Recent Trends of Law & Regulation in Korea

Focusing on Business and Investment

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Recent Events

- The Stable Social Settlement of Released Prisoners! It Begins with Employment.

Policies of the Ministry of Justice

- Korean Government votes in favor of the resolution on a moratorium on the use of the death penalty at the 75th session of the UN General Assembly

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Emblem

Ministry of Justice

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.

Court Decisions

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

01 Supreme Court en banc Order 2014Seu44, 45 Decided November 21, 2019

Division of Inherited Property; Division of Inherited Property

Main Issues and Holdings

[1] In a case where an inheritee's spouse cohabited with and nursed the said inheritee for an extended duration, whether the said spouse has a legitimate claim for a contributory portion to an inheritance pursuant to Article 1008-2 of the Civil Act, and the standard for determining the scope thereof

[2] In a case where: (a) Party C (inheritor), etc., the children of Party A (inheritee) and Party B (Party A's ex-wife), filed a claim for division of inherited property against Party E (inheritor), etc., the children of Party A and Party D (Party A's second wife); (b) alleging that she cohabited with Party A for an extended duration and nursed Party A until his death, Party D filed a claim against Party C, etc. for determination of a contributory portion, the case holding that there is no error on the part of the lower court in dismissing Party D's claim for determination of a contributory portion on the grounds that Party D neither provided special support for Party A beyond what is generally expected of a spouse to an extent that an adjustment of the statutory share in inheritance is necessary to ensure substantive equity among co-inheritors nor made a significant contribution to the maintenance and increase of Party A's wealth by misapprehending the legal doctrine regarding the requirements for recognizing one's contributory portion to an inheritance under Article 1008-2 of the Civil Act

Summary of Decision

[1] [Majority Opinion] In a case where a spouse cohabited with a decedent for an extended duration and cared for the said decedent, Article 1008-2 of the Civil Act is interpreted that the Family Court must examine: (a) whether the said spouse's cohabitation and nursing extended beyond the spousal duty of support as a primary carer to an extent of "special support"; (b) the time at which cohabitation and nursing took place and the manner thereof; (c) the person bearing the cost of caring ensued from cohabitation and nursing; (d) the size of inherited property and special benefit accrued by the spouse; and (e) the number of co-inheritors and the spouse's statutory share of the inheritance, so as to decide whether there is a need for adjustment of the spouse's share of an inheritance in furtherance of substantive equity among co-inheritors and to determine whether to grant entitlement to contributory portion and the extent of the entitlement.

A spouse's intangible contribution manifested through long-term cohabitation and nursing may be affirmatively considered as one of the underpinning elements of the recognition of the said spouse's contributory portion to an inheritance. Nevertheless, recognition of a spouse's entitlement to a contributory portion ought to be preceded by recognition of a need for adjustment of a spouse's share of an inheritance in furtherance of substantive equity among co-inheritors by considering the entirety of the circumstances as illustrated above.

[Dissenting Opinion by Justice Jo Hee-de] In a case where a decedent's spouse cared for the decedent in the manner of sharing accommodation with the decedent and nursed the said decedent for a considerable period of time, the spouse's such act of support qualifies as "special support" under Article 1008-2 of the Civil Act, one of the underpinning elements for recognition of a contributory portion to an inheritance, and thus, unless special circumstances emerge, the said spouse ought to be granted entitlement to a contributory portion.

[2] In a case where: (a) Party C (inheritor), etc., the children of Party A (inheritee) and Party B (Party A's ex-wife), filed a claim for division of inherited property against Party E (inheritor), etc., the children of Party A and Party D (Party A's second wife); (b) alleging that she cohabited with Party A for an extended duration and nursed Party A until his death, Party D filed a claim against Party C, etc. for determination of a contributory portion, the lower court acknowledged that Party D nursed Party A when Party A was stricken by illness, but nonetheless dismissed Party D's claim for determination of a contributory share on the grounds that: (a) Party A's health condition did not require nursing care beyond the level of ordinary care to an extent that entitled Party D to contributory share; (b) Party D merely performed the spousal duty of support required in a marital relationship; (c) it could not be insufficiently concluded that Party D extraordinarily supported Party A or extraordinarily contributed to the retention and growth of Party A's wealth to an extent that requires adjustment of a statutory share of an inheritance to achieve substantive equity among the co-inheritors. The case held that the lower court did not err in so determining by misapprehending the legal doctrine regarding recognition of one's contributory portion to an inheritance stated in Article 1008-2 of the Civil Act.

(Source: eng.scourt.go.kr)

02 Supreme Court en banc Decision 2015Da73067 Decided January 22, 2020

Wage

Main Issues and Holdings

In a case where fixed allowances, paid at either a monthly or daily rate as remuneration for work performed during agreed work hours exceeding standard work hours prescribed under the Labor Standards Act, are translated into an hourly ordinary wage, method of calculating an agreed number of hours included in the total work hours based on which the hourly ordinary wage is calculated, and in such a case, whether "premium rate" required in the calculation of premium pay must be taken

into account (negative in principle)
Whether the foregoing legal doctrine applies likewise to a case in which the premium rate for paid holiday allowance is set through collective bargaining or employment regulations (affirmative)

Summary of Decision

[Majority Opinion] (A) In a case where a fixed allowance, paid in the form of either a monthly salary or daily rate as remuneration for agreed hours of work performed in excess of the standard working hours as prescribed under the Labor Standards Act, is translated into an hourly ordinary wage, the calculation of the number of agreed working hours that are included in the total working hours, based on which the hourly ordinary wage is calculated, must total the actual number of hours the employee agreed to provide labor for, instead of totaling the number of overtime hours and night work hours that take into account the "premium rate" intended for the calculation of premium pay, barring extraordinary circumstances. The relevant part of the judgment in the previous court decision determining to the effect that the calculation of total working hours must take into account the "premium rate" in relation to the number of overtime hours and night work hours when translating an hourly fixed allowance paid in the form of monthly wage or daily wage as remuneration for agreed hours of work performed in excess of the standard working hours is unreasonable, and thus difficult to uphold. The reasons are as follows.

① Barring extraordinary circumstances that specifically determine, with respect to a fixed allowance, in a collective bargaining agreement, employment regulation, or labor contract, the hourly rate for the contractual work performed within standard working hours and the hourly rate for overtime and night work, the most equitable and reasonable view, which also conforms to the principle of wage calculation, is that remuneration for work performed during hours for which the employee agreed to provide labor is set at the same amount. Ascribing the same value to every hour for which "the same labor" has been provided is the rule. Considering it otherwise without any factual basis in statutes or agreements between the parties concerned constitutes arbitrary evaluation of the value of labor.

② Article 56 of the Labor Standards Act is simply a provision stipulating that the employer shall pay statutory allowances set at 1.5 times the ordinary wages to employees working extended hours or night shifts. There is no legal basis for factoring in the premium rate intended for the calculation of premium pay when determining the number of agreed working hours necessary for the computation of the hourly rate of a fixed allowance paid in the form of a monthly salary. The Labor Standards Act does not have a separate provision on the premium rate for the number of overtime, nighttime, holiday working hours.

③ In a case where the employer calculated and paid the statutory allowance without including it in the fixed allowance in the form of a monthly wage, there is no reason for determining the hourly rate of a fixed allowance and, thus, deeming that the employee has formulated intentions with respect to the manner of computation of the hourly fixed allowance is difficult. Even when such fixed allowances were paid pursuant to a collective bargaining agreement, deeming that the trade union had an intention about the manner of computation of the hourly fixed allowance, as in the case of the employer, is difficult. In a case such as the instant one, where there is no predetermined intention of the parties to the labor relation about the hourly rate of a fixed allowance, determining the most reasonable and objective method of calculating an hourly rate is imperative, whereas determining an hourly rate by assuming an intent contrary to one of the parties without legal basis is prohibited.

④ Following previous rulings would lead to a determination of the hourly ordinary wage at a level lower than the actual value by agreeing to work hours exceeding standard work hours, a result that is clearly contradictory to the intent of the Labor Standards Act, which is to protect workers. In addition, consistently applying the intent of the previous rulings would provoke unreasonable consequences in a case where the employee, although not having agreed to work hours exceeding standard work hours, agreed to provide all or part of contractual work at night.

(B) The foregoing legal principle likewise applies to this case concerning determination of the hourly ordinary wage for the fixed allowance paid in the form of a day rate as remuneration for agreed work hours in excess of standard work hours.

(C) The foregoing legal principle likewise applies to this case where a collective bargaining agreement or employment regulations state a premium rate for paid holiday allowances, because such an agreement simply intends to pay paid holiday allowances by adding to the basic allowance a certain rate. Thus, a premium rate for paid holiday allowances need not be factored in when determining the number of hours assumed to be worked during paid holidays to be included in the number of total work hours.

(Source: eng.scourt.go.kr)

03 Constitutional Court, 2016Hun-Ma1071 Decided February 27, 2020

Case on Election Campaign by Teacher via Social Networking Service

In this case, the Court ruled that a mere act of simply sharing other's posting on 'Facebook' account cannot be regarded as an 'election campaign' under the Public Official Election Act. The Court also found that whether the act of posting is to be concluded as an 'election campaign' should be determined by not only considering the contents of the posting but comprehensively examining the circumstances insinuating that it displays explicit intention of helping a specific candidate win or lose the election.

Background of the Case

The Public Official Election Act bans public officials from engaging in any 'election campaign', and those violating it are subject to criminal punishment. The Complainant is a public official serving as a public school teacher, who shared an online post (news and video) on a personal Facebook account telling that a specific candidate was lying, before the 20th General Election. The Complainant was charged for unlawfully engaging in an election campaign by sharing such post. However, the respondent, who is also a prosecutor suspended the prosecution against the Complainant on September 13, 2016, explaining that the act of posting is considered as the election campaign that is banned for public officials to be engaged in pursuant to the Public Official Election Act but the criminality is minor. The Complainant filed this complaint to seek invalidation of the suspension of prosecution, arguing that this measure given by the prosecutor is unfair and infringes upon the Complainant's right to equality and right to pursue happiness.

Legal Ground of Suspension of Prosecution

Public Official Election Act (amended by Act No. 9974, January 25, 2010) Article 255 Section 1 Item 2; and, Article 60, Section 1 Item 4

Summary of Decision

1. Meaning of 'Election Campaign' under the Public Official Election Act

Regarding the 'election campaign' under the Public Official Election Act, the Supreme Court ruled that it shall mean an active and planned activity that is carried out with objective intention of helping a certain candidate win or lose in a specific election. Accordingly, even when a teacher, who is banned from engaging in an election campaign under the Act, expresses his/her political opinion or belief through social networking services such as Facebook and the content is regarded relevant to the election, such act should not be concluded as the part of election campaign just for those reasons (Supreme Court, Case No. 2017DO2972, November 29, 2018). In this regard, to decide whether a person's simple act of sharing online news articles or others' posts on a social networking service account constitutes a 'election campaign', the contents of the posts as well as other circumstances that may suggest actions with explicit intention of helping a certain election candidate win or lose in a certain election such as the volumes of posts in the social media account; whether there were posts similar to the ones at issue; whether the account is created close to the election day and excessive number of people were add to friends while posts with similar contents are uploaded exceptionally or continuosly, should be examined comprehensively.

2. Judgment on This Case

The Complainant shared the online article regarding a certain candidate for the upcoming general election was telling a lie on a personal account, but did not mention any additional comments toward it. By considering the contents of the post shared by the Complainant, total number of Facebook friends (4,583), and a mere fact that the Complainant uploaded one more posting about the aforementioned candidate on the same day on a personal Facebook account, it is hard to conclude that such act is amount to the 'election campaign', which is an

active and planned action with the objective intention of helping a certain candidate to win or lose in a certain election. Therefore, the suspension of prosecution granted to the Complainant on the premise that the Complainant's action is part of the 'election campaign' was resulted from arbitrary judgment on evidence, insufficient investigation and misunderstanding on the law. Consequently, the right to equality and right to pursue happiness of the Complainant are infringed upon and, thus, the suspension of prosecution shall be nullified.

(Source: English.ccourt.go.kr)

04 Supreme Court Decision 2019Do11381 Decided March 12, 2020

Violation of the Adjustment of International Taxes Act

Main Issues and Holdings

Whether standards for determining a domestic corporation (referred to as a wholly owning parent company), which owns, directly or indirectly, 100/100 of the voting stocks of a foreign corporation (referred to as a wholly owned subsidiary), as an actual holder may be included in "standards for determining persons required to report," which will be specified in the enforcement decree in accordance with the delegation of Article 34(6) of the former Adjustment of International Taxes Act (affirmative)

Whether the parenthesis part in Article 50(4) main text of the former Enforcement Decree of the Adjustment of International Taxes Act, stipulating a domestic corporation, a wholly owning parent company, as an actual holder of an overseas financial account, whose nominal holder is a foreign corporation, a wholly owned subsidiary, is considered null and void by exceeding the bounds of delegation prescribed in Article 34(6) of the former Adjustment of International Taxes Act (negative)

Summary of Decision

Article 34-2(1) of the former Adjustment of International Taxes Act (Amended by Act No. 16099, December 31, 2018; hereinafter referred to as "former Act") stipulates that "where the amount on which a person required to report information on his/her overseas financial account pursuant to Article 34 (1) fails to report by the reporting deadline or the under-reported amount exceeds KRW 5 billion won, the person shall be punished by imprisonment for not more than two years, or by a fine not exceeding 20 percent of the amount unreported: Provided, That the same shall not apply where good cause exists." Furthermore, Article 34 of the former Act prescribes that: "a resident or domestic corporation holding an overseas financial account at an overseas finance company, the balance of which as at the last day of any month of the relevant year exceeds the amount prescribed by Presidential Decree, shall report information on overseas financial account including information on the identity of the account holder, such as the name and address, information on persons related to the overseas financial account, etc. to the head of the tax office having jurisdiction over the place for tax payment from June 1 to 30 of the following year" (Paragraph 1); "persons related to an overseas financial account (referring to the nominal holder and the actual holder of an overseas financial account if the nominal holder and the actual holder are different, and each of the nominal holders of an overseas financial account if it is a joint checking account) shall be deemed to hold the relevant account, respectively" (Paragraph 4); and "matters necessary for reporting overseas financial accounts, such as standards for determining persons required to report, etc. shall be prescribed by Presidential Decree" (Paragraph 6).

Article 50(4) of the former Enforcement Decree of the Adjustment of International Taxes Act (Amended by Presidential Decree No. 26078, February 3, 2015; Presidential Decree No. 29525, February 12, 2019; hereinafter referred to as "former Enforcement Decree") pursuant to the delegation of the former Act provides that "an actual holder of an account in Article 34 (4) of the Adjustment of International Taxes Act refers to a person who de facto manages the relevant account in transactions involving the account, regardless of being the nominal holder of the relevant account, in such manner as taking the economic risks, acquiring the interest gains or dividends, or having the right to dispose of the relevant account (including a domestic corporation, if it owns, directly or indirectly, 100/100 of the voting stocks of a foreign corporation; however, this shall not apply in cases determined by the Minister of Strategy and Finance, considering whether a tax treaty has been concluded, etc.): Provided, That none of the following persons shall be deemed an actual holder." Meanwhile, the "public notification on the scope deemed an actual holder of an overseas financial account" (Public Notification by the Ministry of Strategy and Finance No. 2016-12, May 20, 2016) stipulates that "the 'cases determined by the Minster of Strategy and Finance' prescribed in Article 50(4) of the former Enforcement Decree refer to those where 'a foreign corporation, 100/100 of whose voting stocks is, directly or indirectly, owned by a domestic corporation,' enters into a tax treaty, prescribed in Article 2(1) Subparagraph 2 of the Adjustment of International Taxes Act, with the Republic of Korea, and is located in the Republic of Korea where the tax treaty is enforced."

Examining the regulatory contents and structure of the former Act, the purpose of introducing the reporting system with respect to overseas financial accounts, the distinct characteristics of wholly owning parent companies, etc., as above, in light of the relevant legal principles, standards for determining a domestic corporation (hereinafter referred to as a "wholly owning parent company"), which owns, directly or indirectly, 100/100 of the voting stocks of a foreign corporation (hereinafter referred to as a "wholly owned subsidiary"), as an actual holder ought to be seen to be predictable enough to be included in "standards for determining persons required to report," which will be specified in the enforcement decree in accordance with the delegation of Article 34(6) of the former Adjustment of International Taxes Act. Therefore, the parenthesis part in Article 50(4) main text of the former Enforcement Decree of the Adjustment of International Taxes Act, stipulating a domestic corporation, a wholly owning parent company, as an actual holder of an overseas financial account, whose nominal holder is a foreign corporation, a wholly owned subsidiary, cannot be considered null and void by exceeding the bounds of delegation prescribed in Article 34(6) of the former Adjustment of International Taxes Act.

(Source: eng.scourt.go.kr)

05 Supreme Court Order 2015Mo2357 Dated March 17, 2020

Re-appeal of Decision of Acceptance of Quasi-Appeal

Main Issues and Holdings

[1] When a prosecutor interrogates a suspect in an interrogation room, whether protective equipment should be used on an exceptional basis only in cases where the risks described in each subparagraph of Article 97(1) of the Administration and Treatment of Correctional Institution Inmates Act, for example, where a prisoner is highly likely to abscond, commit suicide, injure himself/herself or injure other persons, are clearly and concretely manifested (affirmative)

When a prosecutor or a senior judicial police officer interrogates a confined suspect in an interrogation room, whether the prosecutor is obliged to request a correctional officer to remove protective equipment unless special circumstances exist, and whether the correctional officer ought to abide by the request (affirmative)

[2] When a prosecutor or a senior judicial police officer interrogates an incarcerated suspect, whether his/her refusal of a request of a suspect or a defense counsel to remove protective equipment constitutes a "disposition concerning confinement" prescribed in Article 417 of the Criminal Procedure Act (affirmative)

[3] Meaning of "good cause" prescribed in Article 243-2(1) of the Criminal Procedure Act

Whether a prosecutor or a senior judicial police officer who forced a defense counsel to withdraw from an interrogation room on the sole ground that the said defense counsel raised an objection to unfair interrogation techniques employed during a suspect interrogation is deemed to have placed a restriction on the defense counsel's right to participate in a suspect interrogation without reasonable grounds (affirmative), and whether to allow such a practice (negative)

Summary of Decision

[1] According to Article 198 of the Criminal Procedure Act, an investigation into a criminal suspect, in principle, shall be conducted without putting him/her under detention (Parag. (1)), and each prosecutor shall respect the human rights of each criminal suspect (Parag. (2)). According to the Administration and Treatment of Correctional Institution Inmates Act (hereinafter "Administration of Punishment Act"), human rights of prisoners shall be respected to the utmost (Article 4), and unconvicted prisoners shall be entitled to a presumption of innocence and treated appropriately, accordingly (Article 79). In addition, a correctional officer may use protective equipment only in cases where a prisoner falls under the circumstances where (i) a prisoner is transferred, appears in court and is escorted to the place outside of a correctional institution; (ii) a prisoner is highly likely to abscond, commit suicide, injure himself/herself or injure other persons; (iii) a prisoner obstructs the rational performance of duties by any correctional officer by force; and (iv) a prisoner is highly likely to destroy the facilities, devices, etc. or to

damage the security or order of the correctional institution (Article 97(1)), and in cases of using protective equipment, a correctional officer shall use protective equipment within the minimum necessary extent and stop using protective equipment without delay upon termination of the relevant reason (Article 99(1)).

Keeping in mind that our Constitution, the utmost goal of which is to respect human dignity, proclaims the principle of presumption of innocence under Article 27(4) and emphasizes personal liberty and assurance of lawful procedures under Article 12, and comprehensively considering the content and purport of the aforementioned provisions, a prosecutor who interrogates a suspect in an interrogation room should not, in principle, use protective equipment on the suspect so as to enable the suspect to sufficiently exercise his/her defense right without both physical and psychological restraint. However, a prosecutor may use protective equipment only in cases where the risks prescribed in each subparagraph of Article 97(1) of the Administration of Punishment Act are clearly and concretely manifested in such manner as a suspect's likelihood to abscond, commit suicide, injure himself/herself or injure other persons.

Therefore, a confined suspect has a right not to be forced to wear protective equipment unless he/she falls under the grounds prescribed in each subparagraph of Article 97(1) of the Administration of Punishment Act. Any prosecutor who is interrogating a suspect in an interrogation room is obliged to request a correctional officer to remove protective equipment unless the relevant suspect falls into the aforementioned categories, and the correctional officer must abide by the request.

[2] Article 417 of the Criminal Procedure Act stipulates that a person who is dissatisfied with a "disposition concerning confinement" made by a prosecutor or a senior judicial police officer may file a petition for the cancellation of or alteration to such disposition with the court. In a case where there exist no special circumstances that can justify the use of protective equipment and yet a prosecutor or a senior judicial police officer condones a correctional officer's use of protective equipment against an incarcerated suspect and does not request the removal thereof, the incarcerated suspect would have no recourse to remedy the infringement of his/her rights unless such practice is considered a "disposition concerning confinement" as prescribed in Article 417 of the Criminal Procedure Act. Therefore, if a prosecutor or a senior judicial police officer who interrogates a confined suspect refuses to remove protective equipment upon the request of a suspect or a defense counsel, such refusal should be considered to constitute a "disposition concerning confinement" prescribed in Article 417 of the Criminal Procedure Act.

[3] Article 234-2(1) of the Criminal Procedure Act stipulates that a prosecutor or a senior judicial police officer shall allow the defense counsel to participate in the interrogation of the suspect upon receiving an application from a criminal suspect or his/her defense counsel, etc., unless there is a good cause. The term "good cause" refers to those situations and circumstances where it is objectively clear that a defense counsel may interfere with the interrogation of a suspect or risks divulging the secrets of the investigation.

The proviso of Article 243-2(3) of the Criminal Procedure Act stipulates that the defense counsel who participates in the interrogation may raise an objection to any unfair interrogation manner even in the middle of the interrogation. Hence, unless a defense counsel raises an objection in an unfair manner, for example, by using a loud voice or through verbal abuse, or raises an objection repetitively without reasonable grounds, it is the defense counsel's exercise of right that is lawfully granted to raise an objection to any unfair interrogation techniques employed by a prosecutor or a senior judicial police officer, and it must not be considered as an interference with an interrogation. Therefore, when a prosecutor or a senior judicial police officer orders a defense counsel to leave an interrogation room without the aforementioned special circumstances, on the sole ground that the defense counsel raised an objection to an unfair interrogation manner in the middle of the interrogation of the suspect, such an order is an unjustified restriction on the defense counsel's right to participate in the interrogation of the suspect without reasonable grounds and thus must be prohibited.

(Source: eng.scourt.go.kr)

06 Supreme Court Order 2019Ma6525 Dated March 26, 2020
Objection to Provisional Disposition

Main Issues and Holdings

[1] Standard for determining whether certain acts constitute an act of unfair competition stipulated in Article 2 Subparag. 1 Item (k) of the Unfair Competition Prevention and Trade Secret Protection Act

[2] In a case where: (a) Company A, a limited company that publishes and sells magazines featuring celebrity news and photos and articles, sought to create a photo book of the members of a famous boy band under the management of Company B, a limited company that runs an entertainment business, including artist management, music production, and live performance planning, and sell it as a special supplement to the said magazine's special edition; (b) Company B filed for provisional disposition prohibiting the creation and distribution of the said special supplement on the grounds that Company A's act constitutes an act of unfair competition stipulated in Article 2 Subparag. 1 Item (k) of the Unfair Competition Prevention and Trade Secret Protection Act, the case holding that Company A's creation and selling of the said special supplement is an act of using the outcome, etc. of Company B without permission for Company A's own business operation against fair business transaction practice or competition order and therefore constitutes an act of unfair competition as stipulated in Item (k) of the said provision

Summary of the Decision

[1] The Supreme Court determined as follows: "Using an outcome achieved by a competitor with substantial efforts and investment without permission for one's own business operation against business ethics and fair competition order to gain unjust advantages and infringe the competitor's interests worth legal protection by taking advantage of the competitor's efforts and investment is an act of unfair competition and therefore constitutes tort under civil law."

Article 2 Subparag. 1 Item (j) of the Unfair Competition Prevention and Trade Secret Protection Act amended afterward by Act No. 11963 on July 30, 2013 added "any other acts of infringing on other person's economic interests by using the outcomes, etc. achieved by them through substantial investment or efforts, for one's own business without permission, in a manner contrary to fair commercial practices or competition order" to a type of an act of unfair competition by reflecting the purport of the said Supreme Court Order. The foregoing Item (j) was modified into Item (k) in the Unfair Competition Prevention and Trade Secret Protection Act amended by Act No. 15580 on April 17, 2018 [hereinafter "Item (k)"].

Newly inserted as a provision concerning a new type of an act of unfair competition that was previously not included in the scope of the application of the former Unfair Competition Prevention and Trade Secret Protection Act (amended by Act No. 11963, Jul. 30, 2013), the foregoing Item (k) is a complementary general provision intended for the regulation of unfair competitive acts in reflection of changing commercial ideas in a timely manner by protecting newly emerging intangible products of economic value and remedying the legislators' failure to stipulate all types of the acts of unfair competition, thereby assisting the court in making a coherent determination regarding a new type of the acts of unfair competition.

A comprehensive examination of the foregoing legal provisions and legislative history reveals the following. As Item (k) does not limit the type of "outcome, etc." subject to protection, the said "outcome, etc." includes not only tangible articles but also intangible assets. Moreover, a new type of end result that were not previously protected by the Intellectual Property Act can be included therein. The determination of what constitutes "outcome, etc." must take into account the reputation or economic value attached to such end results, customer attractiveness embodied therein, and the end result's portion in the relevant business sector and its competitiveness.

Whether such an outcome has been generated with "considerable investment or efforts" must be determined by weighing the content and degree of the investment or efforts spent by a rightholder against the business practice or status of the relevant industry sector with which the said outcome is affiliated, and at the same time, the economic interest subject to infringement must be considered not to fall under the public domain allowing free access. To constitute acts of "using the outcomes, etc. for one's own business without permission in a manner contrary to fail commercial practices or competition order" as stipulated in Item (k), the following needs to be taken into consideration: (a) whether a rightholder and an infringer are in a competitive relationship or whether there is a likelihood that a rightholder and an infringer are in a competitive relationship in the near future; (b) whether the commercial practice and the subject matter of competition order in the industry sector with which the outcome claimed by a rightholder is affiliated are fair; (c) the likelihood that the said outcome, etc. may be substituted in the market by an infringer's products or services; (d) how publicly known the said outcome, etc. is to prospective customers or traders; and (e) the possibility that prospective customers and traders confuse the said outcome, etc. with an infringer's products.

[2] In a case where: (a) Company A, a limited company that publishes and sells magazines featuring celebrity news and photos and articles, sought to create a photo book of the members of a famous boy band under the management of Company B, a limited company that runs an entertainment business, including artist management, music production, and live performance planning, and sell it as a special supplement to the

said magazine's special edition; (b) Company B filed for provisional disposition prohibiting the creation and distribution of the said special supplement on the grounds that Company A's act constitutes an act of unfair competition stipulated in Article 2 Subparag. 1 Item (k) of the Unfair Competition Prevention and Trade Secret Protection Act, the case held as follows: (a) Company B selected the members of the said boy band, concluded an exclusive contract, improved the abilities of the members through training, and put substantial investment and efforts into the activities of the said boy band by planning music production, live performance, and appearances on media programs as well as by creating and distributing contents, including sound sources and videos pursuant to the exclusive contract, thereby resulting in a substantial degree of reputation, credit, and customer attractiveness meriting an evaluation of "the outcome, etc. achieved through substantial investment or efforts," which may not be considered to be affiliated with the public domain allowing a free access; (b) hence, when another person uses the abovementioned indicators without obtaining permission, such use leads to an infringement of economic advantages of a creditor; (c) considering that it has been established as a commercial practice in an entertainment industry sector to obtain permission from a celebrity or its agency to use the said celebrity's name and picture in goods or advertisements, failing to obtain permission from a celebrity or its agency or failing to make payment for creating separate booklets or DVDs featuring a large volume of featured articles or photos of a certain celebrity beyond the scope of an ordinary supply of information are against commercial practice and fair competition order; (d) there is a sufficient possibility that the special supplement published by Company A replaces the demand for the pictorial of the said boy band published by Company B, whereby the competitive relationship between the two is recognized; (e) therefore, Company A's creation and selling of the said special supplement is an act of using Company B's outcome, etc. without permission for Company A's own business operation against fair commercial practice or competition order and therefore constitutes an act of unfair competition prescribed in the said Item (k).

(Source: eng.scourt.go.kr)

07 Constitutional Court, 2018Hun-Ma77 March 26, 2020

Case on Public Announcement of List of Successful Candidates for National Bar Examination

In this case, the Court decided whether the part related to making public the list in Article 11 of the National Bar Examination Act, which requires the Minister of Justice to make a public announcement of the names of successful candidates for the National Bar Examination, infringes upon the Complainants' fundamental right. The Court rejected the constitutional complaint, finding that the provision does not infringe upon their right to self-determination on personal information.

Background of the Case

The Complainants already graduated or will graduate from law school and each of them took the 7th National Bar Examination in 2018, the 8 th in 2019 and the 9th in 2020 respectively. The Minister of Justice should immediately make public the list of successful exam candidates when they are determined pursuant to Article 11 of the National Bar Examination Act. The Complainants filed the constitutional complaint against the provision above, contending that disclosing the successful candidate list would let others know whether they passed the bar exam, which infringes upon their fundamental right. The Court granted a motion for preliminary injunction filed by some of the Complainants on April 6, 2018 and decided to suspend the effect of the aforementioned provision until the final decision is made for 2018Hun-Ma77, 2018Hun-Ma283 (Consolidated). In line with the preliminary injunction, the Justice Minister did not disclose the successful candidates' names for the 7th and 8th bar exam. The list of the successful candidates for the 9 th bar exam is scheduled to be announced in April 2020.

Subject Matter of Review

The subject matter of review in this case is whether the part related to announcing the list in Article 11 of the National Bar Examination Act (amended by Act No. 15154, December 12, 2017) (hereinafter referred to as the Provision at Issue) infringes upon the fundamental right of the Complainants.

Provision at Issue

National Bar Examination Act (amended by Act No. 15154, December 12, 2017) Article 11 (Announcement of Successful Candidates and Issuance of Certificates of Passage) When successful candidates are decided, the Minister of Justice shall immediately make a public announcement of the list of successful candidates and issue certificates of passage to the successful candidates.

Summary of the Decision

Violation of Principle against Excessive Restrictions and Infringement of Right to Self-Determination on Personal Information

The right to self-determination on personal information is guaranteed by the general right to personality drawn from Article 10 of the Constitution that specifies human dignity, worth and right to pursue happiness, as well as the right to privacy of Article 17. This refers to the right that the information holder can determine on his/her own as to when, to whom, and to what extent his/her personal information can be disclosed and used.

Personal information includes application for a certain test, passage, or year of passage, etc. The right of the applicants themselves to decide the period and scope for which the above information is known is part of the guaranteed right to self-determination on personal information. The

National Bar Examination is taken by a specific group of people who graduated or will graduate from law school. If the list of the successful candidates is made public by the Provision at Issue, people with knowledge on specific persons' enrollment at a law school or graduation from it would be able to get to know passage of the persons whose name is disclosed and also failure of certain persons by combining the information. Therefore, the right to self-determination on personal information of the applicants is restricted by the Provision at Issue.

The legislative purpose of the Provision at Issue is to help those in need of legal service acquire necessary information by disclosing information on attorney, a profession with publicness, and to indirectly ensure fairness and transparency of bar exam management. The Provision at Issue merely requires the Minister of Justice to disclose the names of the successful candidates among the personal information collected for the exam management, suggesting that the right to self-determination on personal information is restricted to a very insignificant scope and degree. If the list of the successful candidates is announced publicly, anyone can search for the result anytime. Subsequently, the Provision at Issue contributes to building public confidence in the qualification of an attorney, a profession with publicness, provides the means of obtaining information about attorneys, and eventually promotes easy access to the legal service. When the list is disclosed to the public, we can expect the exam authorities to select the successful candidates through stricter standards and procedures and enhance the fairness and transparency of the exam management accordingly.

Therefore, the Provision at Issue does not violate the principle against excessive restrictions or infringe upon the Complainants' right to self-determination on personal information.

Dissenting Opinion of Five Justices

Violation of Principle against Excessive Restrictions and Infringement of Right to Self-Determination on Personal Information

The National Bar Examination is taken by a specific group of people who graduated or will graduate from law school. If the list of the successful candidates is made public based on the Provision at Issue, people who know certain persons' enrollment at a law school would be able to get to know whether they failed to pass by comparing their names with the list of the successful candidates. As it shows, disclosing the information about who took the exam and who passed it to the public can be regarded as a grave restriction on the Complainants' right to self-determination on personal information.

The exam authorities can sufficiently ensure fairness and transparency of the exam management by offering only the application numbers of the successful candidates. Besides, people in need of legal service can visit the official website of the Korean Bar Association for more and better information about attorneys. Thus, there are other means to serve the legislative purpose with less restriction on their right to self-determination on personal information.

In practice, the public announcement of successful candidates is made by posting a document file containing the list of successful candidates with their application numbers, etc., without a time limit. Thus, anyone can search and see it at any time after the public announcement is made, and the list can be spread widely when it is quoted by news media or online posts. Such infringement of private interests would not be addressed with the lapse of time.

Consequently, the Provision at Issue violates the principle against excessive restrictions and infringes upon the Complainants' right to self-determination on personal information.

In this case, unconstitutionality was the majority opinion with four rejection opinions and five unconstitutionality opinions. However, the Court failed to reach the quorum needed to uphold a constitutional complaint as prescribed by Article 113 Section 1 of the Constitution and

Article 23 Section 2 Proviso 1 of the Constitutional Court Act and, therefore, rejected it. * This translation is provisional and subject to revision.

(Source: English.ccourt.go.kr)

08 Supreme Court Decision 2020Hu10087 Decided May 14, 2020

Invalidation of Registration (Patent)

Main Issues and Holdings

[1] In a case where the establishment of a patent has been registered through the patent application by a patent assignor who transferred entitlement to a patent under a contract before a patent application, whether the patent right constitutes the patent of "a person who is not a legitimate right-holder," which corresponds to the causes of the invalidation of patents (affirmative)

[2] Meaning of "a third party" prescribed in Article 38(1) of the Patent Act and whether an assignee, who obtains a patent right, including the causes of the invalidation of patents as a patent of "a person who is not a legitimate right-holder," constitutes the said third party (negative)

Summary of Order

[1] A person who makes an invention or his/her successor shall be entitled to a patent under the Patent Act (main text of Article 33(1) of the Patent Act). If the registration of the grant of the patent is made with respect to a patent application filed by a person who is not such legitimate right-holder (hereinafter "untitled person"), this constitutes the causes of the invalidation of patents (Article 133(1) Subparagraph 2 of the Patent Act). A patent assignor who transferred entitlement to a patent under a contract before a patent application is no longer the subject whom the right is vested in, and thus the patent right of which the establishment is registered with regard to the patent application filed by such patent assignor is the patent granted to an untitled person, corresponding to the causes of the invalidation of patents.

[2] The successor to an entitlement to a patent for which no patent application has been filed shall have no valid claim or defense against a third party, unless the successor files a patent application (Article 38(1) of the Patent Act). A third party herein is limited to those who acquire a legal status that is incompatible with the status of the successor related to the right to obtain a patent. A patent assignee who obtains the patent right which contains the causes of invalidation of patents as a patent of a person who is not a legitimate right-holder does not constitute the said third party as referred to in Article 38(1) of the Patent Act.

(Source: eng.scourt.go.kr)

09 Supreme Court Decision 2018Meu15534 Decided May 14, 2020

Divorce

Main Issues and Holdings

[1] Matters to be considered when determining the custody of a minor child upon divorce of parents

[2] Cases where both parents can be appointed as joint custodians of a child

[3] In a case where Party A and Party B dissolve their marriage by judicial divorce, and the issue of determining the custody of their child, Party C, is contended, the case holding that the lower court erred in its judgment that appointed Party A and Party B as joint custodians of Party C and accordingly determined the manner of joint custody by misapprehending the legal doctrine on the appointment of custodians

Summary of Decision

[1] Parenting or child rearing is the right and duty of parents, and it has a direct impact on the welfare of a minor child. As such, the determination of the custody of a minor child upon divorce of parents needs to be made in the best interest of the minor child's growth and welfare by taking into account the gender and age of the child, the presence of the parents' love for and intent to rear the child, the financial ability of each parent to provide care for the child, the details of the manner of child-rearing adopted by each spouse, the reasonability and appropriateness thereof, the likelihood that their child-rearing styles can strike a balance, the intimacy level between the minor child and his/her father or mother, and the intention of the minor child.

[2] In the case of judicial divorce, the appointment of both parents as joint custodians of a child is allowed only in cases where conditions for shared custody are fulfilled by comprehensively considering (i) whether both parents are prepared to share joint custody of the child; (ii) whether there is a substantial difference in a set of values they have in terms of child rearing; (iii) whether both parents live nearby and the environments where the child will be reared are similar so that money and time loss the child will incur is kept minimum and that the child will have no difficulty adapting to the environment; and (iv) whether the child has rational and emotional responsiveness to adjust to shared custody.

[3] In the case where Party A and Party B dissolve their marriage by judicial divorce, and the issue of determining the custody of their child, Party C, is contended, the case held as follows: (a) Party A and Party B continued to file a claim that he or she be appointed as the sole custodian and rearing parent, instead of sharing custody; (b) for the time being, it is difficult to expect Party A and Party B to coordinate opinions and amicably resolve differences in their opinions about shared custody and the specific manner thereof; (c) even if Party A and Party B manage to reach middle ground and compromise on what is necessary for joint custody of Party C in the future, it is doubtful that this would significantly contribute to mitigating money and time loss and emotional anxiety that Party C, who will have to alternate between households, abide by the decisions made by each parent based on their child-rearing orientations,

and adjust to two incompatible environments; (d) rather, the intended purpose of the appointment of shared custody appears to be mostly achieved with the appointment of either one of the parents and the exercise of the visitation right against the other spouse; (e) nevertheless, the lower court determined otherwise and appointed Party A and Party B as joint custodians of Party C and accordingly determined the manner of joint custody; (f) in so determining, the lower court erred by misapprehending the legal doctrine regarding the determination of a custodial parent.

(Source: eng.scourt.go.kr)

10 Supreme Court Decision 2016Du41071 Decided April 29, 2020

Revocation of Disposition Rejecting Application for Medical Care benefits

Main Issues and Holdings

[1] Whether the "health damage of a fetus" caused to a pregnant female employee by her occupational reason is included in "occupational accidents" of an employee stipulated in Article 5 Subparagraph 1 of the Industrial Accident Compensation Insurance Act (affirmative)

[2] In a case where a fetus, which has formed a monolithic body with the mother body, is separated from it by childbirth after a relation between the supply and demand of medical care benefits in accordance with the Industrial Accident Compensation Insurance Act was established because of occupational accidents such as the health damage of a fetus, which is a part of the pregnant mother, caused to a pregnant female employee by her occupational reason, whether the relation between the supply and demand of medical care benefits that was already established is terminated (negative)

Summary of Decision

[1] Comprehensively considering the purport, nature, and contents of the industrial accident insurance system and health care benefit system, the "health damage of a fetus" caused to a pregnant female employee by her occupational reason under the interpretation of the Industrial Accident Compensation Insurance Act (hereinafter referred to as "Industrial Accident Insurance Act") is included in "occupational accidents" of an employee stipulated in Article 5 Subparagraph 1 of the Industrial Accident Insurance Act regardless of the extent to which it affects the labor ability of the female employee.

[2] If a relation between the supply and demand of medical care benefits in accordance with the Industrial Accident Insurance Act was established because of occupational accidents such as the health damage of a fetus, which is a part of the pregnant mother, caused to a pregnant female employee by her occupational reason, the relation between the supply and demand of medical care benefits that was already established cannot be seen to be terminated even if the fetus, which has formed a monolithic body with the mother body, is separated from it by childbirth thereafter. Therefore, the female employee does not lose the entitlement to medical care benefits regarding a congenital disease of a child who was born by being separated from her even after her childbirth.

(Source: eng.scourt.go.kr)

11 Supreme Court Decision 2019Do9601 Decided April 29, 2020

Violation of the Copyright Act

Main Issues and Holdings

[1] The meaning of "creativity" of the requirements for a "work" stipulated in Article 2 Subparagraph 1 of the Copyright Act

A case where the creativity of architectural works including buildings can be recognized

[2] The requirements to recognize the infringement of copyright

Standard of determining whether there is a substantive similarity between two architectural works so as to determine whether such corresponds with the infringement of copyright

[3] In a case where the Defendant, a qualified architect, was commissioned to construct a café by Party A, and designed and constructed Party A's café building by imitating the design of a café building that Party B had designed and constructed, and, as a consequence, was charged by Party B with copyright infringement, the case holding that the judgment of the lower court viewed that the creativity of Party B's café building is recognized, and the substantive similarity between the building designed and constructed by the Defendant and Party B's café building is also recognized in the same regard on the grounds that it constitutes a work which is protected by the Copyright Act in that the café building of Party B reflects creative individuality on the part of the creator as well as function in accordance with common expressive methods or practical ideas

Summary of Decision

[1] Article 2 Subparagraph 1 of the Copyright Act demands creativity by stipulating a "work" as "a creative production that expresses human thoughts and emotions." Even if the creativity herein does not refer to perfect originality, a certain work should not at a minimum merely imitate another's work and should include independent expression of its creator reflecting thoughts and feelings so that creativity can be recognized.

Article 4(1) Subparagraph 5 of the Copyright Act provides "architectural works including buildings, architectural models and design drawings" as examples of works. However, as so-called functional works, the expressions with respect to architectural works including buildings are, in many cases, restricted according to common expressive methods in the field of architecture, their uses and functions, the user convenience of works, etc. Therefore, if buildings merely reflect the functions or practical ideas in accordance with such common expressive methods, recognizing creativity is difficult, but if the buildings include independent expressions of the creators themselves reflecting thoughts and feelings and thus reveal creative individuality of the creators, creativity cannot be recognized, and thus they can be protected as works.

[2] In order for infringement of the copyright to be recognized, the work of the infringing person should have used it on the basis of the work of the copyright holder and a substantive similarity between the infringing person's work and the copyright holder's work should be recognized. Subjects of copyright protection are creative expressions which specifically express human thoughts and emotions externally through language, letter, sound, color, etc. When determining whether there is a substantive similarity between two architectural works to determine correspondence with the infringement of copyright, only parts corresponding to creative expression methods ought to be compared.

[3] In a case where the Defendant, a qualified architect, was commissioned construction by Party A, and designed and constructed Party A's café building in imitation of the design of a café building that Party B designed and constructed (hereinafter referred to as "Party B's building"), and, as a consequence, was charged with Party B's copyright infringement, the case holding that the judgment of the lower court viewed that the creativity of Party B's building is recognized, and that substantive similarity between the café building designed and constructed by the Defendant and Party B's building is also recognized in the same regard on the grounds that Party B's building corresponds to works that are protected under the Copyright Act in that Party B's building contains independent expressions of the creator himself/herself by integrating various features together, such as a shape of the outer wall and the slab of the roof connected to a line down to the slab between the first floor and the second floor, the extent of the protrusion of the slab and its finished angle, the shapes and degrees inclined of both outer walls, etc., and thus reflects creative individuality on the part of the creator as well as the functions or practical ideas in accordance with the common expressive methods.

(Source: eng.scourt.go.kr)

Recent Events

The Stable Social Settlement of Released Prisoners! It Begins with Employment.

"Ceremony Held to Award Exemplary Companies that Employ the Released Prisoners"

- The Ministry of Justice (Minister Choo Mi Ae) held a ceremony to award 4 representatives of exemplary companies that employed the released prisoners in Government Complex Gwacheon, Ministry of Justice, Meeting room 7th floor on October 16 to encourage them.
  ※Exemplary companies for employing the released prisoners : Companies that have been evaluated and certified by Korea Rehabilitation Agency for employing the released prisoners who are vulnerable to employment. (From 2009 to present, a total of 46 companies were certified)
- The certified companies employed the 862 released prisoners in need of getting a job until now and for now, 68 released prisoners are sincerely working in these companies. For today's recipients of the award are representatives of exemplary companies that passed 3 years after the certification, accumulation of employing over 20 released prisoners, and employing over 3 released prisoners as now.
- The released prisoners have been suffering from social isolation due to imprisonment and have also suffered from getting a job because of the prejudice for ex-convicts. For this reason, they encounter hardships such as the poverty, dissolution of family members, and the severance of relationship. Part of these people sink into vicious cycle to committing crimes again by not overcoming the wall of harsh reality.
- Getting a job is the foundation for the released prisoners as a social member for entering into a social relationship with the co-workers and getting into productive activities, beyond the meaning of maintaining a livelihood. In this sense, getting a job is the stepping stone for stable social settlement for the released prisoners.
- The Minister of Justice emphasized 'Many people just avoid the released prisoners due to vague suspicion and fear. But the businessmen in here are the brave people who gave their hands first. I wish everyone makes an effort in making every single released prisoner spend his or her life as a responsible social member to make the world more harmonious through participation.' in this ceremony.
- The Ministry of Justice will look for various society settlement service to help them overcome the risk of recidivism for the released prisoners and comeback as a healthy member of this society, which will eventually lead to building a society of rule of law and an inclusive society.

Bar Exam Now Also Taking Place in Jeju and Gangwon Province!

Nationwide Expansion of Test Sites Beginning from the 10th Bar Examination in 2021

The Ministry of Justice will expand the bar examination test site to all 25 law schools nationwide (currently nine test sites) beginning from the 10th bar exam in 2021, in order to address the inconvenience of applicants who have to take the test by moving long distances to other provinces and to actively respond to the COVID-19 quarantine situation.

- The Ministry of Justice (Minster Choo Mi Ae) opened the first province test site (Chungnam University) for the 3rd bar exam in 2014 and has gradually expanded the test sites to Busan, Daegu, Gwangju and Jeonbuk province in 2019 and 2020 consecutively.
- However, test takers in areas where test centers are not installed, such as Gangwon, Jeju, and Incheon, are still experiencing inconvenience in having to take the test for four days by moving long distances. Therefore, the Ministry of Justice decided to expand and implement the test sites nationwide in order to address the inconvenience of the applicants and to establish the fairness of the actual test by expanding the choice of test sites.
- Such measure from the Ministry of Justice will allow about 3,500 prospective graduates and graduates of 25 law schools across the country to choose* their desired test sites starting immediately from next year.
- It would be the first essay-type qualification test to be conducted nationwide for two days or more (The bar exam is held in early January every year for a total of four days)
- While the Ministry of Justice actively responds to the nationwide COVID-19 quarantine situation by minimizing cross-regional movement of applicants through the nationwide expansion of test sites, based on the exam conducting experience accumulated in the process of expanding the test site, the Ministry of Justice will conduct rigorous and fair tests with thorough preparation, including pre-training of the test site operators, preparation of the test site quarantine management manual, securing transportation of test papers, and securing the local base safe for safe storage of retrieved answer sheets.

During application form registration period (October 20th ~ October 26th, 2020), students who wish to apply for the 10th bar exam taking place in 2021 will be assigned first within the scope of the test site's quota, if they wish to take the exam at a university in the law school where they have graduated (or are expected to graduate).

25 Test Sites Nationwide (In the order of quota)	
Capital Area (14)	Seoul National Univ., Korea Univ., Sungkyunkwan Univ., Yonsei Univ., Ewha Womans Univ., Hanyang Univ., Kyunghee Univ., Univ. of Seoul, Ajou Univ., Inha Univ., Chungang Univ., Hankuk Univ. of Foregin Studies, Konkuk Univ., Sogang Univ.
Provincial Area (11)	Kyungpook National Univ., Pusan National Univ., Chonnam National Univ., Chungnam National Univ., Dong-A Univ., Jeonbuk National Univ., Yeungnam Univ., Chungbuk National Univ., Wonkwang Univ., Kangwon National Univ., Jeju National Univ.

- The Ministry of Justice will continue to improve the system for the fairness of the bar exam and the enhancement of convenience of applicants with the aim of selecting excellent legal professionals, so that a more stable and reasonable test management system can be established.

MOJ Enforces Crackdown on Crime Offenders who are Encroaching Common People's Jobs and Violating Korean Citizens' Safety

39 people including illegal entry and employment brokers received Criminal Punishment (7 arrested), 885 illegally employed foreigners removed from Korea

Ministry of Justice (MOJ, Minister Choo Mi Ae) enforced crackdown on immigration offender to prevent encroachment on jobs of common people who is suffering from COVID-19 and to protect Korean citizens' safety from Aug 3rd, 2020 to Nov 20th,2020.

Results of the Crackdown

Dealt with 1573 cases, including 1294 foreigners who violated the law (① 862 foreigners in area of common people's job, such as delivering business, manufacturing business and construction business, ②171 foreigners in area of Korean citizens' safety, such as illegal entry, drug and unregistered vehicle ③261 foreigners in entertainment establishments which causes spread of COVID-19, such as club and massage parlors), 254 illegal employers and 25 brokers who consulted illegal entry and illegal employment.

Results of the Action

- Among 1294 foreigners, 4 were arrested, 885 were removed from Korea, 304 were fined and the rest 101 are still under investigation.
- Among 254 illegal employers, 17 were transmitted without detention, 5 were charged and 232 were fined.
- Among 25 illegal brokers, 3 were arrested, 10 were transmitted without detention, 7 were fined and the rest 5 are still under investigation.

Crackdown on area of Common People's Jobs

According to civil complaints, unreasonable discharge cases in fields encroached by foreigners are increasing due to recent influx of illegally employed foreigners

- Considering the significance of the issue and the urgency to protect jobs of common people who is suffering from COVID-19, MOJ has obtained a seizure and search warrant from the court to enforce crackdown on companies which illegally hired foreigners on a large scale.

Safety of the Citizens, Crackdown on Entertainment Establishments

- Recently, there have been many posts on social networking services (SNS), such as Facebook, advertising jobs for illegal immigrants as well as offering foreigners ways to enter Korea illegitimately. After further investigation, we were able to track down the source of these posts and these "brokers" were sent to the prosecutor's office.
- Recently, there have been tips about foreigners administering illegal drugs as well as reckless mass meetings happening around entertainment establishments in and near Seoul Metropolitan Area as well as in other small cities in the provinces. As this could cause problems for preventing the spread of COVID-19, we initiated a crackdown on entertainment establishments with the assistance of local authorities.
- If unregistered cars and motorcycles owned by illegal immigrants were involved in an accident, the victim had to bear and pay for all damages and losses. This happened because these said unregistered cars and motorcycles by nature, uninsured. To prevent this, we are conducting constant monitoring for unregistered vehicles.

The Ministry of Justice will continue its monitoring on jobs where employments for Korean citizens are a big problem due to illegally employed foreigners. We will continue and strengthen the crackdown on brokers that offer illegal entry into Korea and illegal employment as well as entertainment establishments, such as clubs and massage parlors. This along with any issue that could have negative implications on public safety, such as unregistered vehicles, will be strictly monitored as well.
Specifically, we will punish those who take advantage of the spread of COVID-19 to fire Korean citizens and replace them with unqualified immigrants. Through this strict enforcement, we will make sure that Korean citizen's jobs are protected

MOJ to Launch Psychological Treatment of Sex Offenders, Expected to Reduce Recidivism Rates

Analysis of Recidivism Rates of Offenders After Completion of Psychological Treatment Programs

MOJ provided sex offender risk assessment scale services(KSORAS) in 2014 and have been operating sophisticated psychological treatment program to all sex offenders. The program is branched into three courses; basic(100 hours), intensive(200 hours) and advanced(300 hours) according to individual recidivism risk and order to complete sexual violence treatment program.

- Considering that a systemized psychological treatment program started its operation quite recently, and that 5 out of 53 correctional institutions have departments dedicated to psychological treatment, the result helps prove that introduction of psychological treatments into correction administration is a meaningful novel approach.
※Psychological treatment department organization modified accordingly (2020.2): Anyang, Uijeongbu, Jinju, Cheonan, Gunsan(gyo)

As Cho Doo-soon's upcoming release is making the public nervous, while the effectiveness of psychological treatment of sex offenders is in question, the MOJ (Minister Choo Mi Ae) analyzed the rate of re-incarceration among individuals who took the program led by correctional institutions.

- As a result, the rate of re-incarceration of ex-offenders in 2015 was 26.3%, compared to 20.5% in 2016, showing a 5.8% decrease over one year.
※Rate of re-incarceration : Rate of ex-offenders who were once accommodated in correctional institutions after being sentenced to imprisonment or further punishments and released for completing term of punishment, parole or amnesty, and re-incarcerated within 3 years after the release for sentence above imprisonment.
- This helps conclude that the program covered analysis of variables affecting crimes, correction of deviant sexual perceptions, victim empathy and etc., thereby bringing positive effects to the efficacy of the treatment program.

Lee Young-hee, commissioner of Korean Correction Service (KCS), commented that 'the KCS will try its best to raise experts and departments professionalized in psychological treatment so as to provide systematic and effective psychological treatment and lead a society safe from crimes, despite insufficient circumstances.'

Cabinet votes in favor of the bill on the revision of the Special Act on the Punishment of Domestic Violence Crimes

The bill to revise the Special Act on the Punishment of Domestic Violence Crimes, which was passed by the National Assembly's main meeting on September 24, 2020, in order to strengthen response and punishment against domestic violence crimes and further protect the victims was passed at the Cabinet meeting on October 13, 2020.

※The Act will be enforced from January 21, 2021, three months after its promulgation.

Recently, criticism has been raised insisting the government is not sufficiently protecting the victims due to inadequate regulations for responding to or protecting the victims despite the seriousness of domestic violence crimes and the growing social interest in such crimes.

In this regard, the government, together with relevant agencies, announced measures to prevent domestic violence and promoted the revision of the Act. The main contents of the revision are as follows.

Improve crime scene response regulations to strengthen victim protection

- Stipulating that if a police officer dispatched to a domestic violence scene enters a criminal investigation, it is possible to 'arrest the current criminal under the Criminal Procedure Act'.
  ※(current) Separation of domestic violence offenders and victims and criminal investigations ⇨ (revised) Separation of domestic violence offenders and victims + criminal investigation and arrest under Article 212 of the Criminal Procedure Act
- In order to enhance the possibility of using the victim protection system, police officers dispatched to the scene can inform the victim that he or she can request victim protection orders and personal safety measures.

Increase effectiveness of provisional measures to protect the victims

- Sanctions have been strengthened so that criminal punishment, not fines, can be carried out in violation of provisional measures such as a restraining order.
  ※(current) A fine of no more than 5 million won ⇨ (revised) 1 year in prison or 10 million won in fines or detention, or no more than 3 years in prison or a fine of no more than 30 million won for habitual offenders.
- The scope of protection has been expanded by adding 'specific people' as well as 'specific places' to the content of provisional measures including the restraining order.
  ※(current) stay 100 meters away from the residence or workplace or the victim or his or her family member ⇨ (revised) above mentioned places + staying away from the victim or family member

Further strengthen the victim protection order system by adding restriction of visitation rights

- In consideration of the possibility of recidivism during the exercise of child visitation rights, 'restriction of visitation rights' has been added to the types of victim protection order.
- To ensure the effectiveness of the victim protection order, the period of the victim protection order and the total application period have been extended.
  ※(current) Up to six months or up to two years in the case of the period extension or change in type by adding the previous application period ⇨ (revised) up to one year, up to three years for the total application period

Reinforce measures to punish and prevent domestic violence offenders from recidivism

- The scope of application of the law is expanded by adding housebreaking and refusal of eviction to domestic violence crimes.
- To correct the sexual behavior of domestic violence offenders and prevent recidivism,

①In the interim step, the offender may be entrusted with counseling to counseling centers, etc.
②Those who are found guilty can be ordered to take relevant courses and can be given criminal punishment in the case they fail to complete a course.

The Ministry of Justice will continue to improve laws and systems to strictly respond to domestic violence crimes in the future, and will make every effort to ensure that there is no gap in punishment and protection of domestic violence.

Ministry of Justice and National Human Rights Commission of Korea co-host Business and Human Rights Forum to spread human rights management

The Ministry of Justice (MOJ) and the National Human Rights Commission of Korea (NHRCK) held the Business and Human Rights Forum under the theme of international trends in human rights management, corporate action plans, and government's roles on December 4, 2020.

The MOJ and NHRCK signed a Memorandum of Understanding (MOU) on May 26, 2020 to promote mutual cooperation for human rights management and agreed to proactively work together in six projects. As the first step, the two jointly held the Business and Human Rights Forum on December 12, 2020.

- As corporate supply chains have recently expanded overseas markets due to globalization, human rights management issues have emerged as a global problem, and the roles and responsibilities of companies and governments for human rights management have been emphasized.
- In response, the MOJ and the NHRCK have invited U.N. experts, international civic group activists, businesses and government officials to discuss the need for human rights management and action plans to be implemented.
- Taking into account the COVID-19 pandemic, overseas and local speakers and participants have attended the forum online and sign language interpretation was provided.

Lee Sang-kap, Deputy Director for Human Rights of the MOJ welcomed the forum and pledged to continue supporting the Ministry to practice human rights management voluntarily in accordance with international standards, not only in public institutions but also in private enterprises.

Song So-yeon, Secretary-General of the NHRCK stressed that human rights management of companies is a pressing task for a sustainable future in post COVID-19 era.

- In addition, Surya Deva, a member of the U.N. Corporate and Human Rights Working Group, pointed out the responsibility of human rights management by companies and governments in her keynote speech.

In session 1, activists from international civic organizations were invited to discuss the necessity of human rights management and their action plans.

In session 2, experts and government officials were invited to discuss international trends in human rights management and the role of the government.

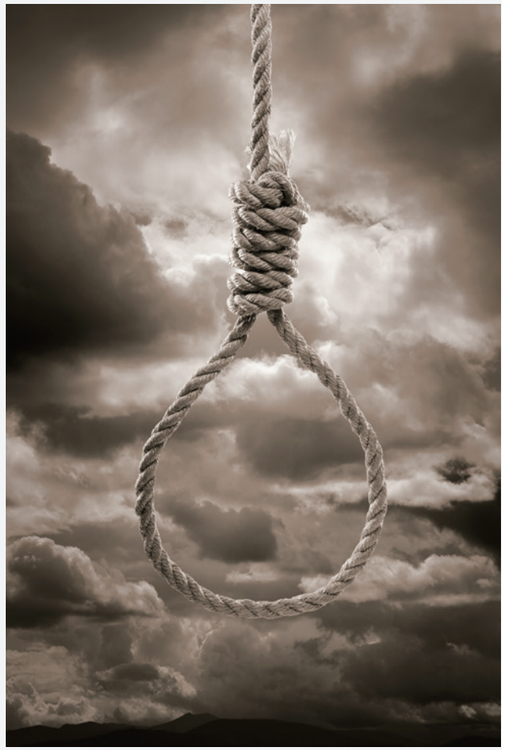
The MOJ and the NHRCK will continue to share related discussions and make efforts to promote and spread the human rights management of companies.

Korean Government votes in favor of the resolution on a moratorium on the use of the death penalty at the 75th session of the UN General Assembly

Adopted Year	2007		2008		2010		2012		2014		2016		2018	
Classification	3rd	Gen	3rd	Gen	3rd	Gen	3rd	Gen	3rd	Gen	3rd	Gen	3rd	Gen
Support	99	104	105	106	107	109	110	114	114	117	115	117	126	121
Opposition	52	54	48	46	38	41	39	41	36	37	38	40	36	35
Abstention	33	29	31	34	36	35	36	34	34	34	31	31	30	32

* Data shows that as time passes, more countries are showing support for the resolution on a moratorium on the use of the death penalty of the UN General Assembly (Number of Countries, the 3rd Committee: 3rd , UN General Assembly: Gen)

* Major Contents of the Resolution : ▲Expressing concerns over the continuing execution of death penalty ▲Seeking gradual restrictions on death penalty for children, pregnant women, and intellectually disabled people ▲Seeking to minimize the scope of death penalty as punishment ▲Ensuring transparent and impartial amnesty review for death penalty, ▲Requesting nations to consider adopting "Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, ▲Requesting declaration on a moratorium on the abolition of death penalty.
- The vote shows that the Korean Government, along with many other nations in the international community, is committed to protecting the right to live, a fundamental human right.
- UN General Assembly's resolution is a recommendation by nature and therefore is not legally binding. In this respect, the vote does not mean that the Korean government should abolish the death penalty or is liable to change its legal system.
- The issue of abolishing death penalty is incredibly important in that, it relates the country's right to punish wrongdoers. Therefore, the Ministry of Justice will continue to examine and review the death penalty's function in criminal political aspect, the views of the Korean people, and the opinions of other nations.



Overview

- This document serves to help people understand the resolution on a moratorium on the use of the death penalty that was voted in favor by the third Committee of the UN General Assembly at the 75th Session of the UN General Assembly.
- The Korean Government voted for the resolution following thorough consultations between related agencies.
- For 23 years, the Korean Government, from Kim Dae-Jung administration to President Moon, has not conducted any execution.
- This fact contributed to the international community's recognition of Korea as a country without death penalty. In addition, due to the fact that the number of countries that are in support of this resolution is constantly rising, the Korean government has decided to vote in favor of the resolution.

Government launches amendments to abortion-related laws

With the Constitutional Court declaring that criminal abortion laws are unconformable to the Constitution in April of 2019, the government, along with establishing new rules for permissible of abortion with the Ministry of Justice, Ministry of Health and Welfare and other related agencies, strived to provide improvements to social·institutional climates to maximize practical harmony between the protection of fetuses' right to life and women's right to choose that the Constitutional Court has mentioned.

The government have especially made efforts to provide safe procedures for abortions within the legal limit and amended the Mother and Child Health Act to improve the social·institutional climate so that women can avoid unwanted pregnancies, and amended the Criminal Act in order to bring practical harmony between the protection of fetuses' right to live and women's right to choose.

This amendment was prepared by the government with the advice from legal and medical professionals in order to comply with the Constitutional Court's order to amend the criminal abortion law by December 31 of this year, and the Criminal Act and the Mother and Child Health Act will be revised simultaneously in order to bring comprehensive improvements to the laws and regulations. Some of the amendments are as below:

Criminal Act

- (Separate provisions regarding permissible period and reasons) Set the permissible period for decision regarding sustaining pregnancy for pregnant women to "within 24 weeks after conception" and separate provisions were set for 14-24 weeks of pregnancy.

Under the current Mother and Child Health Act, abortions are only allowed within 24 weeks of pregnancy if it meets certain criteria*(Article 14, 28 of the current Mother and Child Health Act and Article 15 of the Enforcement Decree of the said Act)

*①Mother or the father has mental, physical, infectious disease that could be transmitted by eugenics or genetics, ②Pregnancy by rape · quasi-rape, ③Pregnancy by incest, ④Health risk to the pregnant woman

Amendment to the Criminal Act fully reflects the purpose of the Constitutional Court's decision, allowing pregnant women to decide on abortions within 14 weeks of pregnancy according to their own will without any specific reason or procedure requirements.

In addition, abortions are allowed during 15~24 weeks of pregnancy if the reason for it are social·economic reasons specified in the existing Mother and Child Health Act and the Constitutional Court's decision (Constitutional Court's Opinion: Unconstitutional · Unconformable to Constitution).

- (Setting procedural acceptance requirements) It requires abortion to be "a medically acceptable method" and abortion due to social and economic reasons is subject to consultation and consideration period.

For safe abortion, it limits the abortion to be conducted by the medical doctor like the existing regulation and by the medically acknowledged method.

*However, under the existing Mother and Child Health Act, which criticized women for violating their right to self-determination, the requirement for consent of spouses was deleted.

For protecting the life of a fetus and optimizing the protection of right for decision-making of pregnant women, it should go through with consultation and consideration for 24 hours*by the Mother and Child Health Act in case of abortion within 24 weeks due to social and economic reasons.

*It prevents any dispute for proof in case of completing the consultation·consideration period, assuming that there are social and economic reasons.

Mother and Child Health Act

- (Acceptance of drugs leading to spontaneous abortion) It extends the options of treatment methods by actualizing the treatment method to medical method such as drugs, operations.
- (Support for social consultation) It establishes the institution of pregnancy·birth support and provides the emergency call and online-consultation for responding quickly to emergencies such as the recognition of unwanted pregnancy or child neglect.

It provides the social·psychological consultation for the maintenance of pregnancy such as emotional support to pregnant woman and her family, providing the information of support policies and ensures to issue the confirmation letter of consultation about the pregnant maintenance·termination by establishing·designating the general counseling agency for pregnancy·childbirth in public health center and non-profit corporation, etc.(designated by Minister of Ministry of Health and Welfare or Governor)

- (Arranging detailed procedures) For ensuring the access to the medical information about induced abortion and preventing repetitive induced abortion, it prepares the regulation for the written consent of the person behind the policy for medical doctor to explain the procedure methods, after-effects, compliances before and after the procedure, etc.

In case of mental disability, it can be substituted to consent of legal representative and the minors can get procedures by the confirmation letter of consultation instead of consent of protector.

- In case of minors over 16 of age, they can get procedure by the confirmation letter of consultation in the inevitable situation such as refusing to get the consent of legal representative,

- For minors under 16 of age, they can get procedure by official documents proving the fact that they could not get the consent for the absence of legal representative or mistreatment such as assault·threat etc., and by the confirmation letter of consultation from general counseling agency for the pregnancy·childbirth.

With this, it admits the medical doctor's denial of diagnosis and treatment for induced abortion by his/her personal belief.

For ensuring the women's accessibility of procedure, the medical doctor is subject to guide the consulting institution for pregnancy·childbirth providing the information for maintaining pregnancy after he/she refuses the procedure request.

- (The support for preventing unwanted pregnancy, etc.) Nation and local government promote education on contraception, conduct factual survey and research about the induced abortion and carry out businesses for increasing the awareness on people's reproductive health*.

In addition, by amending the Pharmaceutical Affairs Act, the government will permit the use of words or design implying abortion to medical treatment that is accepted by the Criminal Act and the Mother and Child Health Act and will take necessary measures such as establishing a safety system for drugs.

Starting with the pre-announcement of legislation on October 7, 2020 the Ministry of Government Legislation will conduct review on the bill, which will be submitted to the Nation Assembly in a swift manner.

Employment of Foreign Workers in Korea

Introduction

Many foreign workers working in South Korea have expressed hardships and concerns regarding their employment and working environment. Amongst approximately 2.5 million workers who come to South Korea from foreign countries, it can be said that those coming from the developing countries are experiencing comparatively much fragile working conditions.

Such labor environment for the foreign workers has been worsened with the outburst of COVID-19 crisis. One of the numerous areas the pandemic has impacted would definitely have to be business, where factories have shut down, companies have gone bankrupt, or they have temporarily gone out of business. Such decisions are deemed to be most problematic especially to foreign laborers, who are listed in the number 1 spot to be fired in order for the company to reduce their human labor and the related costs, especially in small- and medium-sized enterprises. A number of foreign workers have voiced their sufferings, as it concerns not only themselves but also their families whom they have to take care of and are either in South Korea or back in their home country.

In light of the hardships many immigrants and foreign workers in South Korea are going through, the following content aims to provide the following to be of help: proper legal standards and statues on which both legal status and procedures for employment of foreign workers are set; rights protection system for foreign workers in South Korea in case of improper firing or any illegal measures taken by the employers of the South Korean companies; procedures for employment of foreign workers under Non-Professional Employment (E-9) status and Working Visit (H-2) status; and two frequently asked questions and answers regarding foreign workers' employment and their stay in South Korea.

Legal Status, Employment and Status of Stay of Foreign Workers

"Foreign Workers" indicates a person without the nationality of the Republic of Korea who provides or intends to provide his or her labor in return for wages in any business or place of business located within the Republic of Korea (the main body of Article 2 of the Act on the Employment, etc. of Foreign Workers).

Every foreigner who intends to work as an employee in the Republic of Korea shall obtain the status of stay that entitles him or her to engage in work as an employee, as prescribed by the Immigration Act. If any person works in Korea in violation of the above, such person will be subject to imprisonment with labor for not more than 3 years, or by a

fine not exceeding 20,000,000 won (Article 18 Section 1 and Article 94 Subsection 8 of the Immigration Act).

Rights Protection System for Foreign Workers

Rights protection system for foreign workers in Korea is based on two major legal systems of Korean law; labor law and social security law.

Among the two, labor law encompasses laws that govern employment, working conditions and labor-management relations in order to guarantee minimal working conditions of workers and realize equality between employees and employers. As foreign workers acquire position as employees in Korea, they are also under protection of labor laws as domestic workers do. Most representative laws that protect labor rights of foreign workers are introduced below.

Table 1. Laws that protect labor rights of foreign workers, including labor standards act, minimum wages act, and employee retirement benefit security act.

Rights protection system covers social insurance, public aid, and social welfare service that guarantee income and services necessary to protect all citizens from social harms, such as childbirth, nurturing children, unemployment, ageing, disability, illness, poverty, and death,

LABOR STANDARDS ACT	LABOR CONTRACTS Signing written contract of employment is mandatory for employees and employers in Korea. Items that must be included in the contract are specified in The Labor Standards Act (or 'LSA'), which are; Pay components, Pay calculation method, Salary payment method, Work hours, Weekly paid holidays. Unless the contract fills in all mandatory items specified by the LSA, those parts are null and void. Instead, they are governed by the standards provided by the LSA. The duration of the contract may last for either definite or an indefinite term, but the maximum duration of definite contract is two years. In case of indefinite contract, the retirement age is 60. RULES OF EMPLOYMENT Employers hiring 10 or more employers are mandated to create rules of employment. These rules establish general working conditions, and must integrate opinion from at least a majority of the union or employees. Amendments to the rules disadvantageous to the employees require a majority's consent of the union or the employees. HOLIDAYS & LEAVE Employees are guaranteed at least one paid holiday for working a full week. The hourly standards for working a full week are 8 hours a day, 40 hours per week. Weekly holidays are Sundays at most times but this is flexible depending on the characteristic of the work. Employees are paid at least 50/100 on top of their regular wage for any extended work or work during weekly holidays. This extra wage stays independent from regular payment for weekly holidays. Weekly holidays and labor day on the first day of March, are two set holidays for employees. Aside from that, employees may have contractual holidays which are established in labor contracts or rules of employment. These contractual holidays include public holidays or company foundation day. It is mandatory for companies hiring more than 300 people to pay for the employees' contractual holidays. Every employee in his or her first year at work are granted a single day of paid leave for every fully worked month. Therefore, a first-year employee is given a total of 11 days of paid leave per year. From the second year, the employee gets 15 days of paid leave every year as long as the employee keeps a 80% attendance at work. Any attendance below this percentage means the employee can use a single day of paid leave for every fully worked month, which is the standard first-year workers use. The employee is granted an additional paid leave in his or her fourth year, and the number adds up every two years until it reaches the maximum of 25 days. DISMISSAL An employer shall not, without justifiable cause, dismiss, lay off, suspend, or transfer an employee, reduce his/her wages, or take other punitive measures. All of the above are considered as instances of "unfair dismissal." Upon dismissal, employees are given a 30-day advance notice, except in cases such as when three months have not passed since the employee newly joined into the company, or when the company is unable to maintain the business in case of national disasters. The dismissal note must be given in a written form and include details such as the reason and date of dismissal. Without such specifications mentioned in the note, the dismissal is null and void.
MINIMUM WAGE ACT	MINIMUM WAGE The Ministry of Employment and Labor announces the minimum wage of the upcoming year. The rate for 2020 is 8,590 KRW per hour, and every employee is guaranteed at least this amount of wage for their work. Any contract below this rate is null and void, automatically replacing the rate to minimum wage. The minimum wage does not discriminate types and nationality of workers.
EMPLOYEE RETIREMENT BENEFIT SECURITY ACT	RETIREMENT BENEFITS SYSTEM Every employee who has worked for a year or longer and whose contract has expired, are subject to retirement benefits system. The system requires a majority of the union or employees' consent to be established. It adopts either of the two systems, retirement pay or retirement pension. Employers giving retirement pay should give 30 year wage per every year the employee has worked in the company. In case of retirement pension, benefits can be provided in either annuity or lump-sum pay. Employees who have fulfilled the requirements (aged 55 years or older and subscribed to the pension for 10 years or longer) can be paid in annuities, and others who have not reached the requirements are given in lump-sum pay.

and to improve their quality of life. The application of the social security system to foreigners residing in the Republic of Korea shall be made in accordance with the principle of reciprocity and the related Acts and subordinate statutes. Most of the legislatives that applies to foreign workers fall under social insurance acts, such as National Health Insurance Act, National Pension Act, and Employment Insurance Act. The three legislatures are introduced below.

National Health Insurance Act	The National Health Insurance (or "NHI") program provides coverage for foreign workers. Foreigners who registered in the Immigration Office and enrolled in the program are qualified to the program. In case of workers however, they are enrolled in compulsorily. The contribution amount is derived and deducted from the employees' monthly salary, which is shared by the employer. Benefits are the same, which is primarily to share the costs for the healthcare services covered by the insurance.
Industrial Accident Compensation Insurance Act	The Industrial Accident Compensation Insurance (or "IACI") covers foreign workers and provide medical care benefits, temporary disability benefits, injury-disease compensation annuity, permanent disability benefits, nursing benefits and more. The goal of the program is to relieve employees and their families from unexpected injury, disease, disabilities and death. The insurance contribution only applies to employers, determined as total wage amount * 0.007-0.553, depending on industrial sectors.
Employment Insurance Act	Employment Insurance provides benefit to foreigners on a voluntary basis. The program grants unemployment benefit, employment security program and vocational skills development programs. The ultimate aim of the program is to prevent unemployment and boost vocational skills of the employees. Rate of employee contribution is determined as average monthly wage * 0.45%, while rate of employer contribution is determined as average monthly wage & 0.45% for employment benefits, and total wage amount * 0.25-0.85% for employment security and vocational ability development programs.

Table 2. Laws regarding social security system, including National Health Insurance Act, Industrial Accident Compensation Insurance Act, and Employment Insurance Act.

Procedures for Foreign Workers to Engage in Employment

It can be said that the Non-professional Employment (E-9) status of stay and Working Visit (H-2) status of stay are the two kinds of status of stay many foreigners seek to obtain in order for them to engage in employment activities in the Republic of Korea. You can refer to the below to find out who is eligible for obtaining each E-9 and H-2 status of stay and also the specific procedures as to how a foreign worker can obtain the pertinent status of stay.

(1) Procedures for Foreign Workers under Non-professional Employment (E-9) status to Engage in Employment
Individuals eligible for obtaining Non-Professional Employment (E-9) status of stay are those who satisfy qualifications for domestic employment set forth under the Act on the Employment etc. of Foreign Workers [excluding those who intend to engage in professional occupations which require certain qualifications or relevant work experience].
The specific procedures for foreign workers outside Korea under Non-professional Employment (E-9) to engage in employment for the first time in Korea are as follows:

1. Registration on the Foreign Job-Seekers List
2. Application by Employers and referral by the Head of Employment Center
3. Entering into Employment Contrac
4. Application for Visa Issuance
5. Entry into the Republic of Korea
6. Completing Employment Training for Foreign Workers
7. Health Examination
8. Alien Registration
9. Extension of Period of Stay

(2) Procedures for Foreign Workers under Working Visit (H-2) Status
Those eligible for the Working Visit (H-2) status of stay are foreign

nationality Koreans (as defined in Article 2 Subsection 2 of the Act on the Immigration and Legal Status of Overseas Koreans) aged 25 or older who fall under any of the seven categories (for specific categories, please visit https://www.easylaw.go.kr/), intend to stay in the Republic of Korea to engage in activities within the scope defined in Item B (for specific content, please visit https://www.easylaw.go.kr/), and are recognized by the Minister of Justice [excluding those categorized as Overseas Koreans (F-4)].
The specific procedures for employment of foreign workers under the pertinent status are as follows:

1. Completing Employment Training for Foreign Workers
2. Health Examination
3. Applying for Employment
4. Entering into Employment Contract
5. Reporting on Commencement of Employment
6. Application for Permission to Extend Period of Stay

Q & A Section: Case Studies

Case A.
Q. I've obtained a three-month-long tourist VISA. Would it be okay if I travel around South Korea for a month and then work at a foreign language speaking/speech academy for the remaining two months?

A. In order for foreigners to get a job in Korea, they must be eligible to stay (on VISA) to work under the 「Immigration Act」. Therefore, if you are staying in Korea on a tourist visa, you cannot work in any kind of job positions.
In order to get a job at a foreign language speaking/speech academy, you must either enter the country with an E-2 visa obtained beforehand or change your status of stay to 'Foreign Language Instructor (E-2)' if you've already entered the country on a tourist visa (B-2 or C-3).
If a foreigner who is not eligible for employment is employed, he or she will be sentenced to up to three years in prison or fined up to 20 million won.
In addition, hiring or soliciting foreigners who are not qualified to stay in the workforce will result in up to three years in prison or a fine of up to 20 million won.

Case B
Q. I got hurt working at the factory while working illegally, but the company said they can't pay for the hospital fee. Can I get medical care benefits from the 「Industrial Accident Compensation Insurance Act」?

A. The precedent (the Supreme Court's 95.9.15. Sentenced by 94 Nu 12067) states, "If a foreigner enters the country as a qualification to stay for industrial training, not as a employed person, and enters into an employment contract with a business establishment subject to the old Industrial Accident Compensation Insurance Act (1994.12.22. before it was specially amended to Act 4826), even if the foreigner did not have a job qualification under the old Immigration Act, the employment contract cannot be considered null and void. At the time of the injury, the foreigner would have been a prescribed worker under the Labor Standards Act and would be eligible for medical care benefits under the old Industrial Accident Compensation Insurance Act," meaning that even illegal foreign worker is recognized as an employee who provides work.

Korea's Regional Special Dishes

Many regions in Korea have their own special dishes. While most of these specialties can be found outside of their respective regions, nothing can beat the original. If you happen to be in one of the regions mentioned below, take your time to enjoy the food that made the region so famous.

Jeonju Bibimbap

Bibimbap, which means "mixed rice" in Korean, is a traditional Korean rice dish. Bibimbap is served as a bowl of warm white rice topped with seasoned vegetables, kimchi and gochujang (chili pepper paste), soy sauce, or doenjang (a fermented soybean paste). In South Korea, Jeonju is especially famous for their versions of bibimbap. There are different theories about the origins of Jeonju Bibimbap, but many food experts agree that it first originated from the Joseon Dynasty's royal cuisine and later spread to commoners. According to the records, Bibimbap was enjoyed by the people of Jeonju since 1800s, so the history of Bibimbap stretches longer than 200 years. All the five cardinal colors (green, red, yellow, white and black) and five flavors (sweet, salty, savory, spicy and astringent) are included in a typical bowl of Jeonju Bibimbap, Also, the dish is not only nutritionally balanced but also rich in vitamins and minerals. For these reasons, Jeonju Bibimbap is one of the dishes that are loved by gourmets around the world.

Hoengseong Hanwoo

Hanwoo is a breed of cattle native to Korea. Despite its high price, Hanwoo beef is preferred in Korean cuisine, as it is typically fresher and of better quality than budget varieties such as, imported beef. Hoengseong County, best known for its Hanwoo, is said to have the perfect climate and environment to raise cattle. Every year, the Hanwoo festival takes place in Hoengseong County. The festival promotes the superior quality of Korean beef produced in Hoengseong and it offers various events under the theme of Hoengseong Hanwoo. The festival attracts a large number of people who wish to wolf down Hoengseong Hanwoo beef at affordable prices. Since Koreans consider Hanwoo beef

to be a cultural icon and one of the top-quality beefs of the world, it is used in traditional foods, popular holiday dishes, or given as a gift for the holidays.

Chuncheon Dak-galbi

Dak-Galbi, or spicy stir-fried chicken, is a popular Korean dish made by stir-frying marinated diced chicken in a gochujang-based sauce with

sweet potatoes, cabbage, tteok (rice cake), and other ingredients. Dak-Galbi is a local food of Chuncheon with a heartwarming background. Koreans faced hardships after the Korean War, and Dak-Galbi was created in order to bring comfort and bring people of Chencheon together. This background made this dish a symbol of Chuncheon's resilience. An annual festival dedicated to Dak-Galbi is held in Chuncheon and throughout the festival people can enjoy various kinds of Dak-Galbi from many different restaurants in Dak-Galbi rodeo.

Hodo Kwaja of Cheonan

Hodo Kwaja is a snack enjoyed by many Koreans. They are made with walnuts, red bean paste, and flour. Hodo Kwaja has a sweet and crunchy flavor and can be easily found in Korea. While they are made all across Korea, those made in Cheonan are known as the best. According to old tales, walnut was introduced to Korea by Yoo Cheongshin, a Korean ambassador to Yuan Dynasty of China, who brought back walnut seeds with him when he returned from a trip to China. It was planted in Gwangdeok Temple in Cheonan. The natural climate of Cheonan allowed walnuts to prosper and consequently the walnuts produced in Cheonan were tasty and of high-quality. In 1934, Choo Guigeum and his wife, Sim Boksoon, wanting to remember the times when their ancestors enjoyed tea with snacks decided to invent a new snack. They used Cheonan walnuts as the main ingredient because they highly valued their quality and the taste. The tastiness and popularity of Hodo Kwaja resulted in them produced all over Korea, but Cheonan Hodo Kwaja is still considered by many to be the best.

Andong Jjimdak

Jjimdak refers to braised spicy chicken with vegetables. The origin of Andong Jjimdak is not clear and there are multiple theories regarding its origin. The first theory is that during the Joseon Dynasty, people of Andong who lived outside city walls saw people who lived inside the castle eat Jjimdak. Since the area inside the castle was also called “Andong”, the people who lived outside city walls started calling it Andong Jjimdak. The second theory is that during the 1980s, people who went to Andong’s markets wanted more ingredients to be put in in their roasted chicken soup and the owners of the restaurant obliged and this resulted in the creation of Andong Jjimdak. The last theory suggests that Andong Jjimdak was created by restaurant owners of Andong in 1980s as they were worried about the mushrooming of western-style fried chicken restaurants. In this regard, they created a new dish with a unique taste. Regardless of its actual origins, Andong Jjimdak is loved by many for its rich and deep flavor. It is also considered nutritious because the chicken and vegetables provide protein and vitamins respectively.

Black Pig of Jeju Island

Black Pig of Jeju Island is a unique species of pigs. These pigs are thought to be the descendants of pigs that migrated into the Korean Peninsula from northern areas, most likely China, during the Goguryeo Kingdom. These pigs are known for their black skin and it tends to be smaller compared other species of pigs. Until the 20th Century, these pigs were raised by feeding feces simply to dispose them. While this might seem unsanitary, science suggests that the microorganisms and lactobacili from these human feces have strengthened the immune system of these black pigs. Even though this kind of breeding can be found in not only Korea but also Japan and other South Asian countries, it has fallen out of fashion. Today, more conventional ways are used to breed these pigs. Black Pigs are often smoked over burning hay and this gives it a unique flavor and a chewy consistency. It is still very popular with Koreans and it is one of the dishes to try if one were to find him or herself in Jeju Island.

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
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Focusing on Business and Investment

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