

Act on the Immigration and Legal Status of Overseas Koreans Case (13-2 KCCR 714, 99Hun-Ma494)

1) Reference Details

Jurisdiction: Constitutional Court of Korea

Date of Decision: 29 November 2001

Link to full case: http://www.ccourt.go.kr/home/english/download/decision_2001.pdf

2) Facts

The Act on the Immigration and Legal Status of Overseas Koreans (the Act) was legislated by the National Assembly to facilitate overseas Koreans' entry into and departure from the Republic of Korea and to stabilise their legal status in Korea. On 12 August 1999, the National Assembly passed the bill, and the Act entered into force on 3 December 1999.

The complainants were ethnic Koreans with Chinese nationality who were living in China at the time. On 23 August 1999 the complainants filed a constitutional complaint, arguing that Article 29(2) of the Act on the Immigration and Legal Status of Overseas Koreans excluding a person and linear descendents of a person who emigrated before the establishment of the Korean Government in 1948 from overseas Koreans as specified on the Act. Therefore, it denied them the privileges bestowed by the Act, as well as the right to equality in Article 11 of the Constitution and the right to human dignity and worth and to pursue happiness guaranteed by Article 10 of the Constitution.

3) Law

- Article 2(2) of the Act on the Immigration and Legal Status of Overseas Koreans (definition of Korean nationality)
- Article 10 of the Constitution of Korea (right to human dignity and worth and to pursue happiness)
- Article 11 of the Constitution of Korea (right to equality)

4) Legal Arguments

The Complainants

The complainants alleged that the Act violated the principle of equality as it bestowed certain benefits on ethnic Koreans with foreign nationalities but denied the complainants the same privileges. They argued that as the Act applied the standard of whether a person had Korean nationality in the past it was discriminatory without a reasonable basis and therefore violated Articles 10 and 11 of the Constitution, because it effectively limited the scope of ethnic Koreans with foreign nationality to those who emigrated after the establishment of the Korean Government.

5) Decision

The Constitutional Court held that as the Act granted citizenship to all the requests of those who emigrated to a foreign country after the establishment of the Korean Government, while ethnic Koreans who emigrated before the establishment of the Korean Government

were not included in the scope of application of the Act, it denied opportunities to enter and exit and opportunities for employment in Korea. Though the State had cited socio-economic and security reasons for the Act, the Constitutional Court opined that the Act did not have a legitimate basis and therefore was discriminatory.