Refugee Protection in Korean Judiciary

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I. Introduction

First of all, I would like to express my gratitude for the invitation to this Conference by the International Association of Refugee Law Judges, the Supreme Court and the Administrative Court of the Republic of Slovenia, the Ministry of Justice of the Republic of Slovenia and the Slovenian Judicial Training Center. It is my great honor and privilege to present the refugee protection in Korean judiciary in front of such honorable judges and distinguished lawyers and scholars.

While some of you might be somewhat knowledgeable of the situation and progress of refugee protection in Korea and the role of judiciary for that goal, I suspect that most of you would have little knowledge of our situation. So, I would like to give you a general overview of the refugee situation in my country before going into the main topic of my presentation.

As of April 2011, Republic of Korea is one of the 15 Asian countries that have ratified the Convention relating to the Status of Refugee and the Protocol relating to the Status of Refugees which hereinafter will be collectively referred to as the 'Refugee Convention'. Korea ratified the Refugee Convention on December 3, 1992, and subsequently revised the Immigration Control Act, which I will hereinafter refer to as the 'ICA', to integrate the Refugee Convention into its domestic legal system in 1993. I will revisit this topic later on.

Still, we had to wait for a decade to see the first recognized refugee from Ethiopia after more than one hundred denials. Since 2001, the numbers of applications and recognitions have increased together. The number of applicants has hovered around 300 each year since 2008 and the number of recognized refugees has fluctuated from 30 to 70 in each year.

Though it can be said that the number of recognition is growing in recent years, there

still remain quite strong demands for more generous acceptance of refugees. It is not so rare to see Korean newspapers criticizing the high proportion of denial by the Ministry of Justice in their editorials. Along with UNHCR's advice and push for reform, those demands have become a strong impetus driving the legislature to consider a new law for refugee protection. I think this atmosphere may exert some influence on the judiciary in handling refugee cases.

II. Domestic Law on refugees

As I mentioned earlier, Korea incorporated Refugee Convention to its domestic law, the ICA. Article 23 of the ICA defines the refugee as follows; "the term "refugee" means a person to whom the Convention relating to the Status of Refugee is applied as defined under Article 1 of the Convention or Article 1 of the Protocol relating to the Status of Refugees." It does not provide its own definition of refugee, but refers to Article 1 of the Refugee Convention.

Under Article 76-2 (1) of the ICA, Minister of Justice is accorded the power and duty to examine the merits of applications and to make decisions. It states as follows; "when a foreigner in the Republic of Korea applies to be recognized as a refugee in accordance with the procedure prescribed by presidential decree, the Minister of Justice may recognize the foreigner as a refugee after examining the merits." Second paragraph of the same article requires the application to be filed within 1 year from the date of arrival (in case of refugee *sur place*, date of knowing the circumstances that prevent return), unless there are compelling reasons for being unable to do so.

Art.76-3 incorporates the cessation and exclusion clauses of the Refugee Convention and Art.76-4 recognizes the right of petition for review of the denial and withdrawal of refugee status by Minister of Justice. If the Minister of Justice refuses to change its initial decision, then the applicants may file a court action at the administrative court to challenge such decision. I will deal with the procedure of appeal in more detail later.

Articles 76-5 and 76-6 stipulate the issuance and return of the certification and travel documents and Article 76-7 empowers Minister of Justice to permit special sojourn for refugee applicant in deportation process.

With regard to the refugee related clauses in ICA dated December 10, 1993, there was widespread criticism that it was too simple to be sufficient to offer solid and clear

criteria and guidelines to refugee recognition. As the law seemed to allow wide discretion for refugee recognition to the Minister of Justice without specific regulation, it was blamed for being the main reason of easy denials of refugee recognition.

In response to that criticism, the revised ICA came into effect as of June 20, 2009. The revised ICA extended the period of petition from 7 days to 14 days under Article 76-4. In addition, the newly added Article 76-8 (1) stipulates the principle of the same treatments for refugees as those prescribed by the Refugee Convention.

It is also noteworthy that this revised ICA introduced humanitarian stay to supplement refugee status. According to Article 76-8 (2), the Minister of Justice may grant permission of humanitarian stay to the applicants who fall out of refugee definition. Despite the humanitarian intention of legislation, a suspicion was raised that the Minister of Justice would make use of it as an expedient means of avoiding difficult choice between the recognition of refugee status and expulsion after denial.

Article 76-8 (3) made it possible for the applicant to seek a temporary work permit if no decision is issued within 1 year from the date of application. Otherwise, it was impossible for the applicants without other forms of work permits to work legally before recognition of refugee status. A foreigner under humanitarian stay may be given the temporary work permit too.

Finally, Article 76-9 allowed the Ministry of Justice to establish facilities for refugees and asylum seekers. As the Ministry of Justice decided to set up the facilities near the Incheon International Airport, which is quite remote from Seoul or other populated cities, activist groups criticized that the Ministry of Justice paid more attention to containment of refugees than to substantial support.

III. Procedure for refugee recognition and petition

Next I'd like to discuss the procedure for refuge recognition and petition. The procedure for recognition of refugee status is initiated by a foreigner's submission of application to the Seoul Immigration Office. Though the application to the immigration officer at the airport and seaport is not possible due to lack of relevant procedure, it usually does not pose serious harm because Korean immigration officers tend to generously allow entry of foreigners and grant short period of stay so that they could file the application to the Seoul Immigration Office. However, for asylum seekers

without travel documents, as it is impossible for them to pass the immigration gate, the lack of procedure may have the same effect as the instant rejection and expulsion of refugees. To the asylum seeker who files application, G-1 type visa is issued for stay until determination.

A few months after the application, an immigration officer summons the applicant to the Seoul Immigration Office for an interview. The interview mainly focuses on the reasons of departure of his/her home country and the reasons why he/she cannot or refuses to return. Understandably, the initial interview plays the most important role in refugee recognition process. So, it is pointed out that the most of the procedural problems arise from this stage.

The biggest problems are poor interpretation and lack of legal assistance. Many asylum seekers have complained about miscommunication with immigration officers and incorrect transcripts of their interviews. As the transcripts of interviews are written in Korean only, one cannot really expect applicants to review and understand them fully and further correct the mistakes without any assistance. Owing to the demands of some active refugee lawyers, I understand that more and more immigration officers are allowing lawyers to attend and support the applicants during their interviews. Still, I believe that it is one of the most urgent areas of procedural reform.

After this process, the immigration officer makes initial decision based on the interview and other materials. The decision is notified to the applicant in the name of Minister of Justice. If the applicant is recognized as a refugee, he/she will be granted the refugee certificate, F-2-2 type visa for residence, certificate of registered foreigner and travel document. The recognized refugees are deemed to have work permit and shall enjoy the benefits of national medical plan.

However, if the application is rejected, the applicant will be notified to that effect with simple reasons. In response, the applicant may again file a petition challenging the denial to the Minister of Justice. If a petition is filed, the Minister of Justice refers the case to the Refugee Recognition Council. The Refugee Recognition Council consists of 9 members and the Deputy Minister of Justice presides at the meeting. The members of the council include high ranked officials from the Ministry of Justice and the Ministry of Foreign Affairs, an international law professor, a lawyer, civil activists and a judge. Judge Kim of our delegates is one of the members.

While in most cases the Council makes its decision after reviewing documentary files only, if necessary, it will summon the petitioner and have an oral hearing . The opinion of the Council is advisory to the Minister of Justice by law, but it is considered binding in practice. In 2010, the Council reviewed 359 cases. 10 of these cases were reversed and the petitioners were recognized as refugees, 25 were granted humanitarian stay, 304 denials were affirmed and 20 were carried forward.

If the petition fails, the petitioner shall be ordered to leave Korea voluntarily within 90 days. The petitioner may file a court action challenging the denial of the Minister of Justice to the Seoul Administrative Court within 90 days from the receipt of the order.

IV. Judicial Review on Refugee Determination

1. Overview

a. Refugee lawsuit as an administrative case

I will now move onto the topic of judicial review of refugee determination. In Korea, judicial review of refugee determination is a matter of administrative law procedure which starts with an asylum seeker's filing of a lawsuit seeking revocation of the denial of refugee status rendered by the Minister of Justice. As Korea belongs to the civil law tradition, it distinguishes administrative procedures which deal with administrative actions and public law from civil procedures which deal with private law. Against this backdrop, the denial of refugee status by the Justice Minister is recognized as a type of refusal disposition which is appealable under the Administrative Litigation Act along with other forms of administrative actions. According to the Act, an applicant for a refugee status may file an administrative lawsuit to the administrative court within 90 days from the date of receipt of the notice of denial (if the applicant decides to file a petition before filing a lawsuit, within 90 days from the date of notice of dismissal of the petition).

The Administrative Litigation Act of Korea does not permit the type of lawsuit which seeks a judgment of mandamus urging the respondent (in case of refugee lawsuit, the Minister of Justice) to recognize the plaintiff as a refugee. Nevertheless, once the court renders a final decision which revokes a refusal disposition, the respondent is obliged to make a new disposition according to the effect of judgment. So, the revocation of denial of refugee status by court is practically regarded as having the

same effect as granting refugee status.

b. Jurisdiction

At the moment, all the refugee related dispositions are rendered by the Minister of Justice and the Seoul Administrative Court exclusively has the jurisdiction over all the ministries and other national administrative agencies. Accordingly, the Seoul Administrative Court, which I am the Chief Judge thereof, adjudicates the entire refugee cases in Korea.

To be more specific, refugee cases are heard by three-judge panels at the Seoul Administrative Court which has 11 three-judge panels and 7 single-judge panels. At this juncture, I would like to mention one thing. After being inaugurated as the Chief Judge of the court last March, I designated 4 three-judge panels out of 11 to hear refugee cases. Although those 4 three-judge panels deal with not only refugee cases but also non-refuge cases (refugee cases accounts for 5% of all the caseloads of our court), I expect that the designation will enhance the expertise of judges in those panels and further the consistency of related decisions. Judge Sangkyun Jang in the Korean delegation is one of the presiding judges of those panels.

c. Statistics

Prior to 2008, normally 10 to 20 refugee cases were filed annually in the Seoul Administrative Court. That number sharply rose to 222 in 2009 and it stayed at 170 in 2010. Consequently, the number of decisions increased to 62 in 2009 and 299 in 2010. It is evident that the rise of the number of refugee cases and decisions thereof is largely attributable to the explosion of applications for refugee status in 2007 which recorded 717. While the number of applications was at a lower level of 364 in 2008, 324 in 2009 and 423 in 2010, it skyrocketed again this year to reach 386 by June and it is likely to break the all time high record of 2007. In 2010, the top country of origin was Pakistan which was followed by Kyrgyzstan, Bangladesh, Myanmar, Nigeria, Afghanistan, Uganda, Cameroon, Congo, and China in that order.

d. Appeal

A losing party at the first instance, whether it is an applicant or the Minister of Justice, may appeal the judgment thereof to the Seoul High Court. The rate of appeals is quite high. Although no particular restriction is imposed on the final appeal to the Supreme

Court, the highest court in Korea, the Supreme Court may dismiss the appeal thereto by summary disposition using its discretionary power, if it determines that the appeal does not include genuine legal issues.

2. Focus of Judicial Review

As a rule, the reason for denial of refugee status is provided as follows: “there is no ‘well-founded fear of persecution’ against the applicant so as not to meet the definition of refugee under the Refugee Convention.” Challenging the reason of denial, the asylum seeker claims that the denial is erred in factual determination, that is, the facts and circumstances presented by the applicant were sufficient to meet the definition of a refugee. Therefore, the judicial review in a refugee case essentially hinges on factual determination whether there exist sufficient facts supporting ‘well-founded fear of persecution against the applicant.’

As mentioned earlier, an applicant may file a petition challenging the Minister of Justice’s denial of refugee status. However, the petition procedure in the Refugee Recognition Council is usually conducted through documentary review without oral hearings where an applicant may present his/her case through oral testimonies. Therefore, the substantial and full scale review of the refugee status determination essentially begins at the Seoul Administrative Court. Accordingly, the judicial review embraces all the factual legal, procedural, and substantial matters.

It remains debatable whether the recognition of refugee status according to the ICA is mandatory or discretionary, i.e. in case an applicant meets the definition of refugee under the Refugee Convention, whether the Minister of Justice still has discretion not to recognize the applicant as a refugee in exceptional circumstances. Of course, it is confirmed in a number of judgments of the Seoul Administrative Court that recognition of the refugee status does not have the effect of “making" the applicant a refugee but has the effect of simply “declaring” the applicant is a refugee; so an applicant who meets the definition is a refugee even before or without recognition. There is no dissenting view on this issue. Still, the majority of the Seoul Administrative Court decisions have stated in dictum that the provisions of the ICA should be interpreted to the effect that the Minister of Justice retained a discretionary power not to grant an asylum to a refugee under the Refugee Convention by denying his/her refugee status in exceptional circumstances in so far as the Minister offers minimal protection like *non-refoulment*. While there are some opponents dissenting with this majority view, there

has not been any case where the issue has been disputed squarely.

3. Legal Aid System for Applicants of Refugee Status

Most applicants seeking refugee status apply for legal aid. With legal aid, a portion of litigation costs is subsidized for asylum seekers in need by the government-financed funds. The Seoul Administrative Court tends to generously accept the applications for litigation aid and render decisions to subsidize the litigation costs covering filing fees, service fees, attorney fees, costs for court interpretation, etc. Sometimes, it includes additional costs incurred during the course of trial, for example, costs for physical check-ups.

Moreover, the *Court-Appointed Attorney Service for Foreigners* is arranged by each and every court across the nation to guarantee substantial access to justice for foreign litigants. Needless to say, the service is also available to applicants for refugee status. With the help of this service, a prospective applicant for refugee status is directed to a court-appointed attorney who will provide assistance in drawing up a complaint even before a court decision is issued allowing legal aid.

4. Adjudication of A Refugee Case: Material Facts and Burden of Proof

a. Basic Principles

I would like to now discuss some significant rulings of the Supreme Court in refuge cases. The Supreme Court of Korea proclaimed for the first time its position with regard to the definition of refugee and the requirement of granting refugee status, reflecting the positions of lower courts including that of the Seoul Administrative Court. (See Supreme Court Decision 2007*Du*3930, rendered on Jul. 24, 2008)

First of all, the Supreme Court adopted a broad definition of 'persecution' as 'conduct seriously infringing upon or discriminating against inherent human dignity, including threats against life, person or freedom' rather than a narrow definition of 'threats against life, person and physical freedom'. Under the broad definition, a concept of persecution embraces abandonment of one's religious faith by coercion, forced marriage, intentionally imposed grave economic predicament etc. This approach is widely supported precisely because imposition of mental sufferings or economic deprivation can amount to persecution, provided that such sufferings or deprivation seriously infringe upon human dignity.

In addition, with regard to the burden of proof and the degree of proof for refugee recognition, the Supreme Court held that an asylum seeker has the burden to present sufficient facts supporting 'well-founded fear' of being persecuted. It also held that considering extraordinary situation that the asylum seeker is faced with, it is unjust to impose such a burden on the applicant as to prove all the aspects of his alleged claim based on objective evidence. Rather, the applicant is deemed to have met the requirement, as long as the court finds it reasonable to take the alleged facts as true, because his factual allegations are logically coherent, persuasive and credible.

In deciding that, the court may consider various factors such as an entry route into a country of refugee, the period between the entry and the application, details of the application, development of circumstances in the country of origin, degree of subjective fear felt by the applicant, political, societal and cultural environments of an applicant's residential area, level of objective fear that a similarly situated person with ordinary sense might feel, etc. In short, we can say that the Supreme Court adopted a reasonable possibility rule from this adjudication. Because a petitioner's testimony itself does not suffice as evidence in the absence of other corroborating evidences according to the general legal principles in civil and administrative procedures, the above holdings are very meaningful in that the Supreme Court recognized procedural distinctiveness in refugee lawsuits without resorting to any statutory provisions.

b. An Applicant's Own Testimony

Due to the unique character of refugee lawsuits distinctive from general administrative or civil procedure, a petitioner is routinely demanded to testify for himself/herself at hearing. In other words, since the court imputes credibility to the petitioner's factual allegation, as long as the petitioner's testimony taken as a whole is not found incredible, it is critical that the plaintiff is to be heard in front of bench in a courtroom. It also has procedural significance that the plaintiff is allowed an opportunity to explain away any defect in his/her allegation and rebut suspicion that the plaintiff's statement is fabricated or contrary to generally known facts, which adversely undermines the plaintiff's credibility. As the lawsuits are so often dismissed on the ground that the statements of asylum seekers are incredible, because the facts as to same event are varied from the allegation in application to the 1st interview records, subsequent interviews and the statements in the complaint, it is important to explain the difference in front of judges. Without reasonable explanation, the lack of coherence and consistency will effectively undermine the petitioner's case.

It is very critical to examine a petitioner to appoint a qualified interpreter and overcome cross cultural misunderstandings. Since Korea has been for a long time a racially homogenous country using the same language with only a small population of foreigners, there has been relatively low awareness of the need and importance of court interpretation, except for criminal courts. From my own experiences at court, I believe that although the Korean society is making genuine efforts to accommodate foreigners with diverse cultural backgrounds, there still remains a long way to go. Under such circumstances, it is understandably quite difficult to provide accurate interpretation of an asylum seeker's statement about what happened on the other side of the globe, then make a right decision.

Recently, to cope with the increasing number of cases involving foreigners, various measures have been adopted to overhaul the court interpreter system both at family courts and administrative courts. As a result of such efforts, more and more courts are employing interpreters from court-managed lists of interpreters. Previously, it was quite common for petitioners to bring their own interpreters belonging to civic organizations which provide aid to refugees and ask the court to appoint the volunteer interpreter as the court-appointed interpreter. With the launch of refugee lawsuits panels in our court, efforts are being put into rewriting a manual which contains precaution for interpreters and expanding court-managed interpreter list. Nonetheless, in the event an applicant is from ethnic minorities and speaks only the minority language, we have great difficulty during the preparation of hearing in locating a qualified interpreter and ensuring seamless communications without any cross cultural miscommunication. In these cases, it is quite common for the court to appoint 2 interpreters to first interpret the minority language to English, and then English to Korean, as we cannot find any one who can interpret the minority language directly to Korean.

c. Country of Origin Information

Now I would like to briefly deal with the topic of obtaining information of the country of origin. The Korean government does not publish official documents such as 'Country Reports' issued by the US Department of State. Accordingly, the burden of collection and submission of country of origin information is casted on parties, especially on petitioner who bears primary burden of proof to support his/her claim. Nowadays, both parties submit the information released by governments and human rights organizations in the most favorable light to them after searching through the

Internet.

Sometimes, a petitioner, even if he/she is aided by a court-appointed attorney, fails to submit the country of origin information to his/her advantage. Actually, a large number of attorneys listed in court-managed list have little experience in refugee lawsuit and they are very poor at collecting and analyzing pertinent country of origin information. Under these circumstances, the adjudication court would inform the petitioner of how to obtain the information, as far as it is not regarded as undermining the impartiality of the court. While some courts urged a litigant to apply for the inquiry of relevant country of origin information to the UNHCR office in Seoul, it is not a general practice. Most judges think that UNHCR office in Seoul is not so well staffed and rich in resources as to systematically organize a wide range of country of origin information. In this regard, the UNHCR office in Seoul has reportedly made a request to Korean government to establish an entity to collect and analyze the country of origin information.

d. Refugee s*ur place*

Recently, with the upward trend in the number of foreign workers, the number of cases in which petitioners claim a refugee *sur place* is rising in parallel. Among them, a considerable number of petitioners is overstaying illegally. Since no laws and regulations prescribe the determining criteria for a refugee *sur place*, the decision thereto solely depends on the court's interpretation of the Refugee Convention and the ICA.

Previously, several lower court decisions held that a refugee *sur place* is recognized exceptionally only in such cases where an applicant is a "good faith" asylum seeker. They held that an asylum seeker who provides a reason for persecution on his/her own to be recognized as a refugee should not be granted the refugee status, because "stretching the scope of protection for a refugee to such a case does not conform to the purport of the Refugee Convention". However, the Supreme Court rejected that argument by ruling that "a refugee status may also be recognized if 'well-founded fear for persecution' is generated as a result of conduct, for example, expression of political views in a residing country to which an applicant escaped after fleeing a country of nationality, and in the same vein, even if an applicant offered a reason for persecution to be recognized as a refugee, it does not constitute a material fact overturning a ruling." (Supreme Court Decision 2007 *Du*19539, rendered on July 24, 2008)

After this decision, it became quite common for an applicant to claim to be a refugee *sur place*. Last July, the Seoul Administrative Court rendered 3 decisions in a row which recognized refugee status to Iranian asylum seekers who claimed to be refugee *sur place* because of their conversion to Christianity in Korea. The Court found that they were likely to be persecuted on account of their religion, because their conversions were genuine and Iranian criminal codes allowed death penalty to the person who converted from Islam to Christianity. While there were several decisions which recognized refugee status on account of religion before those judgments, they were the first that recognized refugee *sur place* on account of religion. Those decisions were greeted positively by the public.

As the paragraph 96 of UNHCR Handbook indicates, we acknowledge that whether such actions are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances. It should be considered in particular whether such actions may have come to the notice of the authorities of the person's country of origin and how they are likely to be viewed by those authorities.

e. A Choice of Refuge by Asylum Seeker

If an applicant for refugee status can choose a country in which the applicant seeks a refugee status, the applicant will consider various factors, such as a probability of permission of an entry, related expenses, rates of refugee acceptance, etc. In this regard, it is controversial whether the same criteria should be applied in determining refugee status for an applicant who enters country of refuge via a safe third country as applicants who comes directly from a country of origin. It is widely known that many European countries which joined the Schengen Agreement have adopted a rule of safe third country, restricting generally the right of choice by asylum seekers.

By contrast, the rule of safe third country is not recognized in Korea either by statutes or by case law. In case that the applicant alleges an escape from a country of origin to avoid persecution, and notwithstanding the allegation, it reveals during the trial that the applicant did come and go between a safe third country and a country of origin several times, that would be taken by the court as circumstantial facts undermining the credibility of the applicant. However, many Seoul Administrative Court decisions held that “court shall solely focus on whether an applicant meets the requirements of a refugee status and will not look into specific reasons for choosing Korea as a country of

refuge." Therefore, while it is common that asylum seekers enter Korea via third country, it does not become a material issue in determining the case.

V. Draft bill of *Law on Status and Treatment of Refugees*

I will now turn to the draft bill for refugee protection currently pending at the National Assembly. The National Assembly, the legislature of Korea is considering enacting a new law for refugee protection. The title is 'Law on status and treatment of refugees.' It will extract the refugee related articles from ICA and expand it into a full-scale, independent law. The draft bill comprises of 52 Articles and includes comprehensive responses to the problems in current refugee recognition process and treatment of refugees. As the bill is suggested and supported by influential members from the ruling party including its floor leader, we expect the bill to be passed this year. The refugee lawyers in Korea and UNHCR Seoul office are supporting the legislation which they actively participated in drafting. The Ministry of Justice also agrees with the legislation in principle, though with some reservations.

The draft bill includes a definition of refugee in Article 2 and emphasizes the necessity of competent interpretation and due process for application in line with international standard. Article 3 stipulates the principle of *non-refoulement*. It obliges immigration officers to assist prospective refugee applicants and it recognizes the right of asylum seekers to stay during the judicial review process in Article 5.

Article 6 expressly allows asylum seekers to apply for refugee recognition at the airport and seaport and it also prescribes the relevant procedure. Articles 7, 15, and 16 recognize and expand access to information including transcripts of interviews by asylum seekers. The procedural reform includes restriction of period of initial determination to 6 months (Art.18), in-dept survey of country information of origin (Art.11), right of assistance including legal counsel and competent interpreter (Art.12-14), participation of UNHCR in decision making process (Art.35) and guarantee of confidentiality (Art.17).

In addition, It expressly recognizes 'benefit of the doubt' for the applicant (Art.9) and restricts the reasons for and period of detention (Art.20, 21). The Refugee Council shall be expanded into a independent and better-staffed 'Refugee Committee', which will be empowered to make decisions on petitions in its name (Art.29-33). Also, the procedure

of petition which is prescribed by presidential decree now will be elevated to the law and it obliges the Refugee Committee to hear every case from petitioners orally (Art.22).

The draft bill prescribes the treatment of refugees in Chapter 4. It guarantees the same treatments to refugees which are listed by the Refugee Convention and other international human rights instruments (Art.36). Further, the refugee shall enjoy the same social security benefits as Korean nationals including inter alia medical and educational benefits (Art 37-43). These benefits will be also given to the persons who are granted humanitarian stay (Art.47). The applicants under determination process shall enjoy the minimum social security benefits and will be allowed to find employment after 6 months from the application (Art.48). It also stipulates the principle of family reunion (Art.44) and allows refugees who reside in Korea for more than 3 years eligible for Korean citizenship (Art.46).

VI. Conclusion: Prospect of the Korean Refugee System

In retrospect, Korea was one of the countries generating refugees into the late 20th century. Specifically, after the imperial Japanese invasion and annexation of Korea early in the 20th century, a huge number of Koreans who fought for independence left the homeland and resettled in Manchuria, China, Russia and even the farthest in the U.S. They established a government in exile in China and could not return until the liberation in 1945. Afterwards, the break of the Korean War in 1950 compelled a vast number of people to flee the country and to wander overseas as refugees. Even into the 1980's, merely 3 decades ago, not a small number of democratic activists fled the country to avoid persecution from the authoritarian governments.

Now, Korean people enjoy political freedom and economic prosperity, but we remember our past. Korea is the only country that became a provider of economic aid from a receiver. We hosted the Summer Olympics in 1988 and the World Cup Games in 2002 and we will host the Winter Olympics in 2018. It is time for Korea to return the favor to the international community. I believe that our modern history helps us to better understand the sufferings of refugees. We, as a people who endured persecution, are obliged to play an exemplary role in the protection of refugees.

Korea will commemorate the 20th anniversary of the ratification of the Refugee Convention next year. Despite 20 years of holding the signatory status, Korea has not shown too much enthusiasm in receiving a meaningful number of refugees until 2007.

It is only after 2007 when the Ministry of Justice and Korean judiciary have contemplated the refugee issues seriously that Korea took on a more proactive role in accepting refugees. And, it is evident that just 4, 5 years are insufficient to accumulate good experience and to gain profound insight. Since Korea is not immune from globally endemic social problems like unemployment, we cannot deny the existence of anti-immigration sentiment in our society. It is true that the law enforcing authorities are struggling to deal with the rising number of illegal foreign workers.

Moreover, though the North Korean defectors are Korean nationals under the Korean Constitution and they are not treated as refugees under the Refugee Convention in our jurisdiction, from the international viewpoint, there is no denying that they are refugees after all and the primary burden should be on South Korea.

This is precisely why the Korean judiciary, in particular judges handling refugee cases, have to make persistent efforts to interpret and apply the Constitution, relevant laws and the Refugee Convention in conformity with the international standards. We judges have to persuade the public that it is not incompatible to protect our neighbors and also to share the just burden of refugee protection. It is encouraging that as more people have better understanding of international issues, the social awareness is growing that refugees should be treated more generously in tandem with our growing economic strength.

Lastly, I would like to show my deepest respect to the distinguished guests, and participants at this Conference for their commitments and passions. Taking this Conference as a momentum, I pledge that Korean judges will participate more actively in the efforts of the international community to protect refugees.

Thank you so much for your close attention.