

The Republic of Korea

Under Article 5 (2) of the Constitution of 1962,^{1/} it is stipulated that "the status of aliens shall be guaranteed in accordance with international law and treaties." Furthermore, Article 9 of the Constitution provides that "all citizens are equal before the law and there shall be no discrimination in political, economic, social, or cultural life on account of sex, religion or social status."

The above Article 9 and the subsequent 25 articles concerning the rights and duties of the citizens are generally construed to be applicable to aliens as well, although there is a conflict of authority on this point.^{2/} Nevertheless, aliens are subject to certain restrictions under domestic laws and regulations.

1. Immigration rights

Any alien desiring to enter or reside in Korea is subject to the conditions set forth in the Immigration Control Law,^{3/} and is duly required to register with the competent authorities.^{4/} Even if he is allowed to stay, he is subject to deportation, should he violate the requirements specified in the Law.^{5/}

^{1/} Promulgated on July 17, 1948 and amended on December 26, 1962. For the text, see Korean Legal Center, Laws of the Republic of Korea, 1964, pp. 2-7.

^{2/} Chin Kim, Taehan minguk e issozo segukin ui popchuk ch'il [Legal Status of Aliens in Korea], p. 389.

^{3/} Art. 7, 8, 19, 21 and 22, Law No. 1289, March 5, 1961.

^{4/} Ibid., Art. 19 to 25; 27 to 39.

^{5/} Ibid., Art. 26.

Since the Republic of Korea is not confronted with serious problems arising from immigration, the Immigration Control Law is not concerned with the immigrant who wishes to establish permanent residence in Korea. However, this does not necessarily mean that aliens are denied permanent residence. In the absence of specific provisions in the Law, it may be construed that, subject to the conditions prescribed in the Law, any alien may stay in Korea for an extended period as long as the Minister of Justice so permits.

2. Defendant's rights

In spite of the vicissitudes of political development, Korean law does provide equal justice and rights of a fair trial to all its citizens. According to the provisions of the Constitution of the Republic of Korea, it is stipulated that all citizens are equal before the law, and have the right to be tried according to law by judge or judges.^{6/} Laws concerning the rights of defendants are mainly found in the Constitution and the Code of Criminal Procedure.^{7/} None of the above contains any discriminatory clause against race, nationality or alienage.

The concept of due process of law as it is understood in the United States, has been incorporated into the Constitution in Articles 10, 11, 24, 25, 98 and 105, which provide:

^{6/} Art. 9 of the Constitution.

^{7/} Law No. 341, September 23, 1954, as last amended by Law No. 1500, December 13, 1963.

Article 10. (1) All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized, interrogated or punished except as provided by law, or be subject to involuntary labor except on account of a criminal sentence.

(2) No citizen shall be subject to torture of any kind, or be compelled to testify against himself in a criminal case.

(3) A warrant issued by a judge upon request of a prosecutor must be presented in case of arrest, detention, search or seizure. However, in case the criminal is apprehended flagrante delicto or in case where there is danger that a criminal, who committed a crime punishable by imprisonment for three years or more, may escape or destroy evidence, the investigating authorities may request an ex post facto warrant.

(4) All persons who are arrested or detained shall have the right to the prompt assistance of counsel. When a criminal defendant is unable to secure the same by his own efforts, the State shall assign a counsel to the defendant as provided by law.

(5) All persons who are arrested or detained shall have the right to request that the court review the legality of their arrest or detention. When a person is deprived of personal freedom by another private individual, he shall have the right to request a remedy from the courts.

(6) In case the confession of a defendant is considered to have been made against his will by means of torture, acts of violence, threats, unduly prolonged arrest, deceit, etc., or, if the confession of a defendant is the only evidence against him, such confession shall not be admitted as evidence for his conviction, nor shall he be punished on the basis of such a confession.

Article 11. (1) No person shall be prosecuted for a criminal offense unless such act constitutes a crime prescribed by law at the time it was committed, nor shall he be placed in double jeopardy.

(2) No restrictions shall be imposed upon the political rights of any citizen, nor shall any person be deprived of property by means of retroactive legislation.

Article 24. (1) All citizens shall have the right to be tried in conformity with the law by judges qualified under the Constitution and law.

(2) Citizens who are neither on active military service nor employees of the military forces shall not be tried in a military tribunal . . .

(3) All citizens shall have the right to a speedy trial. A criminal defendant shall have the right to a public trial without delay in the absence of justifiable reasons.

Article 25. In case a criminal defendant under detention is found innocent, he shall be entitled to a claim against the State for compensation in accordance with the provisions of law.

Article 98. Judges shall rule independently according to their consciences and in conformity with the Constitution and law.

Article 105. Trials and decisions of the courts shall be open to the public; however, trials may be closed to the public by a court when there is a possibility that such trials may disturb the public safety and/or be harmful to decent customs.

Additional safeguards provided for in the Code of Criminal Procedure include the right to challenge a judge,^{8/} the right to the services of counsel,^{9/} the right to public trial,^{10/} etc.

^{8/} Ibid., Art. 17 and 18.

^{9/} Ibid., Art. 275, 276, 278, and 279.

^{10/} Ibid., Art. 34, 35, 89, 95, 148 and 160.

3. Restriction on Business Activities

Mining and Fishery Rights. In principle, an alien person or corporation is denied mining and fishery rights under the Mining Law^{11/} and the Fishery Law^{12/} respectively, unless the terms and conditions of the rights to be exercised by aliens are approved by the National Assembly. If a domestic corporation engaged in mining enterprise is substantially controlled by aliens, it is regarded as a foreign corporation within the meaning of the above statute. Therefore, a license may not be granted to such domestic corporation. The same also applies to a domestic fishery enterprise when a majority of its capital or voting power is foreign.^{13/} By revision of the Foreign Investment Law in 1966, however, foreign investors or investing enterprises (not individual aliens) are exempted from these restrictions.^{14/}

Investment. Any foreign investor who desires to invest in Korean enterprises must obtain permission from the Minister of the Economic Planning Board in conformity with the Foreign Investment Law. In addition, the following transactions are subject to

^{11/} Art. 6, Law No. 294, December 23, 1951, as amended by Law No. 1061, 1962.

^{12/} Art. 5, Law No. 295, September 9, 1953, as last amended by Law No. 1760, 1966.

^{13/} Law No. 1802, August 3, 1966.

^{14/} Art. 5, Law No. 532, January 1, 1960, as last amended by Law No. 1760, March 8, 1966.

the approval of the Minister: (1) when an alien subscribes stocks from Korean corporations;^{15/} (2) when he uses foreign capital for a purpose other than the originally declared purpose;^{16/} (3) when he concludes a technical assistance contract or renews or alters thereof.^{17/}

However, under special legislation, an alien is expressly denied the right to invest in the Korea Aviation Public Corporation^{18/} or to become a shareholder or an officer in the Korea Salt Industry Corporation.^{19/}

Any alien who intends to do banking^{20/} or insurance business in Korea must obtain a license from the Ministry of Finance. In addition, an alien insurer must deposit 240,000 won or the amount fixed by the Minister of Finance in order to commence his business.^{21/}

^{15/} Ibid., Art. 5.

^{16/} Ibid., Art. 13.

^{17/} Ibid., Art. 17, 20 and 31.

^{18/} Art. 5, Law Concerning the Taehan Aviation Public Corporation, Law No. 1041, Mar. 3, 1962, as amended by Law No. 1765, Mar. 9, 1966.

^{19/} Art. 6, Law Concerning Taehan Salt Industry Corporation, Law No. 1421, Oct. 28, 1963, as amended by Law No. 1598, Dec. 16, 1963.

^{20/} Art. 8, the Foreign Exchange Control Law, Law No. 933, Dec. 31, 1961, as amended by Law No. 1562, Dec. 16, 1963.

^{21/} Art. 9, Law Concerning Foreign Insurance Underwriters, Law No. 989, Jan. 20, 1962.

Similarly, any alien who intends to do business in exports and imports must obtain permission from the Minister of Commerce and Industry who is required to consult with the Minister of Foreign Affairs in advance.^{22/}

Other Business Activities. No alien, foreign corporation or foreign Government or its representative is licensed to establish a radio station in Korea.^{23/} Also a license may not be granted to a domestic corporation if it is represented by aliens or if more than one-third of its officers or voting stockholders are aliens.

Cabotage is expressly prohibited under the Ship Law, except where it is provided by laws or treaties or where permission is granted by the competent Minister.^{24/}

Under the Aviation Law,^{25/} it is stipulated that no alien may engage in scheduled or nonscheduled air transport

^{22/} Art. 8, Trade Law, Law No. 460, Dec. 13, 1957, as last amended by Law No. 1773, Mar. 29, 1966.

^{23/} Art. 5, Law No. 924, Dec. 30, 1961.

^{24/} Art. 4, Law No. 544, Feb. 1, 1960, amended by Law No. 1124, Aug. 13, 1962.

^{25/} Art. 20, Law No. 591, Mar. 7, 1961, as amended by Law No. 1194, Nov. 30, 1962.

enterprise within the territory of Korea except for international aviation services. When aliens hold more than one-fourth of a domestic corporation's stocks or offices, the corporation may be deemed to be foreign under the above law.^{26/}

No alien may operate an automobile industry business, according to the Automobile Industry Law. If a majority of the stocks of a domestic corporation are owned by aliens, this statute regards that corporation as alien as well.^{27/}

No alien is permitted to engage in securities business under the Securities Transactions Law. However, this does not apply to a foreign corporation established according to Korean law and actually controlled by Korean nationals who hold a majority of the corporation's capital or voting rights.^{28/}

Professions. A foreign lawyer may be admitted to a Korean bar. Permission to practice before the Korean court, however, is granted only when a lawyer's home country reciprocally

^{26/} Art. 88 of Law No. 592.

^{27/} Art. 3, Law No. 1079, May 31, 1962.

^{28/} Art. 13, Law No. 927, Jan. 15, 1961, as last amended by Law No. 1563, Dec. 16, 1963.

allows Korean attorneys to practice. Even if the permission is granted, such practice is limited to those cases involving aliens and foreign corporations.^{29/}

An alien is expressly denied the right to become a notary public,^{30/} patent attorney,^{31/} tax attorney,^{32/} accountant^{33/} or port pilot.^{34/}

Aliens who have been licensed to be technical experts or professionals in their own country must obtain the approval of the Minister of Economic Planning Board in order to engage in a similar profession in Korea.^{35/}

^{29/} Art. 3 and 6, the Lawyer's Law, Law No. 63, Nov. 7, 1949, as last amended by Law No. 1154, Sept. 24, 1962.

^{30/} Art. 12, the Notary Public Law, Law No. 723, Sept. 9, 1961.

^{31/} Art. 3, para. 1, the Patent Attorney Law, Law No. 864, Dec. 23, 1961.

^{32/} Art. 3, the Tax Attorney Law, Law No. 712, Sept. 9, 1961.

^{33/} Art. 2, the Accountant Law, Law No. 112, Mar. 10, 1950.

^{34/} Art. 6, item 1, the Port Pilot Law, Law No. 812, Dec. 6, 1961, as last amended by Law No. 1749, Feb. 28, 1966.

^{35/} Art. 5, the Technical Expert Law, Law No. 1442, Nov. 11, 1963, as amended by Law No. 1547, Nov. 16, 1963.

4. Voting Restrictions

The right to elect or to be elected is expressly limited to Korean nationals under the provisions of the Presidential Election Law,^{36/} the National Assemblymen Election Law^{37/} and the Local Autonomy Law.^{38/} Thus aliens are prohibited from participating in political activities, including voting.

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^{36/} Art. 8 and 9, Law No. 1262, Feb. 1, 1963.

^{37/} Art. 8 and 9, Law No. 1256, Jan. 10, 1963.

^{38/} Art. 52, Law No. 32, June 4, 1949, as last amended by Law No. 563, Nov. 1, 1960.

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