The Supreme Court deemed that, following the materialization of the abstract concept of national defense duty under Article 88(1) of the former Military Service Act (amended by Act No. 11849, Jun. 4, 2013; hereinafter referred to as "penal provision" in the Dissenting Opinion) by the final decision of the Head of Military Manpower Administration, the penal provision of this case was legislated to prevent avoidance of military service and force the organization of military manpower, which serves as a basis to preserve national security, by punishing those obligated to serve but fail to perform military service without a "justifiable cause" even after having received a written draft notice. Accordingly, the Court determined that "justifiable cause" ought to be construed as grounds that may justify the nonperformance of the duty of military service materialized by the decision of the Head of Military Manpower Administration, namely, confined to illness or other causes that a non-performer of military service duty cannot be held liable. Provided, however, the Supreme Court held that, in exceptional cases where the right asserted by a person as the ground for refusal of the materialized duty of military service is guaranteed by the Constitution and said right is recognized as possessing a superior constitutional value that surpasses the legislative purpose of the instant penal provision, there exists a justifiable reason for that person's refusal of military service. At the same time, the Court deemed that the freedom of conscience formation by passive omission, as a relative freedom, is not a value superior to that of the military service duty, which is a constitutionally-protected legal interest to preserve the human dignity and value of all citizens. On that premise, the Supreme Court determined that: (a) albeit restricting the freedom of conscience pursuant to Article 37(2) of the Constitution to ensure the constitutionally-protected legal interest with respect to the duty of military service, this is a legitimate restriction under the Constitution; (b) even if applying the instant penal provision against conscientious objectors, doing so cannot be viewed as an unlawful infringement of the freedom of conscience; and (c) refusing to enlist in active service on the ground that it goes against the freedom of conscience cannot be deemed as a justifiable reason.

2. Postponement of, or exemption from, enlistment of Korean male citizens who are obligated to serve in the military should not be permissible as a matter of principle unless the grounds for exemption are clearly stipulated in the Military Service Act. The legislative purpose of the Military Service Act and the basic purport of the conscription system is to enforce the performance of a specified duty of military service (i.e., enlistment), and the same should be carried through as a matter of course when interpreting "justifiable cause" under the instant penal provision.

Causes such as military exemption are attributable to the fact that the performance of military service, namely, engaging in combat, undergoing military training, and living together in tight quarters, accompanies physical as well as psychological restraint and sacrifice. Thus, even though a ground associated with the ability to cope with performing such military service duty is considered as a "justifiable cause" as mentioned above, it is equivalent to the grounds for military exemption as stipulated in the Military Service Act, i.e., mental and physical disability, criminal punishment, and North Korean defector. Hence, it is tenable to deem that the grounds for exemption are limited by factoring objective and value-neutral circumstances associated with the ability to perform military service. Doing so accords with the purport of Article 3 of the Military Service Act that strictly restricts military exemption. Subjective circumstances including an individual belief, value, view, etc. regarding military service, such as conscientious objection on the ground of religious belief as stated in the Majority Opinion, are excluded from the foregoing exemption grounds irrespective of the degree or continuity of said belief. In view of the aforementioned legislative purpose of the Military Service Act, the principle of equal sharing of military service burden, special provisions on military service based on the universal conscription system and the compulsory draft system, and the purport of the Military Service Act that stipulates the ability to cope with performing military service, even if comparing the duty of military service with other constitutional duties such as tax payment, a more rigid standard ought to apply when determining whether capacity or excessive burden of performing military service may fall under grounds for military exemption.

Article 2(1) of the Military Service Act defines the term "enlistment in the military" as a person obliged to perform military service enters a military through conscription (Subparag. 3) and the term "conscription" as a State's imposition of a duty to perform active service on any person liable for military service (Subparag. 1). Article 61(1) of the same Act provides for "postponement of enlistment" by stipulating that, for any person who has received or is to receive a written draft notice is unable to enlist on the required date due to an illness, mental or physical disorder, disaster, etc., the date may be postponed. Article 129(2) of the Enforcement Decree of the Military Service Act (amended by Presidential Decree No. 24890, Dec. 4, 2013; hereinafter referred to as "Enforcement Decree" in the Dissenting Opinion) provides that the date for fulfillment of military duty may be postponed by up to two years. Also, based on the instant penal provision, a military service obligor should enlist on the designated date as a matter of principle; however, if the designated date of enlistment lapses due to "natural disaster, traffic paralysis, delay in the service of notice, or other extenuating circumstances," that person may enlist within three days from the date of enlistment (Article 24(1) of the Enforcement Decree). In full view of the meaning of enlistment and conscription under the Military Service Act and its Enforcement Decree, the purpose of the enlistment postponement system and the postponed enlistment system, and grounds for postponement, etc., "justifiable cause" under the instant penal provision with respect to enlistment in active service should be a reason suffice to justify not being able to immediately fulfill the duty of assembling on the designated date and at the designated place upon having received the written draft notice. That is, it shall be confined to grounds acknowledged as requirements to temporarily postpone or delay enlistment according to the Military Service Act, i.e., reasons that cannot be attributable to an individual such as illness and disaster.

The duty of national defense refers to a duty imposed on citizens for the

purpose of maintaining a State's independence and preserving the territory against direct or indirect invasions by foreign enemy forces. The Constitution may be construed as demanding the responsibility of national security and national defense based on the universal conscription system and the principle of equal sharing of military service burden, namely, allocating the burden of national defense duty to all sovereign citizens necessary to ensure the safety and peace of a community state. In light of our nation's security environment, etc., such demand is a strong and absolute social demand incomparable to that of any other society.

The duty of military service is imposed according to the content and procedure stipulated in the Military Service Act that was legislated based on the provision on the duty of national defense under the Constitution. The act of conscientiously objecting the performance of such duty, which requires participation in military drill or training, grounded on the fact that it goes against one's religious belief formed through self-decision cannot be justified on the basis that said act pertains to "maintaining conscience" or "freedom of conscience formation by passive omission." Furthermore, notwithstanding that criminal punishment based on the instant penal provision is imposed against conscientious objectors as an inevitable means to realize practicality as to equally distributing the burden of, and performing, military service under the Military Service Act, such circumstance alone is insufficient to deem that a State's enforcement of an individual's performance of military duty going against the individual's inner conscience will neither result in the destruction of the value of existence as a human being or the unlawful coercion of opting the individual to endure criminal punishment to maintain conscience, nor excessively restrict fundamental rights and/or infringe or undermine the inherent substance of the same.

3. With respect to conscientious objection, "genuine conscience" that warrants protection should be an absolute freedom of conscience formed and decided within the inner realm prior to being externally expressed when forced to perform the duty of military service. However, the meaning of "genuine conscience" can only be logically determined based on the subjective perspective of the subject thereto. "Genuine conscience" is not often objectively revealed; moreover, its existence is not easily shared to a third party through the presentation of objective evidence. Therefore, following the Majority Opinion's conclusion, even if "genuine conscience" with respect to refusal of military service may be deemed as constituting "justifiable cause" as prescribed by the instant penal provision, such conscience only remains in the inner realm, and thus, objective reenactment or proof of its existence or absence as well as scientific and rational disproof or denunciation of such assertion per se is extremely difficult or nearly impossible. That being said, "genuine conscience" is not an appropriate subject for objective proof according to the empirical and logical rules established in the criminal justice system and based on rationale.

In full view of the inherent issues relating to the criteria for examining and the procedural method for determining the existence or absence of genuine conscience with respect to military service objection, it would be reasonable to deem that such criteria and method is insufficient and incomplete to verify a conscientious objector's "genuine conscience" to the extent similar to the discovery of substantive truth aspired by the Criminal Procedure Act. Therefore, the foregoing criteria and method can only be regarded as compromising and contingent that comprehensively reflects policy-based considerations, namely, normative and regulatory acceptance of conscientious objection, perception and reaction among societal members as to the degree of acceptance, shortage of military manpower and likelihood of alternative military service that are to occur from the direct and indirect exemption of military duty of conscientious objectors, and adverse impact on the morale of the army in general and on national security and national defense. Examining and determining "genuine conscience" associated with military service refusal without a special standard or method in place is a difficult task to fulfill by the judiciary whose mission is to discover substantive truth.

4. Setting the particular details of alternative military service, equivalent to that of compulsory military service, and the procedure for performing such alternative military service is extremely complicated. Determination through weighing and balancing of the burden of compulsory military service and the burden of alternative military service from a general and abstract level by the National Assembly is insufficient. Coordination of various positions among interested parties based on public feedback as well as extensive research and review to ensure practicality and fairness are required. If alternative military service were to be implemented without undergoing sufficient procedural discourse, this would naturally open the door for criticism that it will distort social unification and cause other conflicts and confrontations. It would not be a simple matter that can be resolved on the premise that there exists a mature level of embracement and tolerance within our society.

Without considering the current state and discussions as to the legislative bill on alternative military service to which only a contour exists and even that is a bone of contention, based on the notion that whether to introduce alternative military service and whether to punish conscientious objectors are separate issues as stated in the Majority's logic, it would be inappropriate to determine whether conscientious objection constitutes "justifiable cause" as prescribed in the instant penal provision ahead of the introduction of the alternative military service system.

5. As regards the meaning of "justifiable cause" under the instant penal provision, the legal doctrine established in the Supreme Court's previous en banc decision ought to remain intact as is. Such legal doctrine does not completely accord with the legal reasoning on "justifiable cause" as expressed by the Dissenting Justices. Moreover, no obvious normative and practical changes are observed to deem that the established legal doctrine should be overruled to broaden the scope of "justifiable cause" as mentioned above.

Nevertheless, the Majority's position to overrule the previous legal doctrine is to bring about the following concerns: (i) distorting legal stability, which is a pivotal judicial value; (ii) undermining the legislative purpose of the Military Service Act by granting excessive preferential treatment with respect to performing the duty of military service; and (iii) causing conflict and confusion as it considerably deviates from the normative demand for equal sharing of the burden of military service and the public's expectation. Moreover, the judiciary will not be immune to misconception and criticism that it is de facto exercising legislative power that exceeds the bounds of judicial authority. Albeit there exists somewhat of an unreasonable or harsh aspect of not applying exceptions of the Military Service Act against certain people obliged to perform military service, such as conscientious objectors, this matter ought to be addressed through the National Assembly's legislative process rather than be resolved by courts through construction of the provisions of the Military Service Act going against the purpose and function of the same. This conclusion, as repeatedly emphasized in the foregoing, is based on the fundamental principle and responsibility that should be followed as a matter of course in the process of a judicial officer's statutory construction and exercise of judicial authority.

[2] In a case where the Defendant, a Jehovah's Witness, was indicted on the charge of violating the Military Service Act when he did not enlist due to a religious reason even after the lapse of three days from the enlistment date upon receiving a notice of enlistment in active service under the name of the head of a regional military manpower office, the Court held that: (a) the Defendant, influenced by his father who is a Jehovah's Witness, was baptized at the age of 13 and had been living his life based on that religious belief; (b) the Defendant, who initially received the written draft notice roughly 10 years ago, is refusing to enlist in the military to this day on religious grounds; (c) the Defendant's father as well as his younger brother had previously served a prison term for violating the Military Service Act after having objected to military service on the same grounds; (d) even though the Defendant is married and raising a little girl and a baby boy, he continues to object military service due to religious belief even at the risk of facing criminal punishment; (e) in light of such overall circumstances, the Defendant's act of refusal to enlist was based on his genuine conscience, thus leaving room to deem as constituting "justifiable cause" under Article 88(1) of the former Military Service Act (amended by Act No. 11849, Jun. 4, 2013); (f) nevertheless, the lower court, without examining whether such conscientious objection fell under "justifiable cause" of the foregoing Article, convicted the Defendant by reasoning that the same does not constitute justifiable grounds; and (g) in so doing, it erred by misapprehending the legal doctrine on the construction of justifiable cause under Article 88(1).

(Source: Supreme Court of Justice)

03 Supreme Court Decision 2016Da49931 Decided December 13, 2018

Decision on Enforcement

Main Issues and Holdings

[1] Whether the degree of infringement of a party's procedural right via an arbitral proceeding ought to be apparent to the extent that it is intolerable to constitute grounds for recognition and enforcement of an arbitral award under Article V(1)(d) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (affirmative)

[2] In the event that grounds for a demurrer arose pursuant to an enforcement law subsequent to the recognition of a foreign arbitral award, whether enforcement of the arbitral award may be denied through the application of Article V(2)(b) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (affirmative)

[3] Whether enforcement of a foreign arbitral award may be denied solely on the basis that the foreign arbitral award is unlawful as it contradicts the substantive rights relationship or that an executory claimant based thereto was aware of such circumstance (negative)

Whether enforcement of an arbitral award may be denied on the grounds that the same constitutes abuse of rights or contravenes public order and good morals (affirmative)

Standard for determining the constitution of rights abuse, etc. in the event that the substance of a foreign arbitral award contradicts the substantive rights relationship

In a case where enforcement of a foreign arbitral award is apparently unlawful as there exist grounds for a retrial under the Civil Procedure Act and having a counterparty accept its enforcement violates justice to the extent that is deemed socially intolerable, whether such case may be considered as grounds for a demurrer (affirmative)

Summary of Decision

[1] In light of the characteristics of the arbitration system, the composition of an arbitral tribunal is the most pivotal and inherent element in arbitral agreements and procedures. That said, any breach of matters agreed between the parties with respect to the composition of an arbitral tribunal shakes the foundation of the tribunal's authority. Article V(1)(d) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards provides that the recognition or enforcement of an arbitral award can be denied when either the composition of an arbitral tribunal or arbitral proceeding, which serves as the basis for an arbitral award, does not coincide with a party's arbitral agreement or violates a discretionary provision. However, the mere fact that a party's agreement or discretionary provision had been infringed is insufficient to constitute grounds for the denial of recognition and enforcement of an arbitral award as stipulated in the foregoing provision. Rather, the degree of infringement of a party's procedural right via the relevant arbitral proceeding ought to be apparent to the extent that it is

intolerable.
[2] The existence of the subject claim right is affirmed inasmuch as a foreign arbitral award has res judicata as it has the same effect as a final and conclusive judgment, and the compulsory enforcement procedure by law of the Republic of Korea may proceed once enforceability is granted through judgment of execution. A judgment of execution, which grants executability of a foreign arbitral award so that it may proceed as compulsory enforcement under the laws of the Republic of Korea, determines the existence or absence of executory power based on the time of the closing of pleadings. In a case where the emergence of grounds for a demurrer under the Civil Execution Act leads to the revelation during pleadings in a judgment of execution that permitting compulsory enforcement based on a written arbitral award contradicts the fundamental principle of Korean law, a court may refuse the enforcement of such arbitral award by deeming the same as going against the public order under Article V(2)(b) on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
[3] The mere fact that a foreign arbitral award is unlawful as it contravenes the substantive rights relationship or that a claimant who had been granted executability via an arbitral award was aware of such fact is insufficient to deny enforcement upon the arbitral award. However, even a right granted upon a foreign arbitral award with the same effect as a final and conclusive judgment ought to be exercised in line with the good faith principle, and the same should not be permissible if constituting abuse of rights or contravening public order and good morals. Whether the substance of a foreign arbitral award contradicted the substantive rights relationship to the extent of constituting rights abuse, etc. ought to be examined by fully considering the following, i.e., nature and content of the right in question, developments leading up to the recognition of an arbitral award and ex post rendition of a judgment of execution, and impact on a party upon permission of execution. In particular, where enforcement of a foreign arbitral award is apparently unlawful as there exist grounds for a retrial under the Civil Procedure Act and having a counterparty accept its enforcement violates justice to the extent that is deemed socially intolerable, seeking enforcement of an arbitral award may be deemed as grounds for a demur since it either constitutes abuse of rights or transgression of public order and good morals.

(Source: Supreme Court of Justice)

04 Supreme Court Decision 2013Du14726 Decided January 31, 2019
Claim for Revocation of Corrective Measure, etc.

Main Issues and Holdings
[1] Whether the "condition that the transaction partner does not make any transaction with a competitor business entity" under Article 5(5)2 of the Enforcement Decree of the Monopoly Regulation and Fair Trade Act includes not only a case where such condition is unilaterally and forcibly imposed on by a market-dominant business entity, but also a case where it is introduced by an arrangement with the transaction partner (affirmative), and whether the "act of making a transaction on the condition that the transaction partner does not make any transaction with a competitor business entity" includes a case where compliance with the conditions is de facto enforceable or binding (affirmative)
[2] In determining whether a certain business entity is deemed a market-dominant business entity, the meaning of the "relevant regional market" and method of determining the scope thereof
[3] Requirements for the recognition of the illegality of the "act of making a transaction to exclude a competitor" as stipulated in the forepart of Article 3-2(1)5 of the Monopoly Regulation and Fair Trade Act, and standard of determining illegality
Matters to be considered in determining whether exclusive dealing is deemed illegal pursuant to the foregoing standard of determining illegality
[4] Matters to be considered in determining the illegality of the act of offering conditional rebates by deeming it as an exclusive dealing
Whether the standard of determining illegality applied to the so-called predatory pricing is likewise applicable to the act of offering conditional rebates (negative), and whether the fact that rebates were offered in a case where products were sold for practically below the cost has to be verified by means of an accounting and economic analysis, etc. conducted by the Fair Trade Commission is a mandatory prerequisite for the recognition of illegality (negative)
Whether a business entity may denounce the Fair Trade Commission's reasonable verification made in regard to the de facto binding force or illegality of the act of offering conditional rebates by verifying the credibility of the basic documents or the method of analysis pertaining to the aforementioned economic analysis (affirmative)
[5] In a case where: (a) the Fair Trade Commission levied a penalty surcharge for multiple violations through the issuance of a single notice for payment of a penalty surcharge imposed for multiple violations; (b) imposition of a penalty surcharge for some violations is illegal; and (c) there exist documents with which the amount of the penalty surcharge on that partial violations is computable in a litigation, whether only the part on the amount of the penalty surcharge for the pertinent partial violations is ought to be subject to revocation (affirmative)

Summary of Decision
[1] The forepart of Article 3-2(1)5 of the Monopoly Regulation and Fair Trade Act defines "the act of making an unfair transaction to exclude a competitor" as the illegal misuse of a market-dominant position. Article 5(5)2 of the Enforcement Decree of the Monopoly Regulation and Fair Trade Act stipulates a case of "unfairly making a transaction with a transaction partner on the condition that the transaction partner does not make any transaction with a competitor business entity" as one of the acts stipulated in Article 3-2(1)5 of the Monopoly Regulation and Fair Trade Act.

The "condition that the transaction partner does not make any transaction with a competitor business entity" is not limited to only a case where such condition is unilaterally and forcibly imposed on by a market-dominant business entity, but also includes a case where a condition is imposed by the arrangement with the transaction partner. Moreover, the "act of making a transaction on the condition that the transaction partner does not make any transaction with a competitor business entity" is not limited only to a case where compliance with the condition itself is enforceable by law, but also includes a case where compliance with the condition is de facto enforceable or binding. Therefore, a case where the transaction partner is left with no alternative other than to comply with the condition shall not be readily deemed to have been excluded from the "act of making a transaction on the condition that the transaction partner does not make any transaction with a competitor business entity." The reasons are as follows.
First of all, the language and text of the legislation may not be deemed to have only presumed a case where compliance with conditions is made legally and contractually binding. Furthermore, the difference between a so-called "exclusive transaction contract," widely and inarguably recognized as constituting a technical requirement of an exclusive dealing, under which the transaction partner enters into a binding agreement not to make any transaction with a competitor business entity and a case where the transaction partner is simply provided with certain benefits when it does not make any transaction with a competitor business entity, or, with certain disadvantages when it does otherwise, simply lies in at what time and on which degree the benefits, which are intended to bind the transaction partner with the agreement not to make any transaction with a competitor business entity, are provided. There is no practical difference between the two in that the benefits or disadvantages, which either was already provided or is to be provided in the future, make a definitive contribution in enforcing the pertinent agreement.
Furthermore, considering the legislative purport to regulate the illegal misuse of market-dominant position with the focus on restricting competition, the view that the requirements to be deemed an exclusive dealing differ depending on whether compliance with the conditions is legally enforceable or binding under a contract is unreasonable. Therefore, a case where benefits are provided conditionally upon the transaction partner's compliance with the condition that it does not make any transaction with a competitor business entity, which thereby renders the pertinent contract de facto enforceable or binding, may be deemed, at least technically, as constituting the "act of making a transaction with a transaction partner on the condition that the transaction partner does not make any transaction with a competitor business entity."
[2] A relevant regional market refers to the geographical area wherein business entities in competition are generally located. More specifically, it refers to the entire region whose representative buyers or sellers may convert their purchases or sales in response to price increase or price decline, which is significant to some degree and lasts for a considerable period, and happens only within a certain region, while price in other regions stays consistent. The scope of the relevant regional market ought to be determined by comprehensively taking into account (i) price and characteristics of the products concerned in a transaction; (ii) a seller's output and business capability; (iii) delivery cost; (iv) a buyer's perception towards the possibility of converting the region of purchase, and its behavior pattern relating to converting the region of purchase; (v) a seller's perception towards the possibility of converting the region of purchase, and the decision-making pattern relating to its management; and (vi) convenience of converting the region of purchase in temporal, economic, and legal aspects. In addition, (a) the pace of technological development, and (b) the current situation of the market, where other goods necessary for the production of the relevant products are produced, and where other goods based on the relevant products are produced need to be considered as well.
[3] The illegality of the "act of making an unfair transaction to exclude a competitor" in the forepart of Article 3-2(1)5 of the Monopoly Regulation and Fair Trade Act needs to be construed in line with the legislative intent of promoting competition in a monopolistic market. That said, the illegality can be recognized when a monopolistic business entity committed an act, which can be objectively assessed as an act that bears the risk of restricting competition, with an intent or objective of artificially disrupting the order of the market by limiting free competition therein. To this end, it needs to be verified that: (a) the act in question bore the risk of resulting in the effect of restricting competition, such as (i) price increase, (ii) reduction of output, (iii) hindrances to innovation, (iv) decrease in the number of strong competitors, and (v) reduction of diversity; and (b) such intent or purpose existed. In a case where it is verified that the act in question actually caused such effect, one may presume that there existed (a) the likelihood of restriction of competition; and (b) the intent or purpose of restricting competition. However, where it is not the case, whether the act in question was

likely to limit competition, and whether there existed such intent or purpose ought to be determined by comprehensively taking account of various circumstances, such as: (i) the background leading up to and the motive behind the act in question; (ii) the mode of the act in question; (iii) the characteristic of the relevant market or whether imitation goods and an adjacent market exist; (iv) price in the relevant market and whether there has been a change to the level of output; and (v) whether innovation was hampered or diversity was reduced. Considering that an exclusive dealing as the illegal misuse of market-dominant position pertains to a case where the transaction partner makes a transaction on the condition that it does not make any transaction with a competitor business entity, such an act is usually deemed to include the purpose of limiting restriction in and of itself.

In specifically determining the illegality of an exclusive dealing in light of the standard of determining illegality, the following elements need to be comprehensively considered, with regard to the degree of which such an exclusive dealing either blocks or limits the access to (i) the alternative purchase location or distribution channel, and (ii) purchase conversion to a competitor's goods: (a) details and conditions of the means used to commit the act in question; (b) details and degree of the disadvantages or the opportunity cost to be borne by a buyer in the event of purchase conversion without complying with the exclusive condition; (c) the perpetrator's position in the market; (d) number of transaction partners subject to an exclusive dealing, and the market share taken up by those transaction partners; (e) duration for which an exclusive dealing was conducted, and the characteristic of the goods or services subject to an exclusive dealing; (f) intent and purpose of an exclusive dealing, and the degree of which consumer choice is limited; (g) details of the relevant exclusive dealing; and (h) situation at the time of the exclusive dealing in question.

[4] In a case where various forms of the act of offering conditional rebates are deemed as an exclusive dealing whose illegality is subject to examination, the following things need to be considered, with the focus on the ambivalent characteristics of rebates, and the standard of determining illegality of an exclusive dealing: (a) structure of rebate distribution; (b) details and degree of rebates to be earned by the transaction partner upon compliance of the exclusionary condition; (c) details and degree of disadvantages to be borne by the transaction partner upon purchase conversion; (d) whether the transaction partner considered the possibility of purchase conversion and the details thereof; (e) trends of competitor business entities at the time of the offering of rebates; (f) whether a competitor business entity attempted to enter the market; (g) the transaction partner's response towards the conditions for the offering of rebates; (h) whether the transaction partner can become a potential competitor of the market-dominant business entity as to the goods and services for which rebates were offered; and (i) the impact of cost reduction caused by an exclusive dealing on the final consumers.

Taking into account the negative impact caused by the act of offering conditional rebates, and the fact that such an act does not necessarily contribute to the improvement of consumer welfare, and the need to strike a balance with the fact that whether benefits provided in return for the conclusion of a contract are below the cost, even in a case where the conclusion of a long-term exclusive dealing contract constitutes an illegal exclusive dealing, does not have to be mandatorily considered, the act of offering conditional rebates, whose damaging effect arises from completely different structure and context compared to that of the predatory pricing, ought not to be treated equally, nor the standard for determining illegality, which is applied in the predatory pricing, is applicable thereto. Therefore, the verification of the Fair Trade Commission by means of an accounting and economic analysis (hereinafter "economic analysis"), evidencing that competitor business entities, either virtual or actual, with the same level of efficiency as the market-dominant business entity, were not impeded from responding to the market-dominant business entity's offering of rebates in terms of price and costs, are not mandatorily required as the prerequisite for the recognition of illegality.

Meanwhile, a business entity may be recommended to use the aforesaid economic analysis to improve reliability of its decision regarding the verification of the de facto enforceability and illegality of the act of offering conditional rebates. Furthermore, (i) insofar as a business entity generally possesses documents relating to costs or expenses, which serve as the raw data used for an economic analysis, and documents relating to the structure of the rebate scheme and its purpose and intention, (ii) in a case where there exists ambiguity or doubt with respect to reliability or accuracy of the economic analysis or that of the raw data used in the economic analysis, (iii) the business entity may prove the credibility of the raw data or the method of analysis, thereby denouncing the prima facie reasonable verification presented by the Fair Trade Commission regarding the de facto binding effect or illegality of the act of offering conditional rebates.

[5] In a case where: (a) the Fair Trade Commission levied a penalty surcharge for multiple violations through the issuance of a single notice for the payment of a penalty surcharge for multiple violations; (b) the imposition of the penalty surcharge is partly illegal for some violations; and (c) there exist documents with which the amount of the penalty surcharge on that partial violations are computable in a litigation, the part subject to revocation must only be limited to the amount of the penalty surcharge on the pertinent violations, even though the issuance of the penalty surcharge was made through a single notice.

(Source: Supreme Court of Justice)

05 Supreme Court Decision 2016Da271608 Decided Feb. 28, 2019
Damages

Main Issues and Holdings

[1] Whether an online service provider that operates an Internet portal site has responsibilities to take appropriate actions, such as deleting and blocking the posting, in a case that a posting which violates another person's copyright was posted in the Internet posting space provided by him, but he was not specifically aware of the circumstances since he was not asked by the victim to delete or block the specific or individual posting, or he could not manage or control it on account of technical or economic reasons. (negative in principle)

[2] In a case where: (a) when the members of the portal site posted a video made by Party A on an Internet cafe offered by the portal site; (b) Party B, a corporation that operates the portal site did not fulfill the obligation to take appropriate measures, such as deleting and blocking the posting; and (c) Party A brought a suit against Party B for the joint tort through aiding and abetting by omission, the case holding that since Party A did not request specifically·individually to delete and block the posting that infringes the copyright of Party A regarding the video, Party B does not have the responsibility to take measures such as deleting and blocking the posting.

Summary of Decision

[1] Even though Internet posting that violates another person's copyright was posted in the Internet posting space provided by an online service provider that operates an Internet portal site and the search function makes it easy for Internet users to find the posting, such a reason does not immediately make the online service provider liable for tort in terms of the posting that infringe a copyright. Even if a posting which violates another person's copyright was posted in the Internet posting space provided by an online service provider, if he was not specifically aware of the circumstances since he was not asked by the victim to delete or block the specific or individual posting, or he could not manage or control the posting on account of technical or economic reasons, unless there are special circumstances considering the nature of the posting to acknowledge the obligation to delete it, it is difficult to assume that an online service provider has a duty to take appropriate measures, such as deleting the posting and blocking similar posting to prevent from being posted in the same Internet posting space in the future.

[2] In a case where: (a) when the members of the portal site posted a video made by Party A on an Internet cafe offered by the portal site; (b) Party B, a corporation that operates the portal site did not fulfill the obligation to take appropriate measures, such as deleting and blocking the posts; and (c) Party A brought a suit against Party B for the joint tort through aiding and abetting by omission, in respect of various reasons, including the fact that Party A sent a request to notify Party B of the copyright infringement by their members and to urge them to take action, but it just included the search term to find the video and the representative address of the cafe where the video was posted, and Party A did not specifically and individually specify the Internet address(URL) or the title of the posting of the video, the Court held as follows: (a) comprehensively considering the fact that (i) it is difficult to assume that Party A requested specifically·individually to delete and block the posting that infringes the copyright of Party A regarding the video; (ii) there was no basis that Party B was aware of the circumstances in which the posting was posted; (iii) it is difficult for Party B to clearly understand whether the posting searched by the search terms provided by Party A infringes on the copyright of Party A; (iiii) it is also difficult to manage and control such posting technically and economically, Party B does not have the responsibility to take measures such as deleting the posting infringing the copyright of the video made by Party A and blocking it to prevent similar content from being posted on the site.

06 Constitutional Court Decision 2017Hunba127 Decided Apr. 11, 2019
Case on the Crime of Abortion

In this case, the Court held that (1) Article 269 Section 1 of the Criminal Act which penalizes a pregnant woman who procures her own miscarriage and (2) the part concerning "doctor" of Article 270 Section 1 of the Criminal Act which penalizes a doctor who procures the miscarriage of a woman upon her request or her consent did not conform to the Constitution, and ordered temporary application of these provisions until the legislature amends them by December 31, 2020.

Background of the Case

The petitioner is an obstetrician-gynecologist who was indicted for procuring 69 miscarriages of women from November 1, 2013, to July 3, 2015, upon their request or with their consent.

While the case was pending before the trial court, the petitioner filed a motion to request the trial court to refer the case to the Court for constitutional review of Article 269 Section 1 and Article 270 Section 1 of the Criminal Act. Upon denial of the motion, the petitioner moved to file this constitutional complaint against the above provisions on February 8, 2017.

Subject Matter of Review

The subject matter of review in this case is whether (1) Article 269 Section 1 (hereinafter referred to as the "Self-Abortion Provision") and (2) the part concerning "doctor" of Article 270 Section 1 (hereinafter referred to as the "Abortion by Doctor Provision") of the Criminal Act (amended by Act No. 5057 on December 29, 1995) violate the Constitution. The Provisions at Issue read as follows:

Provisions at Issue

Criminal Act (amended by Act No. 5057 on December 29, 1995) Article 269 (Abortion)

(1) A woman who procures her own miscarriage through the use of drugs or other means shall be punished by imprisonment for not more than one year or by a fine not exceeding two million won.

Article 270 (Abortion by Doctor, etc., Abortion without Consent)

(1) doctor, herb doctor, midwife, pharmacist, or druggist who procures them is carriage of a woman upon her request or with her consent, shall be punished by imprisonment for not more than two years.

Summary of the Decision

1. Opinion of Nonconformity to the Constitution by Four Justices

The general right of personality is guaranteed by the first sentence of Article 10 of the Constitution which provides for the protection of human dignity, and this is where the right to self-determination derives from. The right to self-determination encompasses a pregnant woman's right to decide whether to continue her pregnancy and bring the baby to term.

Other than the exceptions referred to in the Mother and Child Health Act, the Self-Abortion Provision completely and indiscriminately bans all abortions throughout all stages of gestation, and it forces a pregnant woman to continue her pregnancy by imposing criminal punishment on the woman who violates the ban. The Self-Abortion Provision thereby impinges on a pregnant woman's right to self-determination.

The Self-Abortion Provision has the legitimate purpose of protecting the life of a fetus, and imposing criminal punishment on a pregnant woman for procuring an abortion is appropriate means to deter abortion and thus accomplish the legislative purpose of the Provision.

Pregnancy, childbirth, and parenting are among the most important matters that may crucially and fundamentally affect the life of a woman. Therefore, we believe that a pregnant woman's decision whether to continue or terminate her pregnancy amounts to a decision that reflects profound consideration of all her physical, psychological, social, and economic conditions based on her own views on life and society—a holistic decision central to her personal dignity.

At present, a fetus is considered to be viable (able to survive outside the womb) at around 22 weeks of gestation when provided with the best medical care available. Meanwhile, we find that the State should allow a pregnant woman to have sufficient time to contemplate and execute the holistic decision regarding continuing or terminating her pregnancy, in order to guarantee her right to self-determination. Given these considerations, we opine that it is reasonable for the State to draft legislation that is different from the current legislation in terms of the scope and means of protection on fetal life for the abortion that is to be procured before 22 weeks of gestation, which is the time when the fetus has viability, and at the same time, by when a pregnant woman is allowed to have sufficient time to exercise her right to self-determination in relation to abortion (hereinafter, the period from the time of implantation to such point shall be referred to as "Permissible Period for Determination").

During the conflict of determining the abortion, the threat of criminal punishment has only a limited effect on a pregnant woman's decision whether to terminate her pregnancy. In addition, there have been very few cases in which a woman has been punished criminally for procuring an abortion. In light of these circumstances, we find that the Self-Abortion Provision does not effectively protect the life of a fetus during the conflict of determining the abortion.

The Self-Abortion Provision also places a substantial burden on a woman who seeks or has undergone an abortion by limiting her access to counseling, education, and information regarding abortions. Also, it forces her to seek out expensive procedures to procure an abortion, making it difficult for her to seek relief in the event of medical malpractice during an abortion, and rendering her vulnerable to retaliatory harassment that could be committed by her ex-boyfriend or civil lawsuits involving domestic matters that could be filed by her ex-partner.

Although the Mother and Child Health Act sets out several exceptions to the State's complete ban on all abortions, it does not consider the conflict of determining the abortion based on the social and economic determinants, e.g., concerns about difficulty in continuing jobs, studies, or other social activities; low or unstable income; lack of resources to care for another child; no desire to continue a dating relationship or enter into a marital relationship with the partner; discovery of pregnancy at a point when the marriage has in effect broken down irretrievably, break-up of a dating relationship with the partner; unwanted pregnancy of an unmarried minor woman; etc.

Under the Self-Abortion Provision, a pregnant woman who does not fall under the exceptions referred to in the Mother and Child Health Act is forced to continue her pregnancy completely and indiscriminately, with no exceptions, even if she has social and economic reasons for seeking an abortion, and is subject to criminal punishment if she procures an abortion by violating such provision.

Accordingly, we find that the Self-Abortion Provision restricts a pregnant woman's right to self-determination beyond the minimum extent necessary to achieve its legislative purpose. Thus, the Self-Abortion Provision does not satisfy the principle of least restrictive means. Moreover, the Self-Abortion Provision tilts the balance of interests heavily in favor of the public interest in protecting fetal life by awarding absolute and unilateral superiority to it. Thus, it violates the principle of balance of interests. For these reasons, the Self-Abortion Provision violates the principle of proportionality and infringes the right to self-determination of a pregnant woman. Accordingly, the Self-Abortion Provision is in violation of the Constitution.

The Abortion by Doctor Provision punishing a doctor who procures the miscarriage of a woman upon her request or with her consent was enacted for the same purpose as the Self-Abortion Provision. Therefore, it is unconstitutional for the same reason that the Self-Abortion Provision is unconstitutional.

Considering the fact that banning and criminalizing abortions to protect the life of fetus are not in themselves unconstitutional for all cases, delivering a decision of simple unconstitutionality for the Provisions at Issue would create a legal vacuum in which no one is punished for abortion.

Moreover, it is within the legislative discretion to eliminate the unconstitutional elements from the Provisions at Issue and decide how abortion will be regulated. The legislature has, within the limits that we

have noted above, the discretion to decide, e.g., the length and end date of the Permissible Period for Determination; whether to set a specific time period during the Permissible Period for Determination in which a woman is permitted to undergo an abortion without evaluating social and economic justifications, one that needs to be determined to strike an optimal balance between the protection of fetal life and the right to self-determination of women; whether to prescribe additional procedural requirements such as counseling or deliberation period before an abortion could take place; etc.

Therefore, we render a decision of nonconformity to the Constitution in lieu of a simple unconstitutionality decision for the Self-Abortion Provision and the Abortion by Doctor Provision and orders their temporary application until the legislature amends them.

2. Opinion of Simple Unconstitutionality by Three Justices

We concur with the above four justices' opinion of nonconformity to the Constitution that the State's complete and indiscriminate ban on, and criminalization of, abortion during the above-mentioned periods and circumstances violate a pregnant woman's right to self-determination. However, we differ from the nonconformity opinion for we believe that pregnant women must be permitted, regardless of their reasons for abortion, with the careful consideration of their situations to decide to have an abortion during the first trimester of pregnancy (up to 14 weeks of gestation since the first day of the last menstrual period), and thus we deliver a decision of simple unconstitutionality for the Self-Abortion Provision and the Abortion by Doctor Provision (the "Provisions at Issue").

A pregnant woman has the right to self-determination and must be, in principle, permitted to determine whether to continue or terminate her pregnancy, a holistic decision central to her personal dignity. Exceptions may be allowed in cases where, for instance, the fetus has become viable, or if the abortion takes place after the end of the first trimester of pregnancy and it thereby puts her life or health at risk, etc.

Meanwhile, we note that if abortion should be allowed during the period when the procedures can be performed safely and on permissible grounds only, this would eventually lead to permitting abortions in extremely limited cases and would, deprive a pregnant woman of her right to self-determination, in effect.

For the above reasons, we opine that the State should respect a pregnant woman's right to self-determination during the first trimester of pregnancy—a period when a fetus has not yet developed to the stage of viability, abortion is safe, and careful consideration can be given to the determination whether to terminate pregnancy—and should ensure that she makes her own decision whether to abort after carefully evaluating her situations based on her own views of life and society which have roots in her internal dignity and autonomy.

The Provisions at Issue violate the principle of proportionality by imposing a complete and indiscriminative ban on all abortions including safe ones during the first trimester. Therefore, they infringe the right to self-determination of pregnant women.

If the Court delivers a decision of nonconformity to the Constitution for a law restricting a right of freedom even when the restriction in itself is constitutional but the degree of restriction is too excessive, it will eliminate the grounds of existence for a rule that the Court must declare an unconstitutional law invalid as well as the grounds of existence for the type of decision that is rendered based on this rule—a decision of unconstitutionality. Further, we do not see that striking down the Provisions at Issue would cause immense legal confusion or impose social costs, because these provisions have had only a limited effect on deterring abortions and have not functioned properly as penalty provisions. Meanwhile, solving the problem with ex post facto legislation after rendering the decision of nonconformity to the Constitutionis against the purpose of the legislator allowing retroactive effects for the unconstitutional criminal law, but also it is too severe to impose all the burdens of vacuum in law to each individual. In addition, as stated above, the parts of the Provisions at Issue concerning criminalizing abortion during the first trimester of pregnancy clearly violate the Constitution, so the scope of punishment is not uncertain. Therefore, weare of the opinion that the Court should deliver a decision of simple unconstitutionality for the Provisions at Issue.

3. Conclusion

Combining the opinion of simple unconstitutionality rendered by three Justices and the opinion of nonconformity to the Constitution rendered by four Justices, the Court finds that this number satisfies the quorum required for holding that a provision is in violation of the Constitution based on the proviso of Article 23 Section 2 Item 1 of the Constitutional Court Act. Therefore, the Court declares the Provisions at Issue nonconforming to the Constitution and orders their temporary application until the legislature amends them.

Summary of Opinion of Constitutionality by Two Justices

Since a fetus and a person born alive are at sequential stages of human development, we hardly see any essential difference between the two, in terms of the level of human dignity and need for life protection. As

such, we find that a fetus has a constitutional right to life as well.
The legislative purpose of the Self-Abortion Provision is the protection of the life of a fetus. Given the considerable significance of this legislative purpose and the peculiar nature of the infringement of the right to life, we recognize the need for a strict ban on abortion with means of criminal punishment.
We do not see that the importance of the public interest in protecting fetal life varies according to the stages of fetal development and that a pregnant woman's right to dignity or right to self-determination prevails at certain stages of pregnancy and is outweighed by a fetus's right to life at later stages.
The majority opinion suggests that "social and economic determinants" should be recognized as permissible grounds for abortion; however, the concept and scope of such reasons are very vague, and it would be difficult to objectively ascertain whether a woman's social and economic situations qualify as permissible reasons justifying abortion. We are concerned that legalization of abortion on social and economic grounds would produce the same result as the complete legalization of abortion—the widespread disrespect for human life in our society.
Although it is true that the Self-Abortion Provision restricts a right to self-determination of a pregnant woman to some extent, yet such restriction does not outweigh the substantial public interest in protecting fetal life to be served by the Self-Abortion Provision. Thus, the Self-Abortion Provision does not violate the balance of interests.
At the same time, considering that the motherhood is not properly protected in reality, the State should, in addition to criminalizing abortions, enact legislation that encourages women not to obtain an abortion, such as the "Parental Responsibility Act" that imposes more parental responsibility on unwed fathers, legislation to establish social protection system for unwed mothers, maternity protection policy that relieves women of the burden of pregnancy, childbirth, parenting, and so forth.
The statutory maximum sentence for performing abortion prescribed in the Abortion by Doctor Provision is not excessive, and the court may sentence the offender to a suspended sentence or probation. Thus, the Abortion by Doctor Provision does not violate the principle of proportionality between responsibility and punishment. Further, doctors, as professionals engaged in the business of protecting the life of a fetus, are highly likely to be criticized for performing procedures depriving a fetus of life. Therefore, we find that the Abortion by Doctor Provision where the legislature did not set forth any monetary penalty like the one for abortion with consent provision (Article 269 Section 2 of the Criminal Act) does not violate the balance in criminal punishment, and thus is not against the principle of equality.
Therefore, the Provisions at Issue do not violate the Constitution.

(Source: Constitutional Court of Korea)

07 Supreme Court Decision 2016Da33752 Decided June 13, 2019
Loan

Main Issues and Holdings

[1] Meaning and standard of determining "substantive relations" in Article 2(1) of the Act on Private International Law
[2] Whether the jurisdictional provision in the Civil Procedure Act becomes the most important criteria for determining international jurisdiction (affirmative)
Whether the defendant's place of residence as the center of his/her interest lies becomes an important matter of consideration (affirmative)
[3] Reason for considering special jurisdiction in international jurisdiction, and, in a case where the defendant's assets are located within the Republic of Korea at the time of the Plaintiff's filing of lawsuit but without direct relevance to the Plaintiff's claim, method of determining international jurisdiction
[4] Standard of determining predictability in international jurisdiction, and in a case where the defendant has a foundation of livelihood or conducts economic activities by acquiring assets in the Republic of Korea, whether the predictability of a lawsuit against the defendant on his/her assets in the court of the Republic of Korea is recognized (affirmative)
[5] Whether international jurisdiction can concurrently exist (affirmative), and whether the Korean court's jurisdiction can readily be denied on the sole ground that the courts in other countries provide better convenience in terms of geography, language, and communications compared to the court in the Republic of Korea (negative)
[6] In a case where: (a) Party A, a Chinese national, who used to run a moneylending business, entered the Republic of Korea with a view to running a business of the same nature; (b) Party B, etc., a couple with Chinese nationality, who used to operate real estate development business in China, took up residence in the Republic of Korea; and (c) Party A brought a suit in the Republic of Korea court against Party B, etc. for the return of the loan it lent back in China, the case holding that the lower court was justifiable to have determined that, in light of the entirety of the circumstances, the foregoing suit is substantively related to the Republic of Korea, and thus, the Republic of Korea court has international jurisdiction

Summary of Decision

[1] Article 2(1) of the Act on Private International Law states that "In case a party or a case in dispute is substantively related to the Republic of Korea, a court shall have the international jurisdiction. In this case, the court shall obey reasonable principles, compatible to the ideology of the allocation of international jurisdiction, in judging the existence of the substantive relations." Here, the term "substantive relations" refers to having relevance with the concerned parties or the disputed matter to the extent that justifies the Korean court's exercise of jurisdiction. Determination of "substantive relations" must be rooted upon reasonable principles compatible to the idea of the allocation of international jurisdiction, including impartiality among interested parties, reasonableness of a trial, and promptness and the judicial economy. More specifically, such determination ought to take account of not only personal interests such as equity among, as well as convenience and predictability of interested parties, but also the interests of the court and the state, including the reasonableness, promptness, efficiency of a trial, as well as the validity of a judgment. As such, there exist various interests of international jurisdiction. Determination on which interests deserve protection ought to be made on the basis of reasonable examination of the existence of "substantive relations" in individual cases.
[2] Article 2(2) of the Act on Private International Law states, "A court shall judge whether or not it has the international jurisdiction in the light of jurisdictional provisions of domestic laws and shall take a full consideration of the unique nature of international jurisdiction in the light of the purport of the provision of paragraph (1)," providing jurisdictional provisions of domestic laws as the specific criteria or method of determining "substantive relations" as prescribed in Parag. (1). As such, jurisdictional provisions in the Civil Procedure Act functions as the most important standard of determining international jurisdiction. However, considering that such jurisdictional provisions pertain to the provisions regarding venue on the domestic front, in some cases involving determination of international jurisdiction, these jurisdictional provisions must be modified and applied to the extent that they align with the idea of the allocation of international jurisdiction by considering the unique nature thereof.
The main text of Article 3 of the Civil Procedure Act stipulates, "General forum of a person shall be determined by his/her domicile," meaning that a place where an interested party keeps a living relation, i.e., the center on which that living relation is based, is the most general and universal source of land jurisdiction. Article 2 of the Civil Procedure Act states, "A lawsuit is subject to the jurisdiction of a court at the place where a defendant's general forum is located." This is because it is compatible to the impartiality of the interested parties in the allocation of jurisdiction to allow the plaintiff to bring a suit at the court within the jurisdiction where the defendant's domicile is located. A defendant's domicile is the center of living relation and is an important matter to be taken into consideration in the matter of international jurisdiction.
[3] Taking into account special jurisdiction in the matter of international jurisdiction is to recognize the jurisdiction of the state that has "substantive relations" to the disputed issue. Article 11 of the Civil Procedure Act stipulates, "A lawsuit concerning a property right against a person who has no domicile in the Republic of Korea or against a person whose domicile is unknown, may be brought to the court located in the place of the objects of a claim or those of the security, or any seizable property of a defendant." If the defendant's assets remain in the Republic of Korea at the time of the plaintiff's filing of a lawsuit, the plaintiff may bring a suit against the defendant at the Korean court. Upon the ruling in favor of the plaintiff, the court may immediately enforce the judgment to bring the actual result of the trial. As above, if the defendant's assets lie in the Republic of Korea, the Korean court's international jurisdiction may be recognized so as to protect the rights of the interested parties or to ensure the enforceability of the judgment. Nevertheless, indiscriminately recognizing international jurisdiction even in a case where the defendant's assets are accidentally placed in the Republic of Korea may put the defendant at a considerable disadvantage. Therefore, where the plaintiff's claim has no direct relevance to the defendant's assets, the determination of international jurisdiction shall be made by considering the background leading up to the defendant's assets ending up in the Republic of Korea, the value of the pertinent assets, the need to protect the rights of the plaintiff, and the effectiveness of a judgment.
[4] Determination of predictability ought to be made on the basis of whether the defendant could have reasonably predicted the filing of a suit at the court in the relevant jurisdiction because of "substantive relations" between the defendant and the jurisdiction. A defendant, who has an established livelihood in the Republic of Korea or acquires assets and conducts economic activities, can easily foresee the filing of a suit against him/her relating to the assets at the Korean court.
[5] International jurisdiction is not exclusive jurisdiction, but it can exist concurrently with national jurisdiction. The jurisdiction of the Republic of Korea court shall not be readily denied on the sole basis of the fact that courts of other countries provide more convenience than the Republic of Korea court in terms of geography, language, and communications.
[6] In a case where: (a) Party A, a citizen of the People's Republic of China (hereinafter "China"), who used to run a moneylending business, entered the Republic of Korea with a view to running a business of the same nature; (b) Party B, etc., a couple with Chinese nationality, who used to operate real estate development business in China, took up residence in the Republic of Korea; and (c) Party A brought a suit in the Republic of Korea court against Party B, etc. for the return of the loan it lent back in China, the Court held as follows: (a) comprehensively considering the fact that (i) Party B, etc. purchased a real estate property and a car in the Republic of Korea, and possessed and used them; (ii) at the time of the instant lawsuit, Party B, etc. had an established livelihood in the Republic of Korea, raised children, and inhabited the acquired real estate property; (iii) at the time of the filing of the instant lawsuit, Party A entered the Republic of Korea, had been residing in the Republic of Korea for a considerable period of time, and planned to carry out business activities in the Republic of Korea going forward, it can be considered that both Party A and Party B, etc. laid substantial groundwork for livelihood activities in the Republic of Korea at the time of the filing of the instant lawsuit; (b) after leaving China, Party B, etc. established livelihood in the Republic of Korea and acquired assets, making it difficult to assume that Party B, etc. did not possibly foresee the filing of the instant lawsuit against themselves at the Republic of Korea court; (c) since Party B, etc. possessed assets including real estate property and a car in the Republic of Korea, which Party A held under

provisional seizure, Party A had a practical interest in filing a suit at the Republic of Korea court to seek valid enforcement of the claim; (d) considering the fact that (i) Party A, a Chinese national, sought a trial by showing an explicit intent to be tried at the Republic of Korea court against Party B, etc., who are also Chinese nationals; (ii) Party B, etc. filed a countersuit by appointing a legal representative in the Republic of Korea; (iii) practical proceedings and deliberation took place with regard to the merits of the case for a considerable period of time; (iv) the facts that require attestation in the instant case can be proven through the evidentiary document, such as a contract or the history of account transfer records, and do not necessarily require an investigation in China; (v) whereas pursuing a litigation in the Republic of Korea may not be deemed considerably disadvantageous to Party B, etc., denying international jurisdiction of the Republic of Korea court and bringing the case back to the Chinese court for deliberation would seriously undermine judicial economy; (e) the concepts of international jurisdiction and applicable law are governed by different ideologies, and thus, the substantive relations between the foregoing lawsuit and the Republic of Korea court may not be readily denied on the sole basis of the fact that the law applicable to the legal relation of the foregoing case is the Chinese law; (f) taking these matters into account, the lower court was justifiable to have determined that the foregoing lawsuit was substantively related to the Republic of Korea, and therefore, the Republic of Korea court had international jurisdiction.

(Source: Supreme Court of Justice)

08 Supreme Court Decision 2017Da212095 Decided June 27, 2019
Claim for Prohibition of Copyright Infringement

Main Issues and Holdings

[1] Meaning of "creativity," which is the requirement for "work" as prescribed in Article 2 Subparag. 1 of the Copyright Act, and matters to be considered in determining whether game copyrighted works are creative or not

[2] Subject of copyright protection and standard of determining whether there exists substantial similarity between two copyrighted works

[3] In the case where Foreign Company A ("Company A") that launched a match 3 mobile game filed a claim for prohibition of copyright infringement against Limited Company B ("Company B") on the ground that the mobile game produced by Company B infringed upon Company A's copyright, the case holding as follows: (a) Company A's game works are entitled to copyright protection, for it has a creative identity that makes it differentiated from prior game works; (b) Company B's game works had a semblance of creative expression with Company A's game works, rendering the two substantially similar; (c) nevertheless, lower court determined otherwise, and in so determining, it misapprehended relevant legal doctrines

Summary of Decision

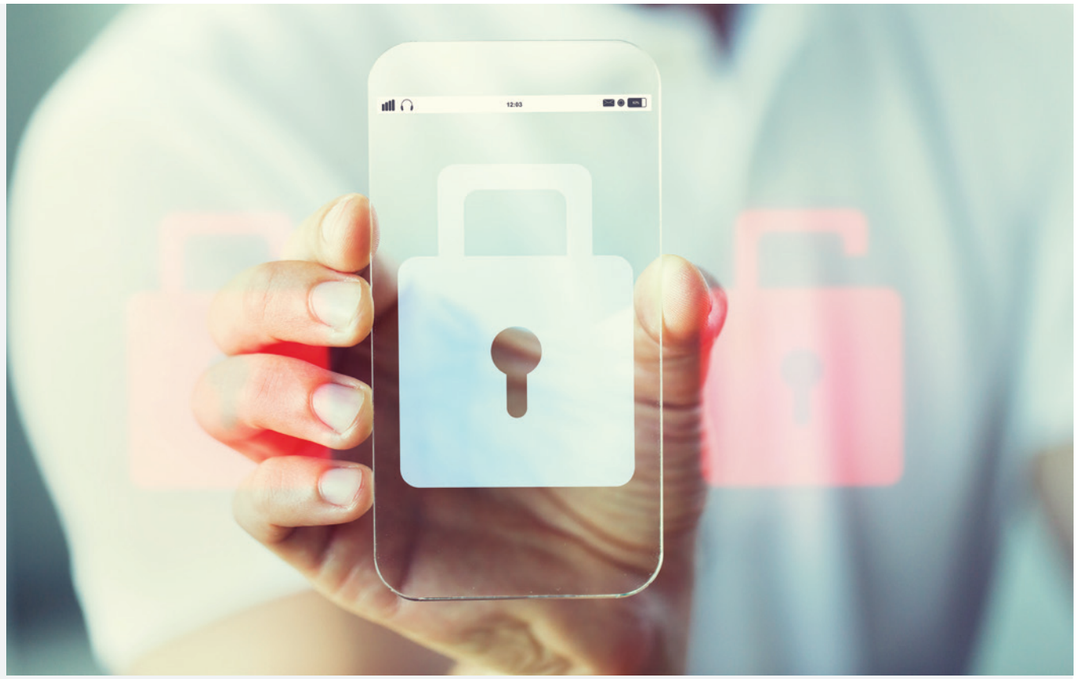
[1] Article 2 Subparag. 1 of the Copyright Act defines copyrighted works as "a creative production that expresses human thoughts and emotions," requiring creativity. "Creativity" may not require complete originality; nonetheless, to be recognized of creativity, the subject work shall not be an imitation of other person's work, and must include the author's original expression of an idea or emotion.

Game copyrighted works (hereinafter "game works") are the copyrighted works of an intricate nature, consisting of literary works, musical works, works of art, cinematographic works, and computer program works. Computer game works or mobile game works is an intricate mixture of characters responding to a given plot and game rules by a player's manipulation, items, background display and the computer program that enables technical operation of the background artwork as well as the video realized therefrom, and soundtrack.

In the process of technically embodying a developer's intent and a scenario, various elements are selected and arranged, and combined to create a feature or uniqueness differentiated from other game works. As such, determination of a particular game work's creative nature must take into account not only the creative nature of each constituent element comprising the game work, but also whether the game work is entitled to copyright protection, with its constituent elements selected, arranged, and combined in the process of technical embodiment under a certain intent of creation and a scenario, going together as creative identity that differentiates it from other game works.

[2] The subject of copyright protection is a creative expression of a human's idea or emotion through speech, letters, musical notes, colors, etc. that is publicly and specifically expressed. In determining whether there exists substantial similarity between two copyrighted works to see if a copyright has been infringed, the comparison must be made only with the materials constituting a form of creative expression.

[3] In the case where Foreign Company A ("Company A") that launched a match 3 mobile game filed a claim for prohibition of copyright infringement against Limited Company B ("Company B") on the ground that the mobile game produced by Company B infringed upon Company A's copyright, the case held as follows: (a) based on the accumulated experience and knowledge with respect to game development, the developer selected elements deemed necessary in light of the characteristics of the game work, and arranged and combined them following the intent of creation and scenario; (b) considering that, aside from recognition of the creative nature of individual constituent elements, the major constituent elements were selected and arranged to create an organic mixture that has a creative identity which makes it completely differentiated from prior game works, Company A's game works were entitled to copyright protection; (c) Company B's game works included exactly the creative expression of Company A's game works, which were made possible by selection and arrangement, as well as a systematic combination of, major constituent elements, technically embodied under the specific intent of creation and scenario, having a creative identity making Company A's game works differentiated from prior game works; (d) that said, the two game works could be considered substantially similar; (e) nevertheless, the lower court determined otherwise, and in so determining, it erred by misapprehending the relevant legal doctrine.



(Source: Supreme Court of Justice)

Recent Events

Electronic Securities System, Opening a New Era of Innovation and Fairness

Enforcing the Act on Electronic Registration of Stocks, Bonds, Etc. on September 16, 2019

- The Ministry of Justice and the Financial Services Commission will fully enforce the 「Act on Electronic Registration of Stocks, Bonds, Etc.」 (hereinafter referred to as the "Electronic Securities Act") on Monday, September 16, 2019, to introduce the electronic securities system.
  - The Ministry of Justice and Financial Services Commission have gone through three and a half years of preparation since the enactment of the "Electronic Securities Act" on March 22, 2016, including the establishment of enforcement decree, etc., and the system will be implemented starting from Monday, September 16.
  - From the day of enforcement, major securities like listed stocks and bonds will be converted into electronic securities all at once, thereby issuance, distribution, and exercise of rights to securities will no longer be done on paper.
- The Ministry of Justice and the Financial Services Commission, and the Korea Securities Depository, which will take on the tasks related to the electronic registration, held a ceremony on September 16, 2019, at 10:00 to mark the launch of the electronic securities system.
- In his congratulatory message, CHO Kuk, the Minister of Justice
  - found that the implementation of the electronic securities system will open up the door to a new environment for innovation in our society and help establish a fair economy;
    - he said, "The electronic securities system will be a foundation for innovative corporate finance services which will be a stepping stone to promote growth for our society";
    - he highlighted that "it will make the ownership relations transparent and facilitate the exercise of rights to securities so as to lay the foundations for a fair economy such as the improvement of corporate governance"; and then
    - he expressed his will by saying, " I will actively support innovative growth based on a fair economy."
- In his congratulatory speech, EUN Sung-soo, Chairman of Financial Services Commission
  - found that the electronic securities system can be summarized into 'the digitization of securities' and 'securities transactions under a real name';
    - he said, "As securities are issued and distributed electronically and the rights thereto are exercised electronically as well, inefficiency will disappear; procedures will be streamlined; and innovation will be accelerated"; and
    - he also emphasized by saying, "Information on the ownership and transfer of securities will be recorded transparently; the risk of counterfeit and loss of securities will disappear; and physical transaction in the black market will become impossible."
  - In addition, he requested the Korea Securities Depository and financial institutions by saying, "We should try to avoid shareholders experiencing inconvenience in the process of electronic registration of paper securities" and that "there should be no unnecessary delays in the screening process of the electronic registration for unlisted companies."
    - He also added that as paper securities are electronically registered, "investors and issuers may have concerns over damages such as hacking and clerical errors so there is a need to take great care of assuring the stability of the IT system and information security."
- As the joint agencies that oversee the electronic securities system, the Ministry of Justice and the Financial Services Commission will cooperate with each other through strengthening internal capabilities by increasing the number of specialists etc., and actively support the stabilization of the operating processes of the electronic securities system in order to contribute to the nation's development.

Korea Prevailed in ISDS Claim Touching on Redevelopment Brought by a US Investor

First-ever win in an ISDS case filed against the Korean Government

- On Friday, September 19, 2019, the Korean Government won an Investor-State Dispute Settlement (ISDS) case, worth approximately 3 million dollars filed by a US investor(a former Korean national who became a naturalized US citizen in 2013), on July 12, 2018, claiming compensation for land expropriation.
  - The investor, who obtained US citizenship during the redevelopment of the area in which her property was situated, was lawfully offered (placed in the court designated escrow account) compensation for land expropriation, but argued that the compensation amount was far below the fair market value; so she claimed, based on the Korea-United States Free Trade Agreement (hereinafter referred to as the "KORUS FTA") USD 2 million in compensation to make up for the difference and USD 1 million in moral damages for distress suffered during the process of compulsory public seizure.
- In response, the Korean government formed a Task Force (represented by Deputy Minister for Legal Affairs) composed of deputy ministers of relevant ministries to deal with the dispute, and established a response system centered on the Ministry of Justice (Minister CHO Kuk) and the Ministry of Land, Infrastructure and Transport.
  - The government built and thoroughly managed a constantly checking and reviewing system through hotlines with domestic and foreign law firms representing the government and gave instructions on the entire response on the date of three-day jurisdictional hearing held in Seoul from last July 31 to August 2.

- Under such response system, on February 26, 2019, the Korean government filed an application for the expedited procedure* under the KORUS FTA, based on the fact that there were multiple grounds for preliminary objections. The Korean government was able to save much time and cost as the claim was dismissed only based on the grounds for preliminary objections.

* Procedure that requires the tribunal to determine the grounds for preliminary jurisdictional objections within 210 days at the most.

  - In its award rendered on an expedited basis, the tribunal, on September 27, 2019, held that it had no jurisdiction over this case, considering that ①the properties the investor purchased do neither constitute an "investment" within the meaning of the KORUS FTA ② nor do they constitute a "covered investment**" as the KORUS FTA designated in its scope of protection.

** A "covered investment" that is in existence at the time the treaty came into force (March 15, 2012), or else be established, expanded, or acquired thereafter.

  - The tribunal determined that the investor's act of purchasing the properties for the purpose of residence of herself and her family and later renting-out some part of them cannot be regarded as typical investment, leading to the conclusion that this act does not fall under the definition of "investment" set forth in the KORUS FTA.
  - In addition, even if they can be regarded as "investment," the tribunal held that they do not constitute a "covered investment" protected under the KORUS FTA, explaining that the investor was a Korean citizen when the KORUS FTA went into effect, and there is no circumstantial evidence of further investment of businesses established, expanded, acquired afterwards.

※The award with certain redactions of personal information will be published.

- The award of this case is significant in that ①it is the very first case for the Korean government to win a ISDS case, and the government prevented draining of national wealth with its prompt and active response to the claim brought for arbitration under the cooperation of relevant ministries, ②maintained the autonomy of our land expropriation system, and ③dispelled in advance worries about the possibility of similar future arbitration cases related to redevelopment.
- Likewise, the Korean government will make its full efforts for other ongoing ISDS cases to obtain the best results to serve the national interest of Korea.

Domestic Violence Offenders Cannot Invite Foreigners for Marriage Purposes

Prior announcement of the amendment to the Enforcement Regulation of the Immigration Act as a follow-up measure to the「8.21 Improvement Proposal on the Marriage-based Immigration」

- On Monday, October 14, 2019, the Korean Ministry of Justice will make a prior announcement of the amendment to the Enforcement Regulation of the Immigration Act, stating any Korean spouse sentenced to a fine or more severe punishment for domestic violence, irrespective of the lapse of time, is not allowed to invite any foreigner for marriage purposes.
- After the past July assaults case involving a marriage immigrant, the Ministry of Justice announced the「Improvement Proposal on Marriage-based Immigration」on August 21, 2019, which includes strengthening of information exchanges between pre-marital couples and education before marriage and also banns domestic violence offenders from inviting foreigners for marriage purposes (also known as "One-strike out for domestic violence offenders").
- In light of the fact that it takes a while to have international marriages arranged, the amended Enforcement Regulation shall enter into force six (6) months after the date of its promulgation.

※The amended legislation will be published on or about April 2020 with due process, yet the schedule may be subject to change.

- This prior announcement of legislation at issue refers to the amendment to the Enforcement Regulation of the Immigration Act, designed to implement the "One-strike Out for Domestic Violence Offenders", and the details are as follows:
- (Grounds for amendment) In order to create an environment that can prevent domestic violence from incurring even from the pre-arrival stage, any Korean spouse sentenced to a fine or more severe punishment for domestic violence, irrespective of the lapse of time, is not allowed to invite any foreigner for marriage purposes.
  - With tightened standards for marriage immigrant visas in 2014, domestic violence offenders have been restricted from receiving visas under the guideline. However, in the wake of the recent assaults case involving a marriage immigrant, the government intends to strengthen further the screening process against domestic violence offenders seeking marriage immigrant visas by codifying standards into the Act and extending the lapse of time.
- (Key points of the amendment) Inviting foreign spouses for marriage purposes will not be allowed in any of the following cases:
  - any person placed under temporary measure or on probation or sentenced to a fine or more severe punishment for domestic violence;
  - any person sentenced to a fine or more severe punishment for sex offenses against children and youths, and ten (10) years have not elapsed since then;
  - any person sentenced to imprisonment without labor or more severe punishment for sex offenses, and ten (10) years have not elapsed since then;
  - any person sentenced to imprisonment without labor or more severe punishment for any specific violent crime or any crime under Chapter XXIV (Crimes of Homicide) of the Criminal Act, and ten (10) years have not elapsed since then; or
  - any person sentenced to a fine or more severe punishment for false marriages, and five (5) years have not elapsed since then.

  ※However, if there are humanitarian reasons like childbirth, visa applications may be accepted.
- (Expected effect) It is expected that the rights of marriage immigrants may be protected through preventive measures against domestic violence from the pre-arrival stage, and wrong practices will be corrected so that the foundation for healthy international marriages will be strengthened.

Ministry of Justice Planning to Implement the「Pre-declaration System」for Voluntarily Departing Foreigners

From October 21, 2019 on, the "System of Voluntary Declaration At The (Air) port On The Day Of Departure" for illegal immigrants will be abrogated

- In order to encourage the voluntary departure of illegal immigrants, the system which allows their voluntary departure at the (air)port on the day of departure has been underway,
  - however, there have been cases like "Changwon child hit-and-run case" where criminals had abused the system by escaping through the airport on the day following the date of crime;
  - There have also been cases in which illegal immigrants arrived near the boarding time without considering the voluntary departure declaration processing time and found themselves unable to leave the country by missing flights.

- In order to resolve such issues, the Ministry of Justice announced that from Monday, October 21, 2019, on, it would abrogate the previous system which allowed voluntary departure declaration at the (air)port on the day of departure but implement a "Pre-declaration System" for the voluntarily departing foreigners that requires illegal immigrants to visit the immigration office near the place of their residence to declare their departure beforehand.
  - The "Pre-declaration System" will replace the previous one which used to require illegal immigrants who were voluntarily leaving the country to depart immediately after declaring to the immigration offices at the (air)port, if there were no unusual details;
    - from now on, the new system will require illegal immigrants to visit the nearest immigration office three to fifteen days (excluding national holidays) prior to their departure and to submit their "Statement of Voluntary Departure," passport, boarding pass (to book flights three days after the declaration date or fifteen days prior* to departure), to go through immigration by the immigration officer and then to leave the country from the (air)port.
      * The following needs to be taken into consideration: holidays, screening process in a long queue at the regional immigration office, and flight schedule depending on the country of destination (1~2 times per week)
- Key details of this improvement proposal
  - First of all, from Monday, October 21, 2019, on, the system which allowed illegal immigrants to voluntarily declare and depart the country from the (air)port on the day of departure will be abrogated.
    *To minimize the confusion that will arise from immediate implementation, the new scheme will be implemented after two weeks of promotion.
  - To depart voluntarily after the implementation of the new scheme, immigrants must personally visit the immigration office near the place of their residence (excluding immigration detention centers) three to fifteen days prior to their departure (excluding national holidays), submit required documents for departure and go through the review process.
    - Immigration offices near the place of immigrants' residency will start to accept statements of voluntary departure from Monday, October 14, 2019, on.

Example of Application of Voluntary Declaration

▶ If a person plans to depart on Monday, October 21, 2019, he/she may submit a statement of voluntary departure between Monday, October 14 (start of the period) and Friday, October 18 (three days before departure); however, as holidays (Saturday & Sunday) are excluded, he/she should visit the immigration office near the place of residence and submit a statement of voluntary departure by Wednesday, October 16.

▶ If a person plans to depart on Wednesday, October 30, 2019, he/she may submit a statement of voluntary departure between October 15 (fifteen days before departure) and Monday, October 27; however, as October 27 is Sunday, he/she should visit the immigration office near the place of residence and submit a statement of voluntary departure by Friday, October 25.

    - The documents required for submission include passport, flight ticket and boarding ticket for departure (must be booked three days after the declaration date or fifteen days prior to departure), and "Statement of Voluntary Departure". The statement of voluntary departure can be downloaded from the Korean Immigration Service website or HiKorea (www.hikorea.go.kr).
    - The statement of voluntary departure needs to be filled out prior to their visit to the immigration office for a faster review process.
  - After a voluntary departure declaration at the immigration office near the place of their residence, on the day of departure, the (air)port immigration officer will finally check once more whether the immigrant has been on the wanted list; and then, the immigrant will receive the boarding pass and go through immigration for departure.

- The Ministry of Justice is planning to prevent immigrants from leaving prior to their date of the intended departure after voluntary departure declaration, as they were involved in crimes so that it plans to permit no change on the date of intended departure. Also, immigrants who have inevitable reasons to depart earlier than expected, such as the critical condition of illness or death in the family, should prepare documents for evidence and visit the inspection office t at the airport immigration office and get approval in advance.

- Meanwhile, for a prompt extradition of the criminal for the hit-and-run child case, which served as a momentum to earlier implement the pre-declaration system for the voluntarily departing foreigners, CHO Kuk, the Minister of Justice asked the Prosecution Bureau to request the Kazakhstan government to extradite the criminal. Furthermore, the Korean head of Immigration Service was also made to hold a face-to-face meeting with the Kazakhstan ambassador to Korea so as to ask for his special attention and cooperation with regard to the extradition of the criminal.

- The Ministry of Justice, first of all, will implement 'Pre-declaration system for the voluntarily departing foreigners' at the immigration office near the place of immigrants' residence and then comprehensively review possible problems including the degree of congestion and inconvenience the civil complaints might cause. If necessary, the Ministry of Justice is planning to promote a measure to enable an online pre-declaration system for the voluntarily departing foreigners through 'HiKorea' (www.hikorea.go.kr) and allow immigrants to depart from the (air)port thereafter directly.

Seasonal Worker Program

Director Lee Jin Gon

Mr. Lee Jin Gon is the Director of Visa and Residence Division of the Korea Immigration Service of the Ministry of Justice.

Visa & Residence Division

The division designs VISA/migrant policies, manages VISA/foreign residence permit issuance.

The Seasonal Worker Program for Foreigners has been introduced to alleviate the labor shortages in the farming and fishing communities. Under the program, local governments in Korea invite foreigners and assign them to farming and fisheries households with due process. A total of 7,059 seasonal workers from 11 countries have been hired so far, including 219 seasonal workers employed during the pilot period in 2015 and 2016.

Q: *What is the Seasonal Worker Program (SWP) and how long has it been implemented?*

The Seasonal Worker Program was designed to legally hire foreigners for a short term period to resolve chronic labor shortages during the busy farming and fishing seasons. Through autonomous operation and cooperation with the central government, the primary local governments manage the supplies and demands of the local farmers and fishermen by inviting family members of marriage migrants within the jurisdiction of a local government who are residing in Korea, family members of foreign nationality Koreans within the jurisdiction of a local government who are residing in Korea, and foreigners recommended by an overseas local government which has signed an MOU with a local government in Korea. The seasonal workers are to leave the country after they finish their seasonal works.

Beginning with the assignment of 19 people to a salted cabbage farm in Goesan-gun, Chungbuk in October 2015, a total of 219 seasonal workers were put on trial until 2016. The program was fully implemented starting in 2017, and this year is the fifth year; there have been positive feedbacks from local governments and farming and fishing communities.

Q: *Who can hire seasonal workers through the program? When and how can employers apply for the program?*

Entities that actually hire seasonal workers are farming and fisheries households, Agricultural Association Cooperation, and Fisheries Association Cooperation. However, entities that apply for the seasonal worker program are local governments.

Local governments should check and clarify various requirements in advance, such as how much workforce is needed for each farming and fisheries household in their localities, whether residents agree, how such seasonal workers are allocated, how they are assigned to employers and how the program is operated. Then, the local governments should apply for the seasonal worker program to their regional immigration offices.

Applications are accepted twice a year in the first half-year and mid-year. The Korean Ministry of Justice announces the basic plans of the program, including specific schedules and procedures every year. In general, local governments submit applications for the year in January and February and additional applications in July.

Q: *What are the specific requirements for employers when they apply for the program?*

Employers should select either farming or fishing industries. In the case of farming industries, employers can apply for up to two crops currently in production. In the case of fishing industries, employers can apply for up to two fishery products currently in production. Applications must be submitted only for a set number of people allowed for each crop or fishery product in proportion to the area or total production.

Q: *What is the reason behind the plan to extend the workers' period of stay from 3 months to 5 months?*

Farms and fisheries produce various crops and fishery products, and those products need workers during different periods and times. At first, in the trial phase, it was expected that seasonal workers would be needed intensively for a short period of 90 days. However, as maximizing the number of crops and fishery products allowed to have seasonal workers, it has happened that some crops and fishery products required seasonal workers intensively for over 90 days.

For this reason, we are currently amending the Enforcement Decree of the Immigration Act to introduce a new visa that allows seasonal workers to stay up to five (5) months in Korea. With the introduction of the new visa for seasonal workers, employers may get to hire seasonal workers for 90 days or five (5) months, by taking into consideration features of crops or fishery products that they are currently producing.

Q: *With regard to visas, what kind of visas will be issued to seasonal workers?*

C-4 visa, a short-term employment visa, did not originally include seasonal workers; now, it officially includes seasonal workers so that they may apply for C-4 visas.

Q: *How are foreigners selected for the seasonal worker program, and how do they enter Korea as seasonal workers? Can foreigners already in Korea apply for the program to work as seasonal workers?*

First of all, foreigners applying for the program should know the concept of recommender and inviter.

Recommenders may include marriage migrants within the jurisdiction of a local government who are residing in Korea, foreign nationality Koreans within the jurisdiction of a local government who are residing in Korea, and / the overseas local government which signed an MOU with a local government in Korea; and inviters are Korean local governments.

There are three different types of recommenders. First, as for marriage migrants, they may recommend their relatives residing either in Korea or overseas to their local government. Secondly, as for foreign nationality Koreans, they may recommend their relatives residing in Korea to their local government. Lastly, overseas local governments that signed MOUs

with local governments in Korea may recommend their residents to their counterpart local governments as foreign seasonal workers.
Korean local governments make final decisions on whether to invite the recommended foreign seasonal workers and then ask the competent immigration officers to proceed with the issuance of visas.

Q: *Who pays for flights or initial settlement costs for foreign seasonal workers living abroad?*

Foreign Seasonal workers themselves must pay for their flights and their initial living expenses. Such expenses would amount to about a month's salary out of three months' salaries. Nevertheless, because there will be a guarantee of some decent levels of work environment and income, many foreigners would like to participate in the seasonal worker program.

Q: *How are the work environment and the accommodation managed for foreign seasonal workers?*

Even though this seasonal worker program is aimed to provide farming and fisheries households with the workforce, if there is too much emphasis on such objectives of the program only, the rights of foreign seasonal workers could be put in jeopardy.
To prevent this from happening and to ensure lives with human dignity while they are working as foreign seasonal workers, the Ministry of Justice has come up with measures to strengthen the protection of their human rights and imposed various duties on local governments and employers.
Employers are required to provide foreign seasonal workers with accommodation, which meets the standards set by the Ministry of Justice. For instance, containers or storages that seem improper for a living cannot be provided as accommodation. Also, the accommodation must have heating and cooling facilities, shower rooms, fire detectors and fire extinguishers in place.
Furthermore, to keep such standards, local governments and relevant authorities monitor whether those standards are ensured and prevent employers who provided improper accommodation from hiring seasonal workers so as to stop possible factors of human rights violations in advance.

Q: *In Korea, which region has the highest demand for foreign seasonal workers?*

Gangwon-do has the highest demand for foreign seasonal workers. Gangwon-do, where a large number of alpine plants are cultivated, needs many seasonal workers since it has relatively fewer workers compared to the regions in the south of Seoul.
Even though the 2019 figure has not been confirmed, 2,824 seasonal workers were invited by 42 local governments in 2018. With 12 local governments inviting 1,413 seasonal workers, Gangwon-do accounts for 50 percent of the total number of seasonal workers invited to Korea. Due to such dependency on seasonal workers, Gangwon-do has established a team within the provincial government exclusively for seasonal workers so as to assist them with various related services.

Q: *Foreign nationals from which country have participated the most in the program? How many foreigners have recently participated in the seasonal work program?*

During the pilot period in 2015 and 2016, 219 seasonal workers were employed. In 2017, 2018, and 2019 (until the end of September), 1085, 2824, and 2931 seasonal workers were hired, respectively. Hence, a total of 7,059 seasonal workers have been hired from 11 countries, and the number continues to increase every year. To date, seasonal workers have come from 11 different countries: the Philippines, Vietnam, China, Cambodia, Mongolia, Nepal, Kyrgyzstan, Laos, Uzbekistan, Russia, and Indonesia. The Philippines is ranked first, with 2,809 people, followed by Vietnam (2,734) and China (526). Those from the Philippines, Vietnam, and China account for 40 %, 30 %, and 7 % percent of seasonal workers, respectively. There are no set quotas for the number of seasonal workers or countries because it is really up to local governments that make decisions on how many seasonal workers to hire and seasonal workers from which country to hire. From the perspectives of foreign countries, the program will make significant contributions to job creation for their people.

Q: *How do workers receive their wages and food expenses?*

The wages should be decided after consultation between seasonal workers and their employers, yet their wages must be set at or above the minimum wage pursuant to the Minimum Wage Act like other Koreans. And the wages should be deposited into the bank accounts opened under the names of foreigners. However, the charges for room and board may be deducted from the wage because employers are required to provide them with accommodation and meals. In this case, employers are prohibited from receiving more than 20 % of the wage from seasonal workers for their room and board expenses. Compliance with regulations regarding wages and room and board expenses needs to be frequently checked by the related government agencies, including the local governments and the Ministry of Justice. Violations of the regulations need to be corrected. Employers who fail to do so are prohibited from being assigned of seasonal workers. Furthermore, procedures for remedies are invoked for foreign seasonal workers to seek damages.

Q: *Are farmers and fishermen satisfied with the seasonal worker program?*

Even though the seasonal worker program is in the initial phase, farmers and fishermen who have once hired seasonal workers continue to hire workers through this program. And they are asking to expand the total number of workers and their employment period.
There are a lot of telephone inquiries from farmers and fishermen about the maximum possible number of seasonal workers allowed for each farming household, the possibility of additional seasonal workers, or extension of their stay.
We believe that these inquiries from farmers and fishermen represent their high satisfaction and expectation and they ask for continuous expansion, and development of the seasonal worker program.

Protection of Consumer Rights

Introduction: Basic background

Following the fast economic growth and technological development, the landscape of consumption has also faced dramatic changes. Throughout the years, consumption and delivery have become automatized, and consumption no longer stays within national borders. Despite such positive changes, it is too early to be optimistic as the change in consumption is a double-edged sword. It has given birth to newly emerging problems, such as an invasion of consumer rights and fraud.

Legal definitions:

According to the Framework Act on Consumers and Article 2 of the Enforcement Decree of the Framework Act on Consumers, a consumer refers to one of the following who uses goods or services (including facilities) provided by businesses in their daily lives or for their production activities. As consumers, they are entitled to fundamental rights as follows: the right to have their lives, bodies or property protected against any danger and injury caused by goods or services (hereinafter referred to as "goods, etc."), the right to be provided with the knowledge and information necessary for selecting goods, etc., the right to freely select the other party of transaction, purchasing place, price, conditions of transaction, etc. for using goods, etc., the right to have their opinions reflected in policies of the State and local governments, business activities of business operators, etc. which have an influence on their daily lives as consumers, the right to obtain proper compensation for damages sustained due to use of goods, etc. according to prompt and fair procedures, the right to receive the education necessary for carrying on their rational lives as consumers, the right to establish an organization and work therein in order to promote their rights and interests as consumers; and the right to enjoy consumption in a safe and pleasant consumption environment.

Emergence of new type of consumption:

One of the most prominent new types of consumption should a new business model named e-commerce. E-commerce is a modernized version of business model that lets firms and individuals take part in transactions over electronic networks and the internet. The main features of e-commerce are ubiquity and interactivity, in which commercial transactions can take place regardless of time or place restrictions and connects consumers, producers and goods all around the globe. Regardless of such benefits, there is a limitation, in which there is an information asymmetry that exists between producers and consumers. It is this lack of social capital and trust that leads to problems, such as fraud, and the dire need for a legal framework for the dispute settlement.

Related Institution: Korea Consumer Agency

Korea Consumer Agency (KCA) is a government organization established in July 1987 based on the Consumer Protection Act. The main functions of the KCA are to provide counseling and redress to those who faced problems with their products consumed or services they have been provided with. Firstly, the Consumer Counseling Team provides counseling and handles complaints related to various fields that may be subject to consumer complaints, such as automobile, daily articles, housing and facilities, publications, service, agriculture, textile, finance and insurance, law and medicine. Afterwards, the redress is provided based on recommended conciliation between parties involved in the dispute in accordance with the Compensation Criteria for Consumers' Damages. However, if parties fail to reach an agreement, the case is referred to the Consumer Dispute Settlement Commission (CDSC) for mediation decision.

If parties in a dispute fail to accept the recommended comprise by the KCA or other consumer organizations, the CDSC with quasi-judicial power will make a mediation decision. The CDSC takes account of relevant evidence and data from the consumer and business and fairly handles the dispute by referencing test/inspection results or expert committee's opinions. The Committee is comprised of 50 experts in the field of law, medicine, automobile, insurance, and product liability, and representatives of consumer and business organizations who are appointed by the Chairman of Korea Fair Trade Commission on the recommendation of the KCA President. If both parties accept the decision by the CDSC, it has the same judicial effect as the court of law.

Basic procedures

If consumer damage occurs with injured product or service in exchange for money, consumers can follow these steps:

Step 1. Consumers should request sellers for exchange or refund as soon as possible. For goods delivered, sellers should accept exchange or refund requests within 7 days upon delivery of goods. If the consumers are requesting for exchange or refund due to a simple change of mind, the delivery fees will be imposed on them, while if the reason for requests is due to damaged goods, the delivery fees will be imposed on the sellers. If the sellers refuse to resolve the problem, the consumer should choose one of the options following:

Option I. If the consumers can speak Korean well, dial 1372 without area code or visit the 1372 Consumer Consulting Center website (222.1372.go.kr).

Option II. If the consumers cannot speak Korean well, dial 1577-1366 to reach Danuri Call Center, where 13 languages of Korean, English, Chinese, Vietnamese, Tagalog (Philippines), Khmer (Cambodia), Mongolian, Russian, Japanese, Thai, Lao, Uzbek and Nepali are provided for 24/7, to receive interpretation service by the Center consultant, and then contact 1372 Consumer Consulting Center.

Step 2. If the problem has not been resolved, the consumers can receive assistance after downloading the damage relief form at Korea Consumer Agency (KCA homepage: www.kca.go.kr→Damage relief→Damage relief application→Download) by submitting a damage relief application to the KCA by choosing one of the options following:

Option I. Directly visit Seoul branch, Korea Consumer Agency, 15th floor, Building A, MunjungTera Tower, 167 Songa-daero, Songa-gu, Seoul, South Korea.

Option II. Apply via fax (043-877-6767) the damage relief form and evidential documents.

Option III. Apply via mail to Consumer consulting office, 6th floor, Korea Consumer Agency, 54 Yongdu-ro, Maengdong-myeon, Eumseong-gun, Chungcheongbuk-do 27738 South Korea

General information on Exchange & Return from Relevant Laws

When consumers can/cannot cancel their orders

- Article 17(1) of the 「Act on the Consumer Protection in Electronic Commerce, etc.」 – Consumers are free to cancel their orders placed in e-commerce during the prescribed period (7 days in general) regardless of the content of the order.
- Article 35 of the 「Act on the Consumer Protection in Electronic Commerce, etc.」 – A purchase contract with a clause unilaterally disadvantageous to consumers, for example, not allowing the cancellation of orders or return of goods, shall be invalid.
- Article 17(2)1-6 of the 「Act on the Consumer Protection in Electronic Commerce, etc.」 – Consumers shall not cancel an order or return goods if the online shopping mall business does not accept it, in any of the following cases: where a good is damaged to the extent that it does not function normally from an objective viewpoint, but this does not apply when a package is open to check the content; where the value of the good has substantially decreased due to a cause attributable to the consumer or due to the passage of time; where the package of the reproducible good has been destroyed; where the bought goods are digital contents or customized goods.

When consumers/mail order distributors pay expenses for returns

- Article 18(9) of the 「Act on the Consumer Protection in Electronic Commerce Transactions, etc.」 – A customer shall bear the expenses for returning the goods and a mail-order distributor shall not request the consumer to pay either the penalty for the breach of contract, or compensation for damage.
- Articles 17(3) and 18(10) of the 「Act on the Consumer Protection in Electronic Commerce Transactions, etc.」 – When the contents of the goods are different from what was indicated or advertised, or have been performed differently from the terms of the contract, the consumer may cancel the order within 3 months from the date of receiving the goods, or within 30 days from the date he or she knew or could have known such fact and a mail order distributor shall bear the expenses for returning the goods, etc.
- Article 18(2) of the 「Act on the Consumer Protection in Electronic Commerce Transactions, etc.」 – An online shopping business operator shall refund the price of the goods that were already paid for within 3 business days from the consumer's request for exchange/return. If the online shopping business operator delays the refund, he/she shall pay interest on the delay calculated by multiplying the delayed period by the interest rate of 20% per annum.

If a business operator closes/suspends its business

- Article 22(1) & Article 32(1)-1 of the 「Act on the Consumer Protection in Electronic Commerce Transactions, etc.」 – Where a business operator fails to fulfill a duty of continuing the procedure of cancellation, and that related to the refund of the price following the cancellation of the order even during closure or suspension of the business, the Fair Trade Commission may order the operator to take corrective measures.

Q & A Section: Case Studies

Case A regarding to groceries. I found foreign substances in the food I bought at a supermarket. Where do I report to and how do I receive compensation?
A. If a consumer found foreign substances while consuming food, he or she should report such discovery to the Integrated Civil Counseling Service through the website or by calling 1399 (Food Sanitation Department). The relevant administrative agency will check the consumer's report, taking account of factors such as the type of foreign substance, the condition of the substance concerned, the circumstances of the discovery, the possibility of the foreign substance being mixed with the consumer's carelessness, and whether or not the evidence product was stored. The cause of the foreign substance will be determined after the investigation has taken place.
Case B regarding to Housing. After the house was plastered, it was found that the wallpaper was defective. The manufacturer accepted the defect and decided to exchange the wallpaper. In this case, is it possible to receive compensation for the construction cost?
A. If the entire wallpaper needs to be replaced due to a defect in the quality of the wallpaper, the consumer concerned can demand a legitimate compensation for the wallpaper, including the construction cost. The same compensation may be demanded for all cases, regardless of who plastered the house. In case of quality defects in wallpaper, not only the wallpaper manufacturer should provide compensation, but the constructor is also liable, but the constructor is not responsible if the consumer purchased the wallpaper and provided it to him or her.
Case C regarding to Home Appliances. I bought 2 million won worth of TV from the overseas purchasing agency site, but it was damaged during delivery. Is it possible to receive compensation?
A. If you find your TV broken from the shipping agent side, you can return it as soon as possible and exchange it for a new product. If the TV that arrived in Korea is damaged, you should request compensation from the shipping agent.
Case D regarding to Electronics. I had purchased a laptop and already had it fixed twice. Now, I do not want to use this product at all. Can I get a full refund?
A. If the product has been repaired twice for the same problem, it is considered as a faulty product and a consumer is entitled to an exchange and/or a full refund. If a newly exchanged product has a problem, the consumer can get another exchange and/or a full refund within 10 days since the problem has been found.

Case E regarding to Vehicles. I had my car parked at a parking lot with charge. When I came back, my car had a scratch and damage on its bumper. Can I ask the owner of the parking lot compensation for damages?
A. Yes, as long as there is no imputation towards users of the parking lot, because the owner has a duty to keep vehicles safe and to monitor them with care. However, the user's inquiry should occur as soon as possible before driving it out of the parking lot. Otherwise, the owner may get excused, as the user might have gotten damage on the car driving it somewhere else.
Case F regarding to Clothes. I purchased a pair of shoes, which is only available abroad, from a purchasing agent service website based on the posted size guide, but the delivered shoes are designed to be bigger than their size, so they are too big for me to wear. I have asked for a refund, but the purchasing agent argues that he does not have any responsibility as he was only acting as an agent. Can I ask Korea Consumer Agency (KCA) for help to get a full refund in my situation?
A. First of all, if the product is only available abroad, it goes beyond the scope of domestic law protecting consumer rights, so it is not possible to get damage relief. Also, the purchasing agent is not liable even with the posted shoe size guide, as the guide is a mere reference, and it is the consumer who has to find the right size out and who chose that specific size. Furthermore, there is no domestic standard on different shoe sizes' exchange, so it is quite difficult for the KCA to review. It is recommended for the consumer to pay extra attention to shoes' designs when purchasing them online and/or abroad.

"Food Delivery Revolution": The Rising Popularity of Food Delivery Apps in Korea

A Nation of Delivery Services

Considering how Koreans are known for their love of food and fast-paced lifestyle, it is no surprise that the food delivery is greatly popular in Korea. Most delivery services run until very late at night and sometimes even for 24 hours, meaning a midnight craving for fried chicken would not be a problem for Koreans. If you want fried chicken at midnight, all you need to do is to make an order via the delivery app and soon the delivery man will be knocking on your door. While this may become a shocking experience for foreigners in Korea, quick food delivery is an integral part of the everyday lives of Koreans.

The Age of Food Delivery Apps

In the age of digitalization and mobile application boom, we have now opened a new era for food delivery: the food delivery service apps. The whole process from searching, ordering, and even paying for food and its delivery can be done through a single app. These services provide a platform that connects restaurants with customers and with the drivers who deliver the food. As of July 2019, 9.4 million Korean residents use food delivery apps such as *Baemin and Yogiyo*.

In the past, restaurants that provided delivery service had to hire someone for food delivery. With the food delivery apps, however, the burdens born by the restaurants will be reduced. This will allow more restaurants to provide delivery services to consumers. As a result, people are now given more options than ever as to what to order via the delivery apps.

Types of Delivery Apps

Various food delivery apps have been established in Korea over the past few years. The two main platforms are *Baemin* and *Yogiyo*. These two are battling it out to be the number one Korean food delivery app., established in 2010, is currently ranked as the number one platform, accounting for more than 50% of the food delivery service market share. *Yogiyo*, the runner-up app, was launched in 2012, two years after *Baemin*. Both apps are available on Android and IOS.

These two platforms are similar when it comes to registration and payment. Before you choose what to order, you have to first specify your address. Then, the two apps will show a large selection of restaurants based on your address. *Baemin* has mainly 15 categories on the menu, including Korean food, Chinese food, dessert, franchise restaurants, rankings of restaurants, etc. *Yogiyo* has mainly 12 categories on the menu, including Korean food, Chinese food, Japanese food, franchise restaurants, late-night food, etc. *Baemin* and *Yogiyo* have a simple payment system, and you can either choose between cash or credit. Please note, however, both services have a minimum order price. Generally, the minimum order price is around 13,000 won.

There are pros and cons for the two apps. Since *Baemin* is the largest food delivery app, it has a considerable number of reviews on both IOS and Android compared to other apps. Currently, there are 176,344 reviews on Android and 3,287 reviews on IOS. However, a controversial issue arose recently, which explicitly showed the pain point of general consumers. Apparently, *Baemin* had been giving special treatments, 10,000 won coupons, to specific groups of people such as celebrities and social media influencers. General customers were enraged by the company's discriminatory actions. *Baemin* apologized and announced that they would no more give out free coupons to certain groups of people. *Yogiyo*, on the other hand, is well known for its successful coupon marketing. There are different kinds of coupons, like 5,000 won coupons for first-time users. Also, *Yogiyo* came up with coupons that customers can use on specific days, called "*Yogiyo* special sale." However, there have been several complaints about the payment error of *Yogiyo* due to these coupons. For example, in August 2019, when a lot of consumers were trying to utilize the coupon that can be used on the last hottest day of summer (*Mal-bok*), server error broke out, and consequently, there were numerous orders that were missing. As a result, a huge number of people could not get their food on time, and even worse, the customer service center was almost shut down due to too many calls on that day, which made it more difficult to solve the problem.

The Rise in Popularity

Data shows that the largest consumer group of food delivery app services is millennials and single-person households. Millennials are in search of convenience and this has forced the food delivery industry to meet such demands. Food delivery apps are able to answer such needs by providing customers a quick and easy option of enjoying foods at the comfort of their homes. The combination of technological development and the rich food culture of Korea has thus produced a unique ecosystem within the food delivery app industry. While the industry still needs to solve issues such as the delivery commission distribution problem, the use of food delivery apps as a whole continues to be on the rise. As the market continues to evolve and change, we are certainly living in the prime age of the "food delivery revolution" of Korea.

Government Departments

Anti-Corruption & Civil Rights Commission
http://www.acrc.go.kr/eng/index.do
82-44-200-7151~6

Constitutional Court of Korea
http://english.ccourt.go.kr/
82-2-708-3460

Fair Trade Commission
http://eng.ftc.go.kr
82-44-200-4326

Financial Services Commission
http://www.fsc.go.kr/eng/index.jsp
82-2-2156-8000

National Assembly Law Library
http://law.nanet.go.kr/eng/index.do
82-2-788-4111

Judicial Research & Training Institute
http://jrti.scourt.go.kr/
82-31-920-3114

Korea Communications Commission
http://eng.kcc.go.kr/user/ehpMain.do
82-2-500-9000

Korea Consumer Agency
http://english.kca.go.kr/index.do
82-43-880-5500

Korea Customs Service
http://english.customs.go.kr/
82-1577-8577

Ministry of Food and Drug Safety
http://www.mfds.go.kr/eng/index.do
82-43-719-1564/ 82-1577-1255

Korean Intellectual Property Office
http://www.kipo.go.kr/kpo/user.tdf?a=user.english.main.BoardApp&c=1001
82-42-481-5008

Korea Law Service Center
http://law.go.kr/LSW/main.html
82-2-2100-2520
(Ministry of Government Legislation)/
82-2-2100-2600
(Legislative Research Services)

Korea Meteorological Administration
http://web.kma.go.kr/eng/index.jsp
82-2-2181-0900

Korean Bar Association
http://www.koreanbar.or.kr/eng/
82-2-3476-4008

Korean Library Information System Network
http://www.nl.go.kr/kolisnet/index.php
82-2-590-0626

Korean National Police Agency
http://www.police.go.kr/eng/index.jsp
82-182

Ministry of Agriculture, Food and Rural Affairs
http://english.mifaff.go.kr/main.jsp
110 (from Korea) / 82-2-6196-9110 (from overseas)

Ministry of Culture, Sports and Tourism
http://www.mcst.go.kr/english/index.jsp
82-44-203-2000

Ministry of Education
http://english.moe.go.kr/enMain.do
82-2-6222-6060

Ministry of Employment and Labor
http://www.moel.go.kr/english/main.jsp
82-52-702-5089 (National Labor Consultation Center)
82-44-202-7137 (International Cooperation Bureau)
82-44-202-7156 (Foreign Workforce Division)

Ministry of Environment
http://eng.me.go.kr/
82-44-201-6568 / 82-1577-8866

Ministry of Foreign Affairs
http://www.mofa.go.kr/eng/index.do
82-2-2100-2114

Ministry of Gender Equality and Family
http://www.mogef.go.kr/eng/index.do
82-2-2100-6000

Ministry of Government Legislation
http://www.moleg.go.kr/english
82-44-200-6900

Ministry of Health and Welfare
http://www.mohw.go.kr/eng/index.jsp
82-44-202-2001~3

Ministry of Justice
http://www.moj.go.kr/moj_eng/index.do
82-2-2110-3000

Ministry of Land, Infrastructure and Transport
http://www.molit.go.kr/english/intro.do
(Day) 82-44-1599-0001, (Night) 82-44-201-4672

Ministry of National Defense
http://www.mnd.go.kr/mbshome/mbs/mndEN/
82-2-748-1111

Ministry of the Interior and Safety
https://www.mois.go.kr/eng/a01/engMain.do
82-2-2100-3399

Ministry of Economy and Finance
http://english.moef.go.kr/
82-44-215-2114

Ministry of Trade, Industry and Energy
http://www.motie.go.kr/language/eng/index.jsp
82-2-1577-0900 / 82-44-203-4000

Ministry of Unification
https://www.unikorea.go.kr/eng_unikorea/
82-2-2100-5722

National Assembly Library
http://www.nanet.go.kr/english/
82-2-788-4211

National Intelligence Service
https://eng.nis.go.kr/
82-111

National Research Foundation of Korea
https://www.nrf.re.kr/eng/index
82-2-3460-5500 / 82-42-869-6114

National Tax Service
http://www.nts.go.kr/eng/
82-2-397-1200 / 82-1588-0560

Network of Committed Social Workers
http://www.welfare.or.kr/
82-2-822-2643

Public Procurement Service
http://www.pps.go.kr/eng/index.do
82-70-4056-7524

Ministry of SMEs and Startups
https://www.mss.go.kr/site/eng/main.do
82-1357

Statistics Korea
http://kostat.go.kr/portal/english/index.action
82-2-2012-9114

Supreme Court Library of Korea
https://library.scourt.go.kr/base/eng/main.jsp
82-31-920-3612~3

Supreme Prosecutors' Office
http://www.spo.go.kr/eng/index.jsp
82-2-3480-2337

The Board of Audit and Inspection of Korea
http://english.bai.go.kr
82-2-2011-2114

The Supreme Court of Korea
http://eng.scourt.go.kr/eng/main/Main.work
82-2-3480-1100

The National Assembly of the Republic of Korea
http://korea.assembly.go.kr/index.jsp
82-2-788-3656

National Library of Korea
http://www.nl.go.kr/english/
82-2-535-4142

VOD Service for Conferences
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82-2-788-3056/2298

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Ministry of Justice

The Ministry of Justice of the Republic of Korea

is the leading state authority which promotes liberty,

democracy, equality, justice and respect for humanity

through fair and transparent enforcement of law.

Emblem The Republic of Korea government has changed its official "government identity." The new logo conveys the dynamism and enthusiasm of the country with the three colors of blue, red and white. It echoes off Korea's national flag *Taegeukgi* with the *taegeuk* circular swirl and the blank canvas embodies in white. The typeface was inspired by the font used in the "*Hunminjeongeum*" (1446), the original *Hangeul* text, in consideration of the harmony embodied in the *taegeuk* circle. Starting March 2016, the new logo is used at all 22 ministries including the Ministry of Justice and 51 central government agencies.

Ministry of Justice, Republic of Korea

Ministry of Justice

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Focusing on Business and Investment

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