Legislative basis of the Migration Legislation and Policies - From the Comparative Perspective of Switzerland and South Korea

- DATE: 26th of January 2017, 14:00~17:30
- VENUE: Rechiswissenschaftliches institut der Universität Zürich(RAI-J-031)
- HOST: Migration and Social-integration Research Center / Center for Legislative Studies
- SPONSOR: NRF 한국연구재단, SSK Legislation of Migration and Social-integration Center

KU KONKUK UNIVERSITY SSK이주법제연구단 MIGRATION AND SOCIAL INTEGRATION RESEARCH CENTER

NRF National Research Foundation of Korea 한국연구재단

■ PROGRAM

	Registration
14:00-14:15	Welcome Address Prof. Dr. Felix Uhlmann
	Theme
14:15-15:45	**Section 1 Legal Framework** Dr. Eujung Yoo (moderator) **"Migration Legislation in Korea from the Constitutional Point of View"** Prof. Dr. Yooncheol Choi **"Migration Legislation in Switzerland"** Prof. Dr. Daniela Thurnherr
15:45-16:00	Break
16:00-17:30	**Section 2 Policy** Prof. Dr. Felix Uhlmann (moderator) **"Migration Policy in Switzerland"** MLaw Stefanie Allemann **"Nomology and Immigration Policy of Korea"** Prof. Dr. Sungbae Kim
17:30-	Closing address

Table of Contents

Section 1 Legal Framework

Migration Legislation in Korea from the Constitutional Point of View

Prof. Dr. Yooncheol Choi ····· 5

Migration Legislation in Switzerland

Prof. Dr. Daniela Thurnherr ····· 15

Section 2 Policy

Migration Policy in Switzerland

MLaw Stefanie Allemann ····· 29

Nomology and Immigration Policy of Korea

Prof. Dr. Sungbae Kim ····· 37

Migration Legislation in Korea from a Constitutional point of view

Prof. Dr. Yooncheol Choi
Konkuk University Lawschool

I. Introduction

International migration, the movement of people across international boundaries, has brought new challenges to the world in the 21th century. Development of transport and communications, combined with higher availability of information, has enabled increasing number of people to leave their home countries and look for better livelihood elsewhere. However, the most significant factors of migration nowadays are frequent and perpetual wars, civil wars and natural disasters. Rapid influx of mass immigration widely affects political, economic, social and cultural aspects of host countries. Recently, mass movement of refugees from Middle East and North Africa has further intensified conflicts on sharing of responsibility within and between European nations. Despite the low influx of refugees, Korea experienced rapid growth in immigration based on marriage and labor from China and Southeast Asia for the last two decades. This trend led to a number of legislation on immigration for the last 10 years in Korea.

History shows that migration played a prominent role in shaping a new world order. Migration, which took place in the era of late Roman Empire, became a foundation of current European society. The crusades in the 11th century, the influence of the Huns and the Mongols in the 14th century, and European immigration to America in the 18th century are the representative examples of establishing a new order and composition of the society. In Asia, China has been a center of incessant migration and restructuring of the world order. Recent trends of mass immigration to Europe, America and the neighboring countries may suggest possibilities for structural reform of individual countries and restructuring of global order. For the most part, many developing countries are now facing changes in demographic structure such as low birth rates, aging population and the consequent generational conflicts. Combined with these factors, influx of immigrants can both be a significant challenge and an opportunity to overcome the crisis for individual countries.

This paper aims to discuss Constitutional principles and considerations regarding the immigration legal system of individual countries that are facing challenges and changes in social order. However, it will exclude countries experiencing outflow of population. Since they are going through specific situations such as wars, natural disasters and poverty, it is inappropriate to discuss the general and universal nature of legal system regarding these countries. Therefore, this paper will focus on legal systems of immigrant-receiving countries where lives of migrants have been established. First, it will provide an overview of current legal immigration system of Korea and its flaws. Secondly, it will identify the features of immigration legislation in Korea and the phenomenon of migration. Lastly, Constitutional principles and considerations which must not be neglected in the immigration legislation process will be examined.

II. Current Situation and Problems of Immigration Legislation in Korea

1. 1. Current Situation of Immigration in Korea

Korea has long been reluctant to accept immigrants throughout history as it continued to proclaim the ethnic homogeneity. It was after the 1988 Seoul Olympics when immigration to Korea started to grow remarkably. Rapid industrialization and urbanization since the Olympics have caused structural transformation and changes in local demographic compositions. This was mainly due to labor importation and the rise in international marriages in rural areas.

1992 establishment of diplomatic relations between Korea and China also stimulated mass immigration of the Korean Chinese to Korea.

Long-term immigration to Korea is roughly categorized into 5 types in terms of motivation. First, there are a group of workers who entered Korea according to the employment permit system based on 'The Act on Foreign Workers Employment'. Secondly, there are 'Overseas Koreans resident in China' (so-called 'Joseon-jok') who later moved to Korea according to 'The Act on the Immigration and Legal Status of Overseas Koreans'. Thirdly, there are a group of marriage immigrants (mostly women) who moved to Korea to marry Korean citizens. Fourthly, there are international students who came to study in Korean universities. Lastly, there are aliens who are granted refugee status by international law or in the middle of refugee application process.

By November 2016, the number of foreign residents in Korea marked 2 million. Among these, there are 1.53 million long-term immigrants who staying for more than 90 days.[1] For the last 2 decades, the number of naturalized citizens, who moved to Korea as overseas Koreans or marriage immigrants, has reached approximately 200 thousand. Now the population of foreign residents and naturalized citizens in Korea amounts to 3% of the total population.

2. 2. Enactment and Amendment of Immigration Laws

1) Summary

There may be controversies about setting out a scope for immigration legislation. It is evident that legislation applicable to foreigners or overseas nationals - such as entry/departure of aliens, status, stay and scope of activities, and acquisition of nationality - falls within a category of immigration legislation. Until recently, Korea was more of a sending country than a receiving country. Many Koreans moved to China, Russia, Japan and the American continents due to poverty after Japanese colonial era, independence and division of the nation, and the Korean War. In 1970s, migrant workers moved to West Germany. In these days, legislation concerning status of stay, activity and management of foreigners resident in Korea was virtually nonexistent.

The first constitution of Korea had an express provision that addresses the status of foreigners, which was quite rare throughout the world. Surviving the latest amendment, this clause was included in current Constitution. However, it seems to merely proclaim an overall standpoint of Korea towards foreigners, rather than actively promote rights of foreigners in Korea.

Beginning from the 1948 'Nationality Act', the 1963 'Immigration Act' can be applied to foreign residents in Korea. Ever since, there was no significant change in the legislation concerning foreigners and immigrants. In 1990s, influx of foreigners due to the globalization and structural reforms of domestic economy led to more legislation on foreigners and immigrants. By the late 1990s, systemic foundations were built to import foreign labors. In the 2000s, most immigration legislation currently in force were enacted or greatly amended. However, many flaws are being pointed out both in terms of constitutional aspects and legislative skills. Moreover, constant criticism is being raised that a major amendment is needed to end current inadequate legislation, because it is unable to address the issue of ever-increasing migrants and diversifying types of migration.

2) Major Immigration Legislation

(1) Entry and Departure of Aliens

Immigration legislation can be categorized according to several standards such as types of

1) Nov. 2016 on the Monthly Statistics of Ministry of Justice Korea p.15.

immigrants, process of migration and host countries' attitude towards immigrants. We shall here briefly discuss immigration legislation of Korea throughout the whole process of immigration - entry, stay, and acquisition of nationality - which can also be called as the ultimate objective of immigration.

Regardless of their motives of migration, all immigrants must start by entering territory of a certain country. All countries, based on their territorial sovereignty, have regulations on those who enter their territory regarding purpose of entry, stay requirements, stay activity and departure.

Korea also enacted 'The Immigration Act (1963)' in order to give government control over both fair management of arrival/departure and stay/registration of aliens resident in Korea. When it was first implemented, arrival, departure and management of aliens did not cause significant problems because there were not many foreigners in Korea. It was after the Olympics that the Immigration Act became a basic foundation for entry, departure and management of foreign residents due to a steep increase in foreign population. Since its legislation, several amendments have been made to the Immigration Act. In 1994, refugee provisions were added to the Immigration Act, later developing into a new legislation-the Refugee Act- in 2012. The 2012 legislation introduced basic provisions for the social integration program. Despite several amendments and refinements, current Immigration Act is criticized for its complicatedness of residency management and the inadequate due process of compulsory eviction.

An Alien who wishes to enter Korea is required to complete preliminary application according to the purpose of entry. In the case of stay exceeding 90 days, alien registration is required on the entry of aliens. The activities of aliens are limited to the designated purpose of stay. Also, when the aliens have accomplished purpose of stay, they have to leave the country before the period expires. The Immigration Act regulates all kinds of status of stay. If the aliens engage in activities beyond the designated scope of activity, they are put into detention and deported by the Immigration Act.

(2) Stay of Aliens

The Immigration Act generally regulates status of stay, activity and management of foreign residents. Another general law is "The Framework Act on Treatment of Foreigners Residing in the Republic of Korea (2007)', which regulates basic principles and systems of treatment of legal foreign residents in Korea. As mentioned above, foreign residents in Korea can be categorized into 5 types - immigrant workers, overseas Koreans, marriage immigrants, international students and refugees. The existing legislation accordingly treats these 5 groups as different from each other.

First, there are laws applied to foreign workers. By November 2016, it is estimated there are 550 thousand foreign workers resideent in Korea. Except for overseas Koreans with H-2 visa, who are mostly Korean-Chinese, immigrant workers (mostly E-9 visa holders) are 290 thousand.[2] There are 200 thousand so-called 'illegal immigrant workers' who have violated restrictions on the scope of activity. The 2003 'Act on Foreign Workers' Employment, etc.' is applied to immigrant workers other than Overseas Koreans. In 1990s, Korea started to accept foreign labor from Southeast Asian countries by taking advantage of the industrial trainee system to handle lack of simple labor. A nominal status, 'trainee' was granted to those workers. This meant the foreign wage workers were not guaranteed workers' rights. The industrial trainee system with grave disadvantages - denial of workers' rights, failure in workplace management, and Human Rights violation by the employers - was ruled unconstitutional by the Constitutional Court[3] and was abolished. It was superseded by 'Employment Permit System' based upon the newly enacted 'Act on Foreign Workers' Employment, etc.' Employment permit system is catered to labor demand of employers, imposing more restrictions on the employees. During the period of employment, foreign

2) Nov. 2016 on the Monthly Statistics of Ministry of Justice Korea, p.18.
3) KorVerfGE 2007. 8.30. 2004heonma670.

workers cannot choose to move to another workplace. Only when there is a cause attributable to the employer , foreign workers are allowed to transfer. Even in these cases, the number of transfers cannot exceed 3 times (Article 25).[4] Above all, employment permit system is strictly based on circular employment - that is, when the employment contract expires, the worker will immediately be sent home. Neither does it admit family reunification, which makes settlement of migrant workers even more infeasible.

Secondly, Korean laws institutionally favor members of Korean ethnic group, calling them 'Overseas Koreans'. It is after late Joseon dynasty that many Koreans began to move around the world. It is noteworthy that mass immigration of Koreans to Northeast China took place in the early 20th century under Japanese rule, and some of the migrants were deported to Central Asia by the Soviet Union. However, a considerable number of Koreans moved to Japan due to forced draft, forced recruitment, and job opportunities. Even after independence Koreans did not cease to move out, settling in countries of South America and North America in 1970s and 1980s.[5] In 1990s, migration out of Korea significantly decreased as Korean economy improved, and return migration was gradually on the rise. Above all, normalized diplomatic relations between Korea and China became a milestone for influx of Korean Chinese (so-called 'Joseon-jok'). In fact, most immigrants with Korean backgrounds are from China. Korea enacted laws to support immigration and settlement of these Overseas Koreans residing abroad but allegedly blood-related. Despite their legal status as aliens, Overseas Koreans' are being actively favored over other foreigners in regard to entry/departure, labor activities and investment. Moreover, certain Overseas Koreans may apply for Korean nationality if they prove to meet nationality requirements. It is also easy for Overseas Koreans above a certain age to acquire a dual nationality when they already have another citizenship or nationality.

Thirdly, laws regarding marriage immigration were enacted in the 2000s. As Korea went through restructuring of industry and rapid urbanization, provincial decline and urban sprawl defined the '90s for Korea. In farming and fishing villages, rapid decrease in young and middle aged adults' population and shortage of young marriageable women brought about steep increase in the elderly and the ineligible men population. To cope with the aging population, shortage of labor and increasing number of unmarried men in rural area, the local governments urged to promote and arrange international marriages. However, international marriage was never an easy task for the unmarried villagers, nor for the local governments subsidizing the arrangements. Therefore, marriage brokerage business appeared, setting up marriages between villager men and foreign spouses. The existing 'matchmaking' tradition in Korea was basically exclusively personalized and non-profitable. However, as international marriage brokerage made money, many brokers gathered to compete against each other. This resulted in serious social problems and criticism arose that brokered marriage can be equated to human trafficking. After all, Korean legislators enacted 'The Marriage Brokers Business Management Act (2007)' strictly restricting marriage brokerage instead of a complete ban. Nevertheless, as most home countries of foreign spouses prohibit marriage brokerage, conflicts between Korea and the countries are inevitable. By 2015, in terms of nationality of foreign spouses, China has the largest proportion of 58%, and other nations are Vietnam, the Philippines, Cambodia and Thailand - mostly Southeast Asian countries. As many criticized that brokered marriages result in divorce, domestic violation and child rearing problems, Korean government enacted regulations strengthening requirements for marriage visa.

Fourthly, legislation was passed to support families consisting of a citizen, a foreign spouse and their children. Spouses in this type of families are mostly from China and Southeast Asia. Many of them have settled in provincial areas to form families. However, most had hard times because of miscommunication and cultural differences. Especially, there was an urgent need for special programs to support the foreign spouses as it was even harder for them to adapt to Korean society. Korean government categorized these foreign spouses as 'Marriage

---

4) KorVerfGE 2011. 9.29. 2007heounma1083 etc

5) Koreans living abroad are approximately over 7 Million in 180 countries now.

Immigrants' and the families 'Multicultural Families'. At first there was temporary assistance for the families, and it was later institutionalized as a unified system of law - The Multicultural Families Support Act (2008). This law aims to support multicultural family members to contribute to the improvement of the quality of life of the multicultural family and their integration into society (Article 1). 'The Multicultural Families Support Act' is a specific law that governs specific subject matter and enforcement. However, this law also can be seen as a general law considering its nature and other aspects regarding legislative skills, because it widely regulates the subject of organization and operation, the system, establishment of master plans and support. The combination of specific and general law brought about ambiguity problem. As a result, most operative clauses, especially support policies provisions, are not mandatory and thus lack effectiveness in policy operations.

Fifthly, a general law governing immigrant students as subject matter has yet to be legislated. By November of 2016, international students in Korea are 100 thousand, mostly Chinese. The principle is that international students on student visa under the Immigration Act enter Korea, complete courses at designated learning institutions and return to their home country. Recently, many countries see the international students group as a major subject of immigration and settlement due to economic relationships with home countries. In terms of social integration, there are expectations that international students show distinctive ability in language acquisition and cultural adaptation. Therefore, students with higher education are expected to have potentials to further contribute to host countries with their specialized knowledge. Korea also is well aware of the situation and setting up policies regarding immigrant students.

Lastly, legislation on refugees (2012) was most recently enacted among immigration laws. Before the Refugee Act, the Immigration Act governed refugee matteres. Systemic flaws of the previous law were pointed out in that refugee admission and stay should be governed differently than those of other general laws on foreigners. Although refugees account for the smallest portion of immigrants in Korea, the number of refugee applicants has dramatically increased since the enactment of the Refugee Act. In comparison with those of European countries, the number of refugee application/admission is significantly small. There are also debates on whether an escaped North Korean citizen qualifies for a refugee. Korean constitution regards North Korean residents as Korean citizens. Therefore, Korean Constitutional court and the Supreme Court also treat North Koreans as Koreans.

(3) Acquisition of Nationality

Acquisition of Nationality is the ultimate stage of immigration where a migrant attains an equal status with native citizens after residing in the host country for a certain period of time(including permanent residence). From the native's point of view, it is a legal action to acknowledge that an alien is an equal member of the society. Acquisition of nationality is about whether the nation will accommodate aliens as members of their community, and such decisions are made by a sovereign entity. Therefore, the terms of nationality exclusively belongs to the host nation.

In regard to grant of nationality, some nations have express provisions in their Constitution, while others only have delegation clauses in Constitution and let legislature decide the matter according to the principle of statutory reservation. Korean Constitution states that nationality be prescribed by Act (Article 2 provision 1 of Constitution). The Nationality Act of Korea was proclaimed in 1948, on establishment of Korean government. The first Nationality Act, following the principle of 'Right of blood (jus sanguinis)', granted nationality only through paternal line while automatically granting nationality to female foreign spouses. Current Nationality Act maintains the principle of right of blood but grants nationality through both parental lines. Instead, foreign spouses can apply for naturalization after a certain period of marriage. The Nationality Act states that a person who came of age under the Civil Act of Korea can apply to attain nationality after having resided in Korea for 5 years. However, illegal immigrants cannot apply even when they meet the terms for acquisition of nationality. The 2010 amended Nationality Act adopted multiple nationality for the first time (Article 10).

When a person with multiple nationality conducts crimes prescribed by Presidential Decree and 7 or more years of sentence is confirmed, the Minister of Justice may decide the loss of Korean nationality (Article 14-3).

3. Problems with Korean Immigration Law System

Lacking interactions with international society, Korea failed to properly prepare for the rapid economic development and changes in the population structure. Lack of foresight and works without planning led to undesirable results. Invitation of immigrant workers due to labor shortage, brokered marriages to tackle aging population in rural area, and favoritism of Overseas Koreans brought about negative effects. Korean government enacted and amended many laws regarding foreigners and immigrants in a short period of time to handle these problems. On the outside it seemed as policies and legal systems concerning stay, management and operation of immigration steadily improved. However, haste of government created numerous problems as opinions of parties concerned, immigrants and the public were not reflected enough. Eventually, inadequate preparation and disorganized Constitutional perspective on immigration caused conflicts and confusions in legislation policies on migration.

III. Trends and Features of Immigration Legislation - Constitutional point of view

1. Immigration Legislation as Constitutional Subject

As a matter of fact, countries would not restrict or ban departure of their nationals except for uncommon cases - when restricting outflow of specific industries or experts, for instance. On the contrary, developing countries tend to implement policies to attract nationals who moved abroad. Legal issues regarding immigrants mostly arise in host countries. Host countries can only focus on border management as long as they rely on entry ban/return decision regarding immigration. For this reason, traditional approaches to migrants were limited to the domain of police administration aimed at border management, public safety and stay management. It was very unusual to accommodate immigrants and have them integrate into society as members of community. However, such standpoint that limits immigrants as risks or aliens to manage is inadequate to cope with society where immigrants and natives coexist.

If a host nation decides to accommodate immigrants and allow permanent residence, it has to set up an organized and comprehensive legal system that not only manages immigrants at entry/residence level, but also aims to meet demands of migrant community. Legislators must have a vision to clarify future of their country where immigrants become members of the host nation through permanent residence. Therefore, legislators are constantly faced with challenges as multilateral approaches are needed to handle the types, forms and effects of migration.

2. Territorial Sovereignty

Influx of migrants, from its very nature, creates Constitutional issue of the host nation - territorial sovereignty. Borders are geographic boundaries that restricts free movement, given by legal jurisdictions. Every state has a right to determine who enters its territory and deny free entry.[6] The host nation has an exclusive right and duty of border management and control regarding entry of immigrants.[7] Freedom of entry is not granted to foreigners. It is the territorial state that exercises sovereignty to determine whether it will allow entry of foreigners or aliens. It can also decide the terms of requirements for aliens to enter its

---

6) BVerfGE 94, 166 (198 f.).

7) Norbert Cyrus, Irreguläre Migration - Zum Stand der Diskussion menschenrechtler Ansätze in der Bundesrepublik Deutschland, ZAR 2010, S. 317.

territory.[8] Territorial sovereignty remains intact during the stay of admitted immigrants, which means the host nation can manage stay and deportation of immigrants. However, the host country must guarantee and protect freedoms of admitted immigrants, and obey the due process in stay management.

3. Protection of Minorities

The host country is burdened with duty to protect minorities as the subject of legal systems regarding migration is always a minority group.[9] Most immigrants, including involuntary immigrants due to war, famine and so on, wish to permanently reside in the desired host country, and this motivation often leads to permanent settlement. On migration, migrants, as a member of minorities, constantly face obstinate inequalities and unequal treatment. All traits of immigrants - race, religion, culture and etc., put them in a position of minorities. Modern democratic states not only should actively promote and facilitate but also passively promote culture, religion and language of immigrants and minorities. In this sense, it can be a violation of equality to require immigrants to assimilate into host society. Democracy does not allow a majority decision to eliminate the essentials of Human Rights.[10] Protection of migrants as minority is closely related to sustainability of the host country in the long-term perspective. Once immigrants reach a stage of permanent residence through acquisition of legal status and participation in labor market, they are accommodated as new members of the host society. Migrants trying to settle in the host country come across many inhospitable environments such as isolation, education deprivation by poverty and exclusion from labor market, which tend to develop into major factors of undermining the host society. Nonetheless, affirmative actions to specifically protect migrants should also obey proportionality principle and avoid reverse discrimination. Legislators have to set up laws and policies to facilitate the settlement of migrants and treat them as upstanding future citizens, not as outsiders of the community.

4. Protection of Fundamental Rights

1) Children's Rights

Many underage migrants, with or without their parents, are on the move due to wars, famine, and natural disasters. International conventions to protect children and guarantee their rights, such as Convention on the Rights of the Child, are applicable to these children. Regardless of their nationality, registration, and legality of their parents' stay, Children must be raised under protection of their families including their own parents. Children are also guaranteed right to health to provide them with medical service and safe upbringing, and right to education to develop human personality and foster self-reliance. For the most part, immigrant children can stably integrate into the host society with the support of education. Protection of children's right to education and health in Korea is inadequate because of unregistered legal status due to the status of their parents' stay. Legislators should properly assimilate international law into Constitution and legal system of the host country. Korean Constitution rules that 'treaties' and 'generally recognized rules of international law' shall have the same effect as the domestic laws. (Article 6 Provision 1). 'Convention on the Rights of the Child' of the UN has the same effect with the domestic laws as an international law ratified by Korea.

---

8) BVerfGE 94, 166 (198 f.)

9) Sun Heui Chang, Eine Studie über die Änderung der Einwanderungspolitik und des integrationverbundenen Rechtssystem in der Bundesrepublik Deutschland, insbesondere in Bezug auf Einwanderungsgesetz, Law Review Busan University, Vol. 55, No. 4, p. 32.

10) Udo Di Fabio, Migrationskrise als föderales Verfassungsproblem, Gutachten im Auftrag des Freistaates Bayern, 2016, S. 104.

2) Protection of Right to Freedom

The host country exercises sovereignty to determine entry of immigrants. This does not deny immigrants' right to freedom they entertain as human beings during their stay. Traditional rights to freedom including due process and personal liberty are applied to migrants, regardless of the legality of their stay and activity. It is possible to limit freedom of residence and movement to a certain degree for administrative purposes.[11] Other kinds of liberty rights, although they can be exceptively restricted in regards to political decisions of the host country, are not denied in principle.[12] Migrants shall also have freedom of expression and freedom of assembly and association. Regarding so-called 'illegal immigrants', law enforcement solely based on stay management from the police viewpoint would be a violation of liberty rights if it fails to observe due process.

3) Protection of Social Rights.

It is controversial whether social rights are also guaranteed to migrants. Korea sees social rights as abstract rights, understanding that social rights can be exercised through an active facilitation (specific enactment, specific enforcement) of the state. An active facilitation of a state requires a prerequisite - nationals as members of the state. Therefore, immigrants who are not granted status of members of the state shall not have social rights. However, it is not reasonable to deny social rights of long-term foreign residents wishing to permanently reside[13] or participate in specific activities. As long as immigrants with purpose of permanent residence are involved in economic and social activities along with natives, and fulfill the obligation to pay taxes, preserve and protect the environment (Article 35 of Constitution), they should not be excluded from social rights the host nation must provide with regarding education and employment. Furthermore, active programs of social rights for immigrants would enhance the quality and stability of their lives, helping them to integrate into the host society.

5. Integration and Admission

The process of immigration and settlement has a significant impact not only on immigrants themselves, but also on natives and the host society. Especially countries like European nations experiencing mass influx of refugees or newly industrialized countries like Korea may encounter intensified conflicts between natives and immigrants. Political and social conflicts intensify as the host society gets more and more dissatisfied with competition in the labor market and distribution of public benefit. Therefore, it is essential to set up social foundation of distribution and labor so that natives can accommodate immigrants as members of the community, while striving for immigration settlement and integration.

In case of permanent residency, migrants go through process of admission to the existing community to become new members. Immigrants can be recognized and admitted to the host society when they are granted equal status and rights to participate in the public affairs and decision making. Grant of nationality is a representative and ultimate form of admission. There are cases where permanent aliens can exercise public rights such as voting right.[14] Legislators of the host nation must accommodate immigrants as possible future holders of sovereignty and correspond to their rights and obligations. Such act of correspondence begins where immigration is admitted, before the immigrant actually enters the host country.[15] In

11) However, it is not allowed to forcefully appoint place of residence or ban movement.

12) Sanghyeon Chun, Fundamental Rights of alien, Kangwon Law Review vol. 43, 2014.

13) Kwangseok Chun, Multicultural Society and Social Right, the Journal of Constitutional Law, Vol. 16-2, 2010, pp. 107; Sanghyeon Chun, op. cit. p. 606.

14) Korea grants the right to vote in local government elections to an alien after having resided for more than 2 years since the acquisition of permanent residency. Running for the election is not allowed. (Article 15 Prov. 3 of Public Election Act).

15) Korean Constitution states that the status of aliens shall be guaranteed as prescribed by

case of Overseas Koreans, if they still hold nationality of the country of their origin, right to vote is granted as long as they wish to permanently reside, regardless of time and period of stay.[16] Considering these factors, it is plausible to grant permanent residents and long-term residents the rights and status to participate in decision-making of the public affairs.

6. International Order

Migration, from its very beginning, is international. Peculiar circumstances such as civil war, natural disaster and war may cause rapid mass immigration to neighboring countries. International legal issues arise regarding borders, protection of nationals, repatriation, burden of expenses, intervention of neighboring nations and humanitarian intervention between the host country and the home country. In cases of voluntary migration where great disparity exists in economic development between countries, the states can also become parties regarding admission, scale, and return of immigrants. Also, sovereign states may disagree on international legal issues such as return of migrants, attitude of the home country towards migrants settling in another country. Legislators of the host nation must consider international legal order and set up principles on immigrants to realize the principles through specific laws.

Korean Constitution states, 'The status of aliens shall be guaranteed as prescribed by international law and treaties' (Article 6 Provision 2). If the treaties or international law address subject of migration, they become sources of immigration law. Legislators must consider treaties and generally recognized rules of international law in relation to immigration legislation.

V. Conclusion

Throughout history people have moved from one place to another to achieve higher standards for living (Homo Migratus). The era of modern territorial state, where protection of nationals and territory was a supreme task and aliens were constantly being managed and monitored, has passed. The new era should embrace changing flows of migration with voluntary migrants and involuntary refugees due to wars, civil wars, natural disasters and environmental changes. Migration is no longer limited to specific regions or countries. It is now a transnational phenomenon that all the nations across the world are facing.

As developing countries are experiencing low birth rates and aging population without exception, worries grow that national competitiveness may decline. Some argue that rapid decrease in productive population and generational conflict due to the collapse of social protection led to crisis of individual countries. Among many measures discussed to achieve optimal productive population, the need to actively embrace immigration is being emphasized. In fact, many countries accept migrants to increase productive population and improve social structure. However, it is very dangerous to take advantage of immigrant influx to handle the decline of national competitiveness due to low birth rates and aging population.

Social conflicts intensify as bias of natives against immigrants strengthen due to lack of tolerance to minority groups. It is virtually hardly achievable for most migrants to settle in the host society and acquire equal status with the natives. Conflicts between the natives and immigrants are often further intensified due to the fact that immigration rights are poorly protected and thus immigrants have difficulties exercising them. Korea is also challenged with rapid urbanization/industrialization and low birth rates/aging population problems. Recent mass immigration to Korea has alleviated labor shortage and contributed to diversification and multi-culturalization to a certain degree. However, state-driven policies and legal systems lacking social consensus and long-term perspective have many limitations.

Immigration is a challenge for both immigrants and the native society. Integration of

---

international law and treaties. (Article 6 Provision 2). However, this is a general declaration regarding foreigners in general, rather than a clause applicable to foreign residents in Korea.

16) Chapter 14-2 of Public Election Act.

existing members of the host society and new immigrant members is an essential element of a sustainable development of the community. Aliens and migrants are no less human beings with dignity than any one of us. Migrants are ends in themselves and never are mere means. The host nation must ponder Constitutional means to promote status, rights and protection of migrants for sustainable growth of the society by integration of immigrants and natives. We must set up and improve immigration legislation and policies after thorough deliberation of both migrants and natives and move forward with lessons learned from previous experience of other countries and ourselves.

References

Winfried Kluth, Demokratische Gesellschaften und Migration, - Migrationsrechtliche Aspekte in der Festschrift für Brun-Otto Bryde1 - ZAR 2014, S. 214 f.

Winfried Kluth, Grundlagen und Strukturen eines Migrationsfolgenrechts, BVBl 17(2016), S. 1081 f.

Udo Di Fabio, Migrationskrise als föderales Verfassungsproblem, Gutachten im Auftrag des Freistaates Bayern, 2016.

Stefan Kuft, Staat und Migration, Frankfurt a, M., 2009.

Dirk Hoerder, Geschichte der Deutchen Migration, München, 2010.

FriNorbert Cyrus, Irreguläre Migration - Zum Stand der Diskussion menschenrechtler Ansätze in der Bundesrepublik Deutschland, ZAR 2010edrich Heckmann, Integration von Migranten, Wiesbaden, 2015.

Sangheon Chun, Fundamental Rights of alien, Kangwon Law Review vol. 43, 2014.

Kwangseok Chun, Multicultural Society and Social Right, the Journal of Constitutional Law, Vol. 16-2, 2010.

Sun Heui Chang, Eine Studie über die Änderung der Einwanderungspolitik und des integrationverbundenen Rechtssystem in der Bundesrepublik Deutschland, insbesondere in Bezug auf Einwanderungsgesetz, Law Review Busan University, Vol. 55, No. 4.

Yooncheol Choi, Current Condition and Prognosis of Migration Laws in Korea, Journal of Migration and Social Integration, Vol. 1 (2016).

Migration Legislation in Switzerland

Korean – Swiss Seminar on Migration Law
University of Zurich – 26 January 2017

Prof. Dr. Daniela Thurnherr, LL.M. (Yale)
University of Basel, School of Law

Overview

1. Introduction
2. Migration to Switzerland: Statistics
3. Constitutional Framework
4. International Law and Migration
   a. Agreements between Switzerland and the EU/EFTA
      i. Free Movement of Persons
      ii. Dublin Association Agreement
   b. International Human Rights Guarantees
5. Swiss Migration Legislation
   a. Overview
   b. Foreign Nationals Act (2005)
   c. Asylum Act (1998)
6. Conclusions

Introduction

- **Three types of migration:**
  - regular migration (based on specific residence titles)
  - humanitarian migration (due to threats and danger in the country of origin and with specific protection claims)
  - unwanted migration (for economic reasons and without entitlement to a residence permit or specific protection claims)

3

Migration to Switzerland: Statistics

- Total population: 8'391'973
- Swiss nationals: 6'309'021 (= 75%)
- Foreign nationals: 2'082'952 (= 25%)

(September 2016)

- Net migration of foreign nationals per year:
  - 2013: 89'541
  - 2014: 78'542
  - 2015: 76'035

4

Migration to Switzerland: Statistics
(Source: ZEMIS)

1. Ausländerbestand am 30.11.2016

Ständige ausländische Wohnbevölkerung			
	November 2015	**November 2016**	Veränderung zum Vorjahresmonat in %
Total	1'996'620	**2'030'113**	1.7
EU-28/EFTA	1'365'385	**1'390'991**	1.9
EU-17	1'240'618	**1'256'258**	1.3
EU-8	72'918	**80'326**	10.2
EU-2	18'246	**21'276**	16.6
Kroatien	29'655	**29'133**	-1.8
Drittstaatsangehörige	631'235	**639'122**	1.2

Migration to Switzerland: Statistics

Entwicklung der Bevölkerung nach Migrationsstatus

Ständige Wohnbevölkerung ab 15 Jahren

Anzahl Personen, in Millionen

Aufteilung nach Migrationsstatus

Quelle: BFS – Schweizerische Arbeitskräfteerhebung (SAKE)

© BFS, Neuchâtel 2016

Constitutional Framework (I)

- **Three main topics**
  - **allocation of competences (Art 121 I Const.)**
  - **provisions restricting migration**
    - loss of the right of residence (Art 121 II-VI Const.)
    - autonomous control of immigration of foreign nationals (Art 121a Const.)
  - **fundamental rights to immigrate or remain in Switzerland**
    - right to privacy (Art 13 Const.)
    - protection against extradition and deportation (Art 25 II and III Const.)

7

Constitutional Framework (II)

Art. 121 Legislation on foreign nationals and asylum*64

1 The Confederation is responsible for legislation on entry to and exit from Switzerland, the residence and the permanent settlement of foreign nationals and on the granting of asylum.

8

Constitutional Framework (III)

2 Foreign nationals may be expelled from Switzerland if they pose a risk to the security of the country.

3 Irrespective of their status under the law on foreign nationals, foreign nationals shall lose their right of residence and all other legal rights to remain in Switzerland if they:

a. are convicted with legal binding effect of an offence of intentional homicide, rape or any other serious sexual offence, any other violent offence such as robbery, the offences of trafficking in human beings or in drugs, or a burglary offence; or

b. have improperly claimed social insurance or social assistance benefits.[65]

4 The legislature shall define the offences covered by paragraph 3 in more detail. It may add additional offences.[66]

5 Foreign nationals who lose their right of residence and all other legal rights to remain in Switzerland in accordance with paragraphs 3 and 4 must be deported from Switzerland by the competent authority and must be made subject to a ban on entry of from 5–15 years. In the event of reoffending, the ban on entry is for 20 years.[67]

6 Any person who fails to comply with the ban on entry or otherwise enters Switzerland illegally commits an offence. The legislature shall issue the relevant provisions.[68]

9

Constitutional Framework (IV)

Art. 121*a*[69] Control of immigration*

1 Switzerland shall control the immigration of foreign nationals autonomously.

2 The number of residence permits for foreign nationals in Switzerland shall be restricted by annual quantitative limits and quotas. The quantitative limits apply to all permits issued under legislation on foreign nationals, including those related to asylum matters. The right to permanent residence, family reunification and social benefits may be restricted.

3 The annual quantitative limits and quotas for foreign nationals in gainful employment must be determined according to Switzerland's general economic interests, while giving priority to Swiss citizens; the limits and quotas must include cross-border commuters. The decisive criteria for granting residence permits are primarily a application from an employer, ability to integrate, and adequate, independent means of subsistence.

4 No international agreements may be concluded that breach this Article.

5 The law shall regulate the details.

10

Constitutional Framework (V)

Art. 13 Right to privacy

1 Every person has the right to privacy in their private and family life and in their home, and in relation to their mail and telecommunications.

2 Every person has the right to be protected against the misuse of their personal data.

11

Constitutional Framework (VI)

Art. 25 Protection against expulsion, extradition and deportation

1 Swiss citizens may not be expelled from Switzerland and may only be extradited to a foreign authority with their consent.

2 Refugees may not be deported or extradited to a state in which they will be persecuted.

3 No person may be deported to a state in which they face the threat of torture or any other form of cruel or inhumane treatment or punishment.

12

International Law and Migration

- **Agreement on the Free Movement of Persons (AFMP) between Switzerland and the EU/EFTA**
  - entry into force on 1 June 2002 for EU-15 and the EFTA-states
  - subsequent expansion to include the new EU member states

EU Member States

EFTA Member States

15

Free Movement of Persons (Switzerland – EU/EFTA)

- Core element: right to free movement of EU and EFTA citizens wishing to live or work in Switzerland
- Complementary provisions:
  - mutual recognition of professional qualifications
  - right to buy property
  - coordination of social insurance systems

16

Tensions between the AFMP and Art 121a Const.

- Free movement of persons vs. autonomous control of immigration of foreign nationals by means of quotas
- Implementation of the constitutional provision: «priority to Swiss nationals "light"» as a compromise between constitutional requirements and international treaty law
  - renunciation of quotas
  - duty of employers to give priority to Swiss residents over foreign employees in regions where the unemployment rate is above average
  - integration in Swiss society as a requirement for residence permit

---

17

Dublin Association Agreement

- Between Switzerland and the European Union (entry into force 26 October 2004)
- Dublin system establishes uniform criteria for examining asylum applications, with each application clearly assigned to just one state → prevents applicants from submitting applications in multiple Dublin states (i.e. all of the EU states plus Switzerland, Norway, Iceland and Liechtenstein)

18

International Human Rights Guarantees

- Art 2, 3 and 8 of the European Convention on Human Rights
- Art 6, 7 and 17 of the International Covenant on Civil and Political Rights
- Art 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Art 33 of the Convention Relating to the Status of Refugees

---

19

Swiss Migration Legislation: Overview

- **Foreign Nationals Act (FNA; 2005)**
  - several substantiating regulations, e.g. on the integration of foreign nationals; on admittance, residence and employment etc.
  - main content: entry and exit, integration, residence and family reunification of foreign nationals in Switzerland
- **Asylum Act (1998)**
  - several substantiating regulations, e.g. on technical (procedural) issues; on questions of funding; on the processing of personal data etc.
  - main content: granting of asylum, legal status of refugees in Switzerland

---

20

Foreign Nationals Act (FNA) (I)

- **Core principles:**
  - **limited access for foreign nationals from so-called third states**
    - criteria: interests of the economy as a whole, chances of lasting integration in the Swiss employment market as well as in the social environment
      → dual system of immigration
  - **admission if required by international law obligations, humanitarian grounds or the principle of family unity**
  - **integration**
    - coexistence of the resident Swiss and foreign population on the basis of the values of the Federal Constitution as well as mutual respect and tolerance

---

21

Foreign Nationals Act (FNA) (II)

- **Specific admission requirements (Art 18 et seqq.)**
  - for a period of stay with or without gainful employment
  - under certain circumstances: deviation from these requirements
- **Four types of permits:**
  - short stay permit (Art 32)
  - residence permit (Art 33)
  - permanent residence permit (Art 34)
  - cross-border commuter permit (Art 35)

  → different purposes, requirements and duration of validity

  → maximum numbers of short stay and residence permits per year

---

22

Foreign Nationals Act (FNA) (III)

- **Family Reunification (Art 42 et seqq.)**
  - scope of application:
    - family members of Swiss nationals
    - spouses and children under 18 of persons with a permanent residence permit
  - high practical relevance: about one third of all entries are based on family reunification

---

23

Foreign Nationals Act (FNA) (IV)

- **Integration (Art 53 et seqq.)**
  - relevance in connection with certain permits:
    - residence or short stay permits may be made conditional on taking a language or integration course; obligation may be stipulated in an integration agreement
    - authorities take into account the degree of integration when granting permanent residence permits
  - measures for fostering integration: e.g.
    - information of foreign nationals about their rights and obligations
    - integration particularly takes places in state-run institutions such as schools, vocational training centers, public health care facilities; supplemented by additional measures (cross-cultural translators etc.)

24

Asylum Act

- **Long-standing humanitarian tradition in Switzerland**
  - granting of asylum according to international law obligations
  - coordination with other Dublin states
- **Specific provisions aiming at fair and fast procedures, e.g.**
  - establishment of reception and processing centers
  - assistance by interpreters and representatives of authorized charitable organizations
  - short procedural deadlines
- **Challenges**
  - evaluation of the situation in the country of origin
  - repatriation

25

Conclusions

- **International and national migration law**
  - high relevance of international treaty law
  - tensions between recent popular initiatives and international law obligations
- **Dual system of migration regulation**
  - free movement of persons from the EU/EFTA vs. Restriced access for citizens from third states
  - integration instead of assimilation or parallel socities
- **Humanitarian tradition with regard to granting of asylum**
  - recent flows of refugees as a major challenge
  - improvement of procedures as a main problem solving approach

---

26

Immigration Policy in Switzerland

Korean – Swiss Seminar on Migration Law, Zurich, 22.01.17

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA
Swiss Agency for Development and Cooperation
Special Ambassador for International Cooperation in Migration

Aspects of migration

- Perception of migration
- Immigration & integration
- Regular & irregular migration
- Return & reintegration
- Protection (asylum & Protection in the region)
- Migration & Development
- Regional and multilateral migration policy
- Demography

World population

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA
Swiss Agency for Development and Cooperation
Special Ambassador for International Cooperation in Migration

Permanent population of Switzerland (10/16)

Source: SEM

Source: SEM

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA
Swiss Agency for Development and Cooperation
Special Ambassador for International Cooperation in Migration

Permanent Resident Foreign Population (09/16)

Source: SEM

Resons for immigration 01.01.-30.09.2016

Source: SEM

Dual Admission system

EU & EFTA nationals

- Agreement on the Free Movement of Persons
- No discrimination
- Access to labor market
- Right of family members to stay
- No visa required

Third country nationals

- Swiss immigration law
- Admission complementary and as an exception

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA
Swiss Agency for Development and Cooperation
Special Ambassador for International Cooperation in Migration

Federal Act on Foreign Nationals
Article 3 – Admission

[1] The admission of gainfully employed foreign nationals is allowed in the **interests the economy** as a whole; the chances of **lasting integration** in the Swiss employment market as well as in the social environment are crucial. Switzerland's cultural and scientific needs shall be appropriately taken account of.

[2] Foreign nationals shall also be admitted if **international law** obligations, humanitarian grounds or the unity of the family so requires.

[3] In deciding on the admission of foreign nationals, account shall be taken of Switzerland's **demographic and social development**.

EU/EFTA

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA
Swiss Agency for Development and Cooperation
Special Ambassador for International Cooperation in Migration

Quota (Art. 20 FNA)

Switzerland has a quota system, i.e. only a limited number of work permits are issued each year for third country nationals.

2016:

- 4000 units for Permit L (short-term residence permit)
- 2500 units for Permit B (residence permit)

2017

- 4500 units for Permit L (short-term residence permit)
- 3000 units for Permit B (residence permit)

Asylum requests 1996-2016

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA
Swiss Agency for Development and Cooperation
Special Ambassador for International Cooperation in Migration

Swiss expectation: Integration encouragement & stipulations

- Requiring willingness and openness from the foreign nationals and the Swiss nationals
- Respecting the law and the values of the Swiss constitution
- Learning a local language
- Familiarization with the social conditions of Switzerland
- Willingness to participate in economic activities and education

Naturalizations 2006-2015, Top 10 countries

Nomology and Immigration Policy of Korea

Prof. Kim, Sung-Bae
KooKmin Univeristy College of Law

Table of Contents

- I. Introduction
- II. Nomology and Practice of Legislation in Korea
- III. Legal structure of Immigration Policy
- IV. The direction of foreigners' immigration policy in terms of legislative policy
- V. Conclusion

I. Introduction

- Modern Democratic State
  - In order to organize the Government based on the law and to administer it by law
- Rule of Law
  - it is very important to form a rule that becomes the basis of the state.
- Governed by law
  - The Law becomes the standard of the people 's behavior, and becomes the standard of the executive administration.
- Separation of Power
  - Executive, Legislative, Judicial Branch.
    - Korean Legal Society has been forced on review and analyze the real case or legal framework to solve real cases
- Legislative Study and Nomology
  - It is important b/c Law is the foundation of the nation and the basis of everyday life
  - However, the legislative study and nomology research was only recently begun.
  - In my person view, the legislative study or nomology in Korea is still an early stage of development.

I. Nomology and Practice of Legislation in Korea

- 1. Nomology in Korea
- What is Nomology (Science of legislation)?
  - No Fix definition yet.
  - A comprehensive study of the legal process, mechanisms, participants, motivation, and purpose (Korean Dictionary)
- Development of Nomology in Korea
  - Late 80s or early 90s.
  - In 2016, Korean Public law association's 60th anniversary seminar : legal assessment for better legislation.
  - Now, The Korean legal society has begun to recognize the independent academic value of the legislature or Nomology.

1) Legal Society of Nomology in Korea

- History and status
  - 1994 April, "Korean Legal Policy Association"
  - **EST In 1998, "Korean Society of Legislation Study"**
  - EST in 2003, "Korean Society of Legislation and Policies"
  - In 2010, Legislation Theory and Practice Association.
  - Only "Korean Society of Legislation Study" focuses on Legislation and nomology.
- The Status of Legal Society of Nomology in Korea
    - Korea Research Foundation: evaluate and classify academic journals
  - 1st Rank Journals(Registered Journals), 2nd Rank Journals (Waiting for Registered Journals), 3rd Rank
    - This Rank closely linked to Professor Achievement Evaluation and Hire Process.
  - Korean Society of Legislation Study: Journal of Legislative Studies became 2nd Rank from 2015 since 2016.
  - Korean Legal Policy Association: 2nd Rank (from 2004), 1st Rank (from 2007)

2) Research Achievements of Korean Nomology

- (1) Beginning and development of legislation Study in Korea
  - 1960s and 1970s, National Assembly : publications (Analysis of the role and function of the legislature)
  - The full-fledged research on legislation in Korea began in or after the late 1980s.
    - government-led research was conducted through the establishment and expansion of research and research departments in the National Assembly
    - In the early 1980s, the study of law was started by some public law scholars to raise public law issues.
      - An academic conference held at the Institute of Law, Seoul National University in 1984 The main theme of the conference is "Legislative functions and problems in Korea"
  - Feb. **1998, The Korean legislative society Inaugural seminar : "What is the Legislation Study and Nomology"**
  - March. 1999. , The Korean legislative society with National Assembly: Challenges and Directions of Korean Legislation Study and Nomology

(2) Achievements of Korean Legislation Study

- Government Research Paper '"Institutional support for the analysis and development of legislation" in 2009. (Korean Ministry of Government Legislation)
  - 1960 - 2009: total publications related to Legislation study - 165 (articles 93, books 72)

	Introduciton to Nomology or General	Legislation Poress	legislative method,	legislative technology,	legislative evaluation	etc
Articles	18	28	3	11	12	21
Books	6	7	2	20	18	19

  - **Most of the publication were based on Government Oriented Research** Such as Korean Ministry of Government Legislation, National Assembly, Korea Legislation Research Institute
- 2005 -2016: Keyword as Legislation Study or nomology, Legal Science - total 50 articles
- In 2016: 10 articles b/c Joint Seminar Korean Public Law Association (60th Anniversary) and Korea Legislation Research Institute
- Dr. Sim (National Assembly Research Center) 9 articles, late Dr Park (Korea Legislation Research Institution) 5 articles, Prof. Choi (Konkook University) 4 articles.

2. Legislation Practice in Korea

- **1) Ministry of Government Legislation**
  - Supervising and supporting legislative efforts of government for effective government administration
    - Fast and accurate legalization of state affairs, managed systematically and supportively of governmental legislation
    - Fast legalization of policy, actively supporting legislation of assembly members and local government
  - Statutory improvement for public satisfaction
    - Seeking out and improving statutes so as not to, overburden the individuals' life and the companies' business
  - Creating people-oriented legalization
    - Managing and providing statutory information, to enable the public to find and easily use the necessary statutory information
    - http://www.moleg.go.kr/english/aboutMgl
- Governmental Legislation planning system
  - MOLEG establishes and enforces the above system, supervising legislation planning, that is intended for processing by each department during the year.
- National Legislation Information Center http://www.lawmaking.go.kr)
  - It shows how the Korean National Legislation is made and it enables searches of all the information necessary for legislation at one place.

1) Ministry of Government Legislation

- Statutory Examination
  - MOLEG examines wording, structures and expressions of the bills drafted by each department and reviews the necessity, legal validity, constitutionality and methodology of their contents.
- Statutory interpretation
  - Statutory interpretation is the task of understanding systematically its meaning and of clarifying its standard meaning based on its purpose of enactment. The opinion of statutory interpretation, suggested by MOLEG is the final decision in the administrative department; therefore it becomes 'government's authoritative interpretation'.
- Statutory Improvement
  - This project seeks out irrational statutes, that are overly focused on administrative convenience and which burden everyday life and companies' business life in order to improve them for the satisfaction of the public.
  - Easy to Understating Statute Project: MOLEG is changing Chinese characters and Japanese based terms into Korean language, and simplifying long and/or complicated phrases in order to make the statutes easier to understand.
- Legislation Support
  - it presents at the National Assembly, united opinion of government about the proposed Assembly members' Bills and supports for more effective legislative processes. In the case of necessity for having united opinion, the Governmental Legislation Policy Council and General Consultative Body of Assembly Members' Legislation are operated.
- Management of Statutory Information
  - The National Legal Information Center is the Korean representative legal information web site, where all the legal information can be searched.

2) National Assembly Research Service (NARS)

- History
  - NARS is grounded on the National Assembly research Service Act and Article 22.3 of the National Assembly Act
  - 2006. DEC the bill on the establishment of the National Assembly Research Service
  - 2007.DEC. Launch of the National Assembly Research Service (2 research and 1 management offices, 10 teams, and 65 staff members)
  - 2009. Reorganization of NARS with 3 research and 1 management offices,1 counsel, 14 teams, and 92 staff members
  - 2014. Answered 30,000 research requests to the Members and Committees
  - 2016. Reorganization of NARS with 3 research and 1 management offices, 2 counsel, 2 divisions, 12 teams, and 126 staff members
- Organization
  - President, Department of Planning and coordination, Department of Research ; (Office of the Inspector General, Research Advisory Committee)
  - In Department of Research: Administrative law Research, Socio-cultural Law Research, Economic Law Research, Comparative law Research, Global Law Research, Legislative Strategy and Analysis

2) National Assembly Research Service (NARS)

- Legal Duties of NARS
  - Processing the Members' and Committees' requests for research and analysis
  - Examining and researching legislative and policy issues and providing relevant information
  - Collecting, managing and disseminating information on legislative and policy issues
  - Providing information to the Members' Study Groups
  - Analyzing legislative trends of other countries and providing relevant information
- Mission
  - Research and analysis on legislative and policy issues to realize the policy driven National Assembly
  - Premier Think Tank for the National Assembly
  - Core Values
    - Non-partisanship, Balance, Comprehensiveness, Expertism, Diversity

2) National Assembly Research Service (NARS)

- Publications
  - NARS proactively discovers and examines current and potential legislative and policy issues, and
    provides the research results to Members
- Issue Brief
  - **Timely research on legislative and policy issues (more than 130 brief per year)**
- NARS Report
  - **Exhaustive, comprehensive, and in-depth research from a mid- to long-term perspective**
- Field Survey Report
  - **Field research to obtain in-depth and on-site information**
- Legislative Impact Analysis
  - **Report analyzing and assessing the direct and indirect impact of law in systematic way**
- **ERFO**
  - **Report tracking its revision progress from last year by administrative branch**
  - **Evaluation Report on the Follow-up Actions of the Oversight of Administrative Agencies**

3) Korea Legislation Research Institute

- The Korea Legislation Research Institute works for the purpose of supporting national legislative policies, and promoting timely and accurate dissemination of legislative information, as well as assisting the general legislative activities by systematically collecting and managing the legislative information, and investigating or researching juristic and legislative issues with extensive expertise.
- History
  - Dec. 21,1989 | Promulgation and enforcement of the Korea Legislation Research Institute Act(Act No. 4141)
  - Jul. 30, 1990 Establishment and Opening of the Institute
  - Jan. 29,1999 | Promulgation and enforcement of the Act on the Establishment Operation and Fosterage of Government-Invested Research Institutions, etc.

3) Korea Legislation Research Institute

- Primary Functions
  - Investigation and research on foreign and domestic laws and legislative policies, both domestic and abroad
  - Systematic intergration, management, dissemination and data-entry of foreign and domestic legislative information
  - Publication and supply of the Code of Laws of Korea and if needed, explanatory materials concerning the purpose and background of individual legislations
  - Investigation and modification of legal terminology, research for the Korea old legal codes before the introduction of current legal systems, and study on the history of the Korean legal system
  - Joint-research with other institutions foreign or domestic and invitation to legal experts for research
  - Entrustment of research projects to other domestic research institutions or individuals as well as performance of research projects at the Government or private organizations entrustment
- Law Search
  - http://elaw.klri.re.kr/eng_service/introduction.do
- Publications
  - KLRI Journal of Law and Legislation, 9 different periodicals
  - Legislative evaluation Study

3. Legislation Study and nomology of Korea

- Government-led Development
  - Government body, government-funded research institutes or government-funded projects
  - the roots of the legislative study in Korea are not yet deeply rooted
  - the scholars are aware of the necessity and necessity of legislative studies
  - but the scholarly identity is not recognized.
    - Legal article, papers or basic research of pure legal theory or criticizing national policy may be ignored.
    - The initial approach to legislation was heavily dependent on the translation and introduction of foreign literatures and on the analysis of foreign legal systems,
    - but Korea's own legislative theory and analysis are still lacking.
- In the past, scholars' papers on the identity of legislative science in Korea have emphasized social science in legislative history and emphasized that they should be proved or evaluated by statistics or mathematics

3. Legislation Study and nomology of Korea

- The emphasis on the scientific nature of legislation is positively related to the introduction of various legislative impact assessments and the development of various indices, thereby enriching legislative data and measuring legislative effects.
- However, legislative assessment without Checking system thorough pre-inspection and post-evaluation, there is a risk of abuse as a tool to pass certain laws without national consent.
- Because of Korean legal society, which takes a purely normative approach and is biased toward legal interpretation, there is the possibility of misunderstandings that legal impact assessment is done by other major who do not understand the law
- Legal scholar who do not understand the result of impact assessment is analyzed by other major (political science, Economics, Sociology etc) who does understand legal issues.
- There is also the possibility of a scholarship and a struggle for scholarship on new fields such as legislative evaluation.

III. Legal structure of Immigration Policy

- 1. Introduction (Constitution and Legal Scheme)
  - Immigration Act, Nationality Act, Refugee Act, Framework Act of Treatment of Foreigners Residing in the Republic of Korea, Act on Foreign Workers' Employment
    - Not in a single law but in several individual laws.
  - Most modern democracies and communist countries recognize foreigners' rights to immigration at a certain level, but foreign immigration policy does not start at the stage of the law, but is largely determined at the constitutional level of a country.
    - The Korean Constitution differs from the contents of the constitutional norms of the Constitution and the normative power in documents concerning the immigration of foreigners.
    - ARTICLE 3 "The territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands."
      - In the literature, Korea's immigration control law should be applied in the territory of North Korea as well as South Korea, but it is in a state that is practically unapplicable.

1. Introduction (Constitution and Legal Scheme)

- Article 6 (2) expressly stipulates foreigners in the Korean Constitution.
  - "The status of aliens shall be guaranteed as prescribed by international law and treaties."
- Article 14
  - All citizens shall enjoy freedom of residence and the right to move at will.
    - Not "all human beings" but Citizens (Korean Citizens)
    - In other words, in the documents of the Constitution, foreigners do not have the same level of freedom of residence as the citizens, but have freedom of residence and transfer as defined by international law and treaty.
    - As for the subjectivity of the basic rights of foreigners, the precedent sees different subjectivity by basic rights according to the principle of right nature.
    - There are various arguments such as the theory of denying the basic rights of foreigners and the whole acceptance theory, but the pluralism takes basic rights according to individual right nature.

2. IMMIGRATION ACT

- History
  - March 1963 enacted.
    - the original immigration law was enacted 18 years after the Republic of Korea was established.
    - Immigration was not an important policy concern and there was no urgent need to manage the immigration of foreigners.
- Structure
  - 11 CHAPTERS (1 - 106)
  - CHAPTERS I GENERAL PROVISIONS
  - CHAPTER II NATIONALS' ENTRY INTO AND DEPARTURE FROM THE REPUBLIC OF KOREA
  - CHAPTER III ENTRY AND LANDING OF ALIENS
  - CHAPTER IV STAY AND DEPARTURE OF ALIENS
  - CHAPTER V REGISTRATION OF ALIENS AND SOCIAL INTEGRATION PROGRAMS
  - CHAPTER VI DEPORTATION, ETC.
  - CHAPTER VII SEARCH OF SHIPS, ETC.
  - CHAPTER VIII RESPONSIBILITY OF CAPTAINS OF SHIPS, ETC. AND FORWARDING AGENTS
  - CHAPTER VIII-2 ISSUANCE OF REFUGEE TRAVEL DOCUMENTS, ETC.
  - CHAPTER IX SUPPLEMENTARY PROVISIONS
  - CHAPTER X PENALTY PROVISIONS
  - CHAPTER XI ACCUSATION AND DISPOSITION OF NOTICE

2. IMMIGRATION ACT

- Article 2 (Definitions)
  - The term "alien" means any person who is not a national of the Republic of Korea;
  - The term "refugee" means a refugee defined in subparagraph 1 of Article 2 of the Refugee Act
    - A foreigner who does not want to be protected or wants to be protected by nationality because of a fear that he or she has sufficient grounds to recognize that he or she may be persecuted for reasons of race, religion, nationality, A foreigner who is unable to return to his / her country of residence before entering the Republic of Korea or who does not wish to return to the Republic of Korea.
- Article 7 (Entry of Aliens) (1) When an alien enters the Republic of Korea, he/she shall hold a valid passport and a visa issued by the Minister of Justice.
- Article 10 (Status of Stay) (1) Every alien who intends to enter the Republic of Korea shall be granted status of stay prescribed by Presidential Decree. (2) The maximum period of stay initially granted depending on an alien's status of stay shall be prescribed by Ordinance of the Ministry of Justice
- Article 11 (Prohibition, etc. of Entry) (1) The Minister of Justice may prohibit an alien from entering the Republic of Korea if the alien is: 3. A person deemed highly likely to engage in any conduct harming the interests or public security of the Republic of Korea 5. A mentally disabled person who is void of a capacity of discriminating sense and has no person to assist his/her stay in the Republic of Korea, a person who cannot afford expenses incurred in relation to his/her stay in the Republic of Korea, and a person in need of relief;
  - The Minister of Justice may forbid entry into the country.

2. IMMIGRATION ACT

- Article 17 (Stay and Scope of Activity of Aliens)
  - (1) Every alien may stay in the Republic of Korea as permitted by his/her status of stay and within the authorized period of stay. (2) No alien staying in the Republic of Korea shall engage in any political activity unless otherwise permitted by this Act or other Acts.
- Article 18 (Restrictions on Employment of Aliens)
  - (1) Every alien who intends to engage in employment in the Republic of Korea shall obtain the status of stay that entitles him/her to engage in job-seeking activities, as prescribed by Presidential Decree. (2) No alien having the status of stay referred to in paragraph (1) shall work at any place, other than the designated workplace.
- Article 20 (Activities not Covered by Status of Stay)
  - If an alien staying in the Republic of Korea intends to engage in activities permitted under a different status of stay, in addition to those activities permitted under his/her original status of stay, he/she shall obtain prior permission to engage in such activities, other than those permitted under his/her original status of stay, from the Minister of Justice.
- Article 31 (Registration of Aliens)
  - (1) If an alien intends to stay in the Republic of Korea for more than 90 days from the date of entry, the alien shall file for alien registration with the head of the Regional Immigration Service having jurisdiction over his/her place of stay within 90 days from the date of entry into the Republic of Korea, as prescribed by Presidential Decree: Provided, That this shall not apply to any of the following aliens:

2. IMMIGRATION ACT

- Article 46 (Persons subject to Deportation)
  - (1) The head of a Regional Immigration Service may deport any of the following aliens from the Republic of Korea according to the procedures prescribed in this Chapter:
    - A foreigner who has violated a certain immigration control law, such as a foreigner who has entered Korea due to a violation of the Immigration Control Act, or a violation of conditions of permission, etc.
    - Not All foreigners who violate the Acts of the Republic of Korea are subject to forced evictions but mainly foreigners who have violated the main provisions of the Immigration Control Act and foreigners who have been sentenced to higher than imprisonment.
- Article 47 (Investigations)
  - An immigration control official may investigate aliens suspected of falling under any subparagraph of Article 46 (1) (hereinafter referred to as "suspect").
- Article 51 (Immigration Detention) "IN KOREAN TEXT, PROTECTION"
  - (1) If there are reasonable grounds to suspect that an alien falls under any subparagraph of Article 46 (1) and the alien has fled or might flee, an immigration control official may detain the alien upon obtaining a detention order issued by the head of the Regional Immigration Service.
  - Cf: Con law Article 12 (1) All citizens shall enjoy personal liberty. No person shall be arrested, detained, searched, seized or interrogated except as provided by Act. No person shall be punished, placed under preventive restrictions or subject to involuntary labor except as provided by Act and through lawful procedures.
  - (3) Warrants issued by a judge through due procedures upon the request of a prosecutor shall be presented in case of arrest, detention, seizure or search: Provided, That in a case where a criminal suspect is an apprehended flagrante delicto, or where there is danger that a person suspected of committing a crime punishable by imprisonment of three years or more may escape or destroy evidence, investigative authorities may request an ex post facto warrant.

3. NATIONALITY ACT

- History
  - Dec. 20 1948. (16 Article)
    - Article 2(1) Any person falling under one of the following subparagraphs shall be a national of the Republic of Korea: 1. A person whose father is a national of the Republic of Korea at the time of his or her birth;
    - It was a law that confirmed the status of the people of the Republic of Korea through the legitimacy based on the paternal bloodline.
  - Jun. 1998. (amendment)
    - 1. A person whose father or mother is a national of the Republic of Korea at the time of his or her birth;
- Main Articles
  - Article 2 (Acquisition of Nationality by Birth)(1) A person falling under one of the following subparagraphs shall be a national of the Republic of Korea:
  - Article 3 (Acquisition of Nationality by Acknowledgement)
    - (1) Where a person who is not a national of the Republic of Korea (hereinafter referred to as a "foreigner") is acknowledged by his father or mother who is a national of the Republic of Korea and falls under the following subparagraphs, the person may acquire the nationality of the Republic of Korea after reporting to the Minister of Justice:

3. NATIONALITY ACT

- Article 5 (Requirements for General Naturalization)
  - A foreigner shall meet each of the following requirements in order to obtain permission for naturalization, except where prescribed by Article 6 or 7:
    - 1. He/she is to sustain a domicile in the Republic of Korea for at least five consecutive years; 2. He/she is to be an adult under the Civil Act of the Republic of Korea; 3. His/her conduct is to be orderly; 4. He/she is to be able to support himself/herself, relying on his/her own assets, ability or family he/she lives with; 5. He/she is to have basic knowledge as a national of the Republic of Korea, such as Korean language skills and understanding of Korean customs.
- Article 6 (Requirements for Simple Naturalization)
  - (1) A foreigner who falls under any of the following subparagraphs and has sustained a domicile in the Republic of Korea for at least three consecutive years may obtain permission for naturalization, even without meeting the requirements under subparagraph 1 of Article 5:
    - 1. A person whose father or mother was a national of the Republic of Korea; 2. A person who was born in the Republic of Korea and whose father or mother was born in the Republic of Korea; 3. A person who adopted by a national of the Republic of Korea and was an adult, under the Civil Act of the Republic of Korea, at the time of adoption.

3. NATIONALITY ACT

- Article 7 (Requirements for Special Naturalization)
  - (1) A foreigner who falls under any of the following subparagraphs and holds a domicile in the Republic of Korea may obtain permission for naturalization, even without meeting the requirements under subparagraph 1, 2 or 4 of Article 5:
    - 2. A person who has contributed greatly to the Republic of Korea; 3. A person acknowledged to contribute to the national interests of the Republic of Korea who has very excellent ability in a specific field, such as science, economy, culture, sport, etc.
- Article 10 (Obligation of Persons who Retain Nationality of the Republic of Korea to Renounce Foreign Nationality)
  - (1) A foreigner who has attained the nationality of the Republic of Korea but retains a nationality of a foreign country shall renounce the nationality of the foreign country within one year after the attainment of the nationality of the Republic of Korea.
- Article 11-2 (Legal Status, etc. of Persons with Multiple Nationalities)
  - (1) A person who has both the nationality of the Republic of Korea and that of a foreign country by birth or under other conditions prescribed by this Act (hereinafter referred to as "person with multiple nationalities") shall be treated as a national of the Republic of Korea only in applying the Acts and subordinate statutes of the Republic of Korea.
- Article 12 (Obligation of Persons with Multiple Nationalities to Choose One Nationality)
  - (1) A person who has attained multiple nationalities before fully turning 20 years of age shall choose one nationality before fully turning 22 years of age; and a person who has attained multiple nationalities after fully turning 20 years of age shall choose one nationality within two years from such time pursuant to Articles 13 and 14: Provided, That this shall not apply to any person with multiple nationalities who has vowed his/her intention not to exercise his/her foreign nationality in the Republic of Korea to the Minister of Justice, pursuant to Article 10 (2).

4. FRAMEWORK ACT ON TREATMENT OF FOREIGNERS RESIDING IN THE REPUBLIC OF KOREA

- History
  - [Enforcement Date, 17. May, 2007.,] 5 Chapter 23 Articles
    - The purpose of this Act is to prescribe basic matters relating to the treatment, etc. of foreigners residing in the Republic of Korea to help them adjust to Korean society to make full use of their abilities and to create a social environment in which Korean nationals and foreigners in Korea understand and respect one another, thereby contributing to the development and social integration of the Republic of Korea.
- Main Articles
  - CHAPTER I GENERAL PROVISIONS, CHAPTER II ESTABLISHMENT AND IMPLEMENTATION OF POLICIES FOR FOREIGNERS, CHAPTER III TREATMENT OF FOREIGNERS, ETC. IN KOREA, CHAPTER IV CREATING SOCIETY WHERE KOREANS AND FOREIGNERS IN KOREA LIVE IN HARMONY, CHAPTER V SUPPLEMENTARY PROVISIONS
    - Most regulations are policy-declarative rather than substantive.
  - Article 2 (Definitions)
    - 1. The term "foreigners in Korea" means those who do not possess the nationality of the Republic of Korea and who legally stay in Korea for the purpose of residing in Korea.
    - 2. The term "treatment of foreigners in Korea" means the treatment of foreigners in Korea by the State and local governments according to their legal status; and

5. ACT ON FOREIGN WORKERS' EMPLOYMENT, ETC.

- History
  - [Enforcement Date 17. Aug, 2004.] [Act No.8852, 16. Aug, 2003., Other Laws and Regulations Amended]
  - When various problems from abuse of the foreign industrial trainee system were raised, the Employment Permit System was introduced by enacting the Act on Employment.
- Main Articles
  - Article 1 (Purpose) The purpose of this Act is to promote a smooth supply and demand of manpower and the balanced development of the national economy by introducing and managing foreign workers systematically.
  - Article 2 (Definition of Foreign Worker)
    - The term "foreign worker" in this Act refers to a person who does not have the nationality of the Republic of Korea and works or intends to work in a business or workplace located in the Republic of Korea for the purpose of earning wages: However, the following foreigners who are granted a status of sojourn eligible for employment pursuant to Article 18 (1) of the Immigration Control Act shall be excluded; those designated by the Presidential Decree taking into consideration the area of employment, period of stay, etc.
  - Article 4 (Foreign Workforce Policy Committee)
    - (1) To deliberate and decide on important matters concerning the employment management and protection of foreign workers, the Foreign Workforce Policy Committee (hereinafter referred to as "Policy Committee") shall be established under the control of the Prime Minister.

5. ACT ON FOREIGN WORKERS' EMPLOYMENT, ETC.

- Article 6 (Efforts to Employ Native Workers)
  - (1) An employer who intends to employ a foreign worker shall first file an application for seeking native workers with an employment security office (hereinafter referred to as "employment security office") under subparagraph 1 of Article 2-2 of the Employment Security Act.
- Article 8 (Foreign Worker Employment Permit)
  - (1) An employer who has filed an application for seeking native workers pursuant to Article 6 (1) shall, if he/she fails to hire workers despite receiving job placement services under paragraph (2) of the same Article, apply for employment permit for foreign workers to the head of an employment security office as prescribed by the Ordinance of the Ministry of Employment and Labor.
- Article 13 (Departure Guarantee Insurance and Trust)
  - (1) The employer of a business or workplace employing a foreign worker (hereinafter referred to as "employer") shall take out insurance or trust (hereinafter referred to as "departure guarantee insurance, etc.") with the foreign workers as an insured person or beneficiary (hereinafter referred to as "insured person, etc.") in order to provide retirement pay to the foreign worker due to his/her departure, etc. In such cases, insurance premiums or trust installments shall be paid or deposited every month.
- Article 18 (Restrictions on Employment Period)
  - A foreign worker may be employed for up to three years from the date on which he/she enters the Republic of Korea.

5. ACT ON FOREIGN WORKERS' EMPLOYMENT, ETC.

- Article 25 (Permission for Change of Business or Workplace)
  - (1) A foreign worker (excluding foreign workers under Article 12 (1)) may apply for a transfer to another business or workplace to the head of an employment security office, as prescribed by the Ordinance of the Ministry of Employment and Labor, if any of the following events occurs:
    - 1. Where his/her employer intends to terminate his/her labor contract during the contract period or to refuse to renew his/her contract after its expiration for a justifiable reason;
    - 2. Cases announced by the Minister of Employment and Labor, where the foreign worker is deemed unable to continue to work in the business or workplace according to social norms due to a reason not attributable to him/her, such as temporary shutdown or permanent closure of business, the cancellation of an employment permit under Article 19 (1), restrictions on employment under Article 20 (1), or violations of working conditions or unfair treatment by an employer;
    - 3. Where any other event prescribed by the Presidential Decree occurs.
- Article 18-3 (Restrictions on Employment After Re-entry)
  - A foreigner worker (excluding foreign workers under Article 12 (1)) who departs from the Republic of Korea after working in the Republic of Korea shall not be reemployed under this Act unless six months have passed since the date of his/her departure.

IV. Direction of the change of foreign immigration policy From a legislative Study and legislative policy perspective

- 1. The reality of Korea
  - In 2015, Korea's birthrate is 1.24, which is far below the OECD average birthrate of 1.68.
  - It is hard to expect that Korea's birth rate will increase significantly in the future due to the high unemployment rate of young people, the polarization of wealth in society, and the soaring real estate prices.
  - There is an unequal male and female sex ratio problem due to preference of male in Korean society.
  - university entrance rate around 80% of high school graduated.
    - There are Increased highly educated professional women but It became difficult to find a marriage partner. On the other hand, men who have academic backgrounds less than that of a professional college(2 year College) have difficulties in finding a marriage partner.
  - In order to solve the marriage imbalance, an makeshift, government-led multicultural policy was introduced.

2. Necessity of Constitutional Discussion and Foreign Policy

- Before the candlelight vigil began, President Park claimed that we should start discussing the constitutional amendment through her speech to the National Assembly.
- the Korea people all over the country held a candlelight rally, demanding President Park Geun-Hye, to step down. This is the "presidential cronies" since the outbreak of Korea people held a candlelight vigil Saturday for the 10th straight time.
- Issues to be discussed in the Constitutional amendment in relation to foreign policy
  - ① Expanding the issue of enjoying basic rights. (Human right v a People's right with Nationality), ② Status of Foreigners ③ a nation-state issues(a single-race nation)
  - However, discussions of these issues should not be solely led to discussion of politics or academics who are interested, nor should debates on special fields be directly linked to constitutional revision.
  - Even if it acknowledges the universality of world pacifism and human rights, it should start first to discuss on the issues of the seriousness of the people's constitutional dimension on the relationship between the people, the basic constituent of the nation, and foreigners staying in the country, and the legal status and recognition of foreigners who want to become citizens.
- The 18th Foreign Policy Committee, held in April 2016, set the direction for lowering the illegal stay rate and strengthening social integration.
  - The Policy Goal of the Foreign Policy Committee may also be interpreted as a reflection of the opposing public opinion.
  - There is also public opinion demanding strong enforcement and control based on anti-alien sentiment in the foreign policy of the Republic of Korea, and there is public opinion to support the same basic rights and free movement in the light of real necessity or universal human rights and global trend.

3. Analysis of foreign-related issues in the Immigration Control Act

- Recent papers dealing with the Immigration Control Law point out the problems of enforcement, 'protection'(detention) measures and deportation of illegal immigrants.
  - Some scholars believe that the current immigration control law and the forced evictions are unconstitutional.
  - b/c of restricted in the administrative procedure and No pre-warrant requirement.
    - the pre-warrant should be applied because the foreigner's physical freedom is restricted to the same degree as the arrest and the arrest in the criminal procedure.
  - In order for the expulsion procedure to become a substantive hearing, legislative changes should be introduced, including the separation of investigation procedures from legal proceedings, as well as the granting of neutral and independent powers to the judicial institution responsible for such cases.
- the Constitution is read as not applying **the warrant requirement in administrative procedures** : The warrant requirement of the Korean Constitution only applies to investigation procedures. Therefore arrest, detention, seizure and search in the process of expulsion are not considered to be unconstitutional, even if they are carried out without a court-issued warrant.

3. Analysis of foreign-related issues in the Immigration Control Act

- Legal term problems
  - Where Korean has Immigration Law? No/Yes
    - Immigration Act (in English Translation but Board and Immigration Control ACT in Korean)
  - Article 2 (Definitions) 11. The term "detention" means an immigration control official's enforcement activities taking into custody or impounding a person having reasonable grounds to be suspected of falling under persons subject to deportation under the subparagraphs of Article 46 (1) at an immigration detention unit, immigration detention center or other place designated by the Minister of Justice;
  - In Korean Text not "detention" but "Protection": It provides "protection" for aliens suspected of being deported. The law uses the term 'protection' in Korean Text.
    - Whether or not the constitution of the article is unconstitutional, there is a need to change the term to match the substance
  - Article 51 (Immigration Detention) (1) If there are reasonable grounds to suspect that an alien falls under any subparagraph of Article 46 (1) and the alien has fled or might flee, an immigration control official may detain the alien upon obtaining a detention order issued by the head of the Regional Immigration.
    - An immigration control official shall produce a detention order to the suspect in question when executing such a detention order.

3. Analysis of foreign-related issues in the Immigration Control Act

- What is Difference Between Criminal Process and Administrative Process?
    - Formally, it is administrative procedure, but substance is similar to penal procedure ??
  - 20 days 'Protection': Article 52 (Period and Place of Detention) (1) A period for which an alien can be detained under Article 51 to examine and decide on **whether the alien is subject to deportation, shall not exceed ten days:** Provided, **That the period may be extended only once,** by up to ten days with permission from the head of the competent Regional Immigration Service in extenuating circumstances.
  - 96 hours 'Protection': Article 56 (Temporary Detention of Aliens) (1) An immigration control official may temporarily detain any of the following aliens in an immigration detention unit for up to 48 hours: 1. A person whose entry is not permitted under Article 12 (4);2. A person granted obtained conditional entry permission under Article 13 (1) and who has fled or appears very likely to flee; 3. A person subject to a departure order under Article 68 (1) who has fled or appears very likely to flee.
    - (2) Where an immigration control official is unable to deport an alien temporarily detained under paragraph (1) within 48 hours due to lack of transportation to repatriate the alien, illness, or other extenuating circumstances, the immigration control official may extend the period of detention only once by up to 48 hours with approval from the head of the competent Regional Immigration Service.

3. Analysis of foreign-related issues in the Immigration Control Act

- It is Administrative Process for protecting Public(National) Interest.
  - Article 67 (Recommendations for Departure) (1) If an alien staying in the Republic of Korea falls under any of the following circumstances, the head of a Regional Immigration Service may recommend the alien to voluntarily depart from the Republic of Korea 1. A person who violates Article 17 or 20 through a minor offence; 2. A person who violates this Act or any order issued under this Act, in respect of whom the Minister of Justice deems it necessary to recommend departure
  - Article 68 (Departure Orders) (1) The head of a Regional Immigration Service may order an alien to depart from the Republic of Korea if: 2. The alien has received a recommendation for departure under Article 67, but fails to comply therewith; 3. Any of his/her permission, etc. has been revoked under Article 89;
- It is necessary measures to protect national interest.
  - Protective measures or forced evictions may be somewhat lacking in human rights, but they are the minimum enforcement measures against illegal aliens who violate the main provisions of the Immigration Control Act, and the necessary measures to protect the national sovereignty and national interests.
  - From Legislative policy view, there are extremely opposite opinions about immigration issues: World citizenship(Free movement No Control at all ←→ No Foreigners except Rich or Smart and royal enough to contribute to Korean Society
  - As seen in the recent US presidential election, the opinion of shy(?) conservatives who insist on rigorous immigration control and foreigner restraint policies, which is usually considered to be a minority, may be expressed through elections.

4. Review from Legislative Policy View

- Constitutional Level Discussion
  - The policy of foreigners should start from the decision of the Constitution issue
  - Korea accepts international agreements and practices, but How much protection and grantee of foreigner's fundamental right and legal right should be provided?
  - Recent foreign policy, marriage and family policy, nationality and immigration policies:
    - To solve increased unmarried men, and Shot of labor force
    - It is not based on public opinion, or pondered and determined among scholars. but is expanded and reproduced in the academic and professional areas and humanitarian level.
  - Accurate Data and National Consent and People Agreement
    - Based on accurate data, the selection process of the people based on the evaluation of the experts and the evaluation of the experts on the possible alternatives to prepare for the future of Korea
    - Although there are various impact evaluations, if there are no evaluation of the results of impact analysis themselves, the processes become an evaluation for evaluator or an evaluation for evaluation.

4. Review from Legislative Policy View

- First Priority of Foreign Policy
  - the first priority in foreign policy should not be the human rights of illegal aliens but the interests of the Korean society and the national interests of the whole country.
  - The national interest should include playing a role as a responsible member in the international community, in harmony with foreigners and to promote world peace.
- Strict management of Illegal immigrants = Foreign Hatred ?? → NO
  - Strict management of illegal immigrants and strict enforcement of illegal immigrants do not result in foreign hatred or anti-foreign policy.
  - In order to protect a large number of good foreign nationals who are in compliance with international practices, international laws, the laws and social order of the Republic of Korea, it is necessary to strictly adhere to a strict approach to illegal immigrants.
  - It may be more necessary to maintain the strictness of enforcement

5. Conclusion of Immigration Policy

- Conclusion
  - Although it should As for the issue of foreigners' legal issues in the Immigration Control Act, I believe that the constitutional agreement is necessary, but I do not think that the current law is unconstitutional against the Constitution.
  - Rather, it is thought that the reform proposals that are claimed in the academic fields ignore the majority of the public sentiment and the practical reality.
  - develop in the direction to guarantee the equal human rights of foreigners and the people,
  - Domestic people who are offenders may also have limited freedom of movement and limited basic rights
  - Given that the principles of due process do not apply equally to all Koreans
  - It is perfectly reasonable to take measures to isolate foreigners who are illegally staying in Korea and to return them to their home country because they are not guaranteed freedom of entry to Korea from the beginning of the year.
  - As foreigners have already recognized this fact, it is not necessary to protect basic rights such as procedural guarantees at the same level as those of Koreans.

V. Summary and Conclusion

- In Korea, the legislative study and nomology began not with a voluntary academic interest but with the national institutions led by the national institutions such as the National Assembly and the Ministery of Legislation.
- At the beginning of the study, comparative legal analysis such as introduction of foreign legal system was the main research.
- The period of full-scale research on legislation and nomology in Korea began after the 1980s
- By 2009, there are many the books and ariticles on legislative technology and legislative evaluation. It means that the government-led organization has published many practical research articles.
  - There is a clear need for government research aid and academic promotion, and there are many advantages.
- There may be a disadvantage that the framework or direction of legal research may be limited to the logic and function of the organization and the policy of the government

V. Summary and Conclusion

- The base and roots of the legislative history of Korea are not yet deep, and the scholars are aware of the necessity and necessity of legislative studies and nomology.
  - In my personal view, In Korea the academic independence of nomology is not well recognized yet.
  - Korea legislation study and nomology has relied heavily on the translation and introduction of foreign literatures and on the analysis of foreign legal systems.
  - but Korea's own legislative theory and analysis are still lacking.
- Social Science, Legal Science, legal doctrine, or Legal Policy
  - In the past, most Korean scholarly articles on the identity of legislative science have emphasized social science in legislation. In other words, it has been emphasized that it must be proved or evaluated by statistics or mathematics.
    - Although the emphasis was on scientific merit, it did not cover the responsibilities based on what was actually verified or verified afterwards.
  - The emphasis on the scientific nature of legislation study is positively related to the introduction of various legislative impact assessments and the development of various indices, thereby enriching legislative data and measuring legislative effects.

V. Summary and Conclusion

- However, there is a risk of abuse that legislative evaluation without thorough preliminary inspection and follow-up verification can fall into formal catering and acts as a tool to pass certain laws.
- the main legal academic field of Korea takes a purely normative approach and focuses on interpretation of law so that there is a risk that a person who does not know the law and legal doctrine will do legislative analysis.
- In many cases, jurist and legal scholar who do not understand legislative analysis techniques have to conduct legislative analysis, supervise legal impact analysis or use analysis results.
- It is also possible that legislation study or legislative appraisal is not introduced in a way that helps society, but it is also likely to be used as an opportunity to expand employment opportunities of certain major and influence of the major.
  - Battle fields law major and other social science (Politics, Economics, Public Administration, Social Welfare etc)

- Korean Legal Education System was Changed
  - American Law School system has been introduced since 2009. first lawyer under law school system was in 2012.
  - Still Transition, Various undergraduates and various doctoral researchers will be able to study law.

V. Summary and Conclusion

- The policy of foreigners should start from the decision of the Constitution issue first.
  - Recent foreign policy, marriage and family policy, nationality and immigration policies:
    - To solve increased unmarried men, and Shot of labor force
    - It is not based on public opinion, or pondered and determined among scholars. but is expanded and reproduced in the academic and professional areas and humanitarian level.
- Accurate Data and National Consent and People Agreement
  - Based on accurate data, the selection process of the people based on the evaluation of the experts and the evaluation of the experts on the possible alternatives to prepare for the future of Korea
  - Although there are various impact evaluations, if there are no evaluation of the results of impact analysis themselves, the processes become an evaluation for evaluator or an evaluation for evaluation.
  - Although it should As for the issue of foreigners' legal issues in the Immigration Control Act, I believe that the constitutional agreement is necessary, but I do not think that the current law is unconstitutional against the Constitution.
  - Rather, it is thought that the reform proposals that are claimed in the academic fields ignore the majority of the public sentiment and the practical reality.

V. Summary and Conclusion

- Immigration Policy has to be developed in the direction to guarantee the equal human rights of foreigners and the people.
  - Domestic people who are offenders may also have limited freedom of movement and limited basic rights
  - It is also true that the principles of due process are not always to be applies at the same level. (by situation; emergency, inmate, soldier, official)
- It is perfectly reasonable to take measures to isolate foreigners who are illegally staying in Korea and to return them to their home country because they are not guaranteed freedom of entry to Korea from the beginning of the entry or beyond of certain period.
- Because illegal immigrant already know this fact and the take risk of immigrant enforcement, it is not necessary to protect all of basic rights such as procedural guarantees at the same level as Koreans who do not break the law.
- The fate of the scholar is to lead the society by looking at the future in the sense of Justice and Peace of Mankind, but in the immigration-related policy, it is necessary to face reality at the level of the everyday joe.
  - This is democracy, However sometimes Consensus or agreement through the democracy is Incomplete, unequal or anti-human.
  - Who will draw the line and limit?
    - Descendant and History