State Practice Notes on Korea

Korean Municipal Governments' Discrimination of Foreigners regarding COVID-19 Benefits: Decision of the National Human Rights Commission

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1 Introduction

The outbreak of COVID-19 has not only brought about a global healthcare crisis, but also brought about chaos in the everyday and financial lives of people. Many countries including South Korea have implemented an economic benefit regime as means to cope with the unprecedented threats.

Despite Korea's geographic proximity to China, it has experienced a relatively low mortality rate and rates of confirmed cases. South Korea has shown a rapid and wide-range of virus diagnostic capabilities and pioneered drive-through testing stations that have inspired others to follow suit. Transparent communication between the related authorities has also enabled the government to gain public trust. However, the virus revealed the government's lack of support for foreigners and immigrants. Recently, there was a complaint filed to South Korea's National Human Rights Commission against two municipal governments, Seoul City and Gyeonggi Province. As the global pandemic showed that developed countries were not ready to cope with the novel virus, it revealed the Korean government's insufficient understanding of human rights and international law. This note will focus mainly on the complaint filed against South Korean local governments over discriminatory treatment regarding the distribution of COVID-19 economic benefits.

2 Overview of the Decision

2.1 *Complaints*

Seven foreigners residing in Seoul City and Gyeonggi Province, including a married immigrant woman and a permanent resident, filed a complaint to the National Human Rights Commission. They argued that "in the face of the pandemic, there is no reason for cities to treat residing foreigners differently from Korean nationals." They requested the Commission to advise the mayor

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of Seoul City and the governor of Gyeonggi Province to supplement their relief fund policy. The petitioners stated:

In an emergency situation like a pandemic, the livelihood of foreigners and immigrants are threatened as much as Korean nationals. They suffer from unemployment, layoffs, reduction of social relations and low health service accessibility like Korean nationals. Therefore, it is unreasonable to apply one's nationality, country of origin or family relations in the relief plan.

The relief plans of the Seoul City and Gyeonggi Province exclude foreign residents as beneficiaries, which is a discriminatory act violating human rights. In particular, the exclusion is a violation of human rights prohibited by the Constitution and the National Human Rights Commission Act.

2.2 *Local Governments' Statements*

The Seoul-type Basic Security Welfare system assists households below 100% of the median income. City officials stressed that their emergency checks are not for every citizen, but for lower income households. For emergency checks, it is important that it gets distributed to the needed households fast. To process applications and income investigations, the city needs to attain information via the national social security information system (Haengbok-e-eum). The city investigates the household's income level through the system, which is based on the resident's registration number. Since foreigners do not hold a registration card, but only individually registered by their address, it is difficult for city governments to identify the financial information for foreigners. Moreover, income investigation on foreigners through the social security system is impossible. The city tried to include some foreigners like married immigrants, to minimize discrimination while putting their best effort to support registered foreigners. For foreign students, the government provides transportation services to and from the airports, and necessary health support such as masks and some health care assistance.

The Gyeonggi provincial government announced their emergency benefit plan in the governor's briefing on 24 March 2020. To deal with the emergency urgently, the city decided to exclude foreigners. This is because the foreigners' conditions were impossible to check via the registration system. The Gyeonggi provincial government has admitted that their policy is insufficient to protect foreign residents' "right of equality and the right to lead a life worthy of human dignity." However, government responded as follows:

It is hard to say that the basic rights protected by the Constitution are identically guaranteed regardless of one's citizenship. Even if the rights are acknowledged for foreigners, the beneficiary legislation gives the law-maker freedom of legislation, and thus unless the violation is remarkably arbitrary, the legislation itself cannot be referred to as an unconstitutional measure.

Additionally, emergency basic income falls under the social security system that does not include foreigners. Thus, discrimination between nationals and foreigners is inevitable.

2.3 *Legal Analysis of the Commission's Decision*

The Commission analyzed the petitioner's legal status and rights under domestic and international law. It also reviewed the standards established by international human rights organizations regarding pandemic measures.

2.3.1 UN OHCHR COVID-19 Guidance

The UN OHCHR stressed in its COVID-19 Guidance that migrants and refugees often face obstacles in accessing health care due to language and cultural barriers, costs, lack of access to information, discrimination, and xenophobia. Thus, it recommended that states take specific actions to include these groups in national COVID-19 prevention and response. This should include ensuring equal access to information, testing, and health care for all migrants, IDPs, and refugees, regardless of their status. Additionally, a firewall to separate immigration enforcement activities from the ability of migrants and refugees to access health, food distribution, and other essential services should be guaranteed.

2.3.2 Possibility of International Law Violations

The Commission quoted the International Convention on the Elimination of All Forms of Racial Discrimination in its 2020 Decision. While the Convention casts possibilities of treating citizen and non-citizens differently in Article 1, Paragraph 2 as "this Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens," the Committee on the Elimination of Racial Discrimination published its interpretation of the provisions in General Recommendations No. 11 (1993) and the General Recommendation No. 30 (2004). The 2020 Decision says that General Recommendation No. 11 states that "Article 1(2) shall not be interpreted in a way that would damage the rights and freedoms recognized and stated in other documents, in particular the

Universal Declaration of Human Rights, the Covenant on Social Rights and the Covenant on Freedom.” Furthermore, General Recommendation No. 30 (2004) clarifies that “treatment differentiated by citizenship or immigrant status is discriminated if the criteria for this distinction do not comply with a legitimate purpose given the object and purpose of the Convention or are not proportional to the achievement of this purpose.”

2.3.3 Review of Foreigner's Legal Status and Basic Rights

2.3.3.1 *Constitution of the Republic of Korea*

According to Article 6, the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea. International human rights law is based on the inherent equality of all people. However, it is debatable as to whether foreigners are also included as the subject of the basic rights ensured by the Constitution since Article 10 indicates “all citizens” shall be assured of human worth and dignity and have the right to the pursuit of happiness. In 1994, the 93 Hun-ma 120 decision of the Constitutional Court first declared that citizens (or foreigners at a similar status with citizens and private juristic person) possess fundamental rights. Many other decisions confirmed that if a certain right is admitted to be universal, it should be interpreted as a human right and applies to foreigners.

2.3.3.2 *Local Autonomy Act*

According to the Local Autonomy Act Article 12 (Qualification of Residents), persons who have a domicile within the jurisdiction of a local government shall be residents of such local government. Article 13 (Rights of Residents) also puts in paragraph 1 that residents shall have the right to use the property and public facilities of their local governments, and to benefit equally from the administration of their local governments as prescribed by statutes.

3 Analysis of the Decision

3.1 *Overview of COVID-19 Economic Benefits in South Korea*

Korean citizens receive economic benefits at two levels: the central government and the municipal government. Both benefits are to stabilize people's living status and to support the national economy. First of all, the central government's benefit is paid to each household based on a person's national health insurance premium. Single-member households get 400,000 won; two-member households get 600,000 won; three-member households get 800,000 won; and households of more than 4 people get 1,000,000 won.

Korean nationals residing abroad were excluded from the benefit since their living base is outside the nation and they are not paying health insurance or the residence tax.

On the other hand, the municipal government’s economic aid varies depending on their financial status and local backgrounds. This note will make a comparison of three representative municipal governments: Seoul City, Gyeonggi Province, and Ansan City. These local governments differentiate foreign citizens from nationals. The details of the benefits are indicated in the table below:

	Seoul City	Gyeonggi Province	Ansan City
Amounts	1–2 member household: 300,000 won 3–4 member household: 400,000 won 5 or more member household: 500,000 won	100,000 won per citizen	100,000 won per nationals & 70,000 won per foreign citizen
Selection Criteria	Households below 100% of the median income	All citizens	All citizens
Inclusion of Foreigners	Marriage immigrants and refugees only	Limited. Permanent residents and marriage immigrants only	All foreign residents

When Gyeonggi Province first announced their benefit plan on 24 March, 2020, criticism arose from foreign residents. Consequently, Gyeonggi Province modified their plan and ordinance to include permanent foreign residents and married immigrants as beneficiaries.

It seems that the local government’s overall foreign population and cultural and social context is important to the city’s benefit plan. Ansan City is a good example of this. Ansan City decided to include all foreign residents in their relief plan from the beginning. This is due to the city’s cultural and social background. Ansan City is the most prominent multicultural city in South Korea. About 10% of its residents are foreigners, which is the highest figure in the nation. Ansan City was designated as an “Intercultural City” by the Council of Europe for the first time in South Korea. An intercultural city refers to a city where various cultural backgrounds and nationalities are respected and

exchanged by the immigrants and natives. Ansan City announced their relief fund plan on 2 April, 2020 which noted that all residents including any registered foreigner who has registered an address in Ansan city on the date was entitled to benefit. The city decided to provide 70,000 won per foreigner and 100,000 won per national.

3.2 *COVID-19 Economic Relief Overseas – Central Governments*

Many countries including South Korea have implemented economic aid to deal with the pandemic. However, each country differs in the way of treating foreign residents and immigrants. The United States regulated federal stimulus funds by enacting S.3548–CARES Act (The Coronavirus Aid Relief and Economic Security). This includes foreigner who have a social security number. Any immigrant who earns below 75,000 dollars and has either a social security number or green card is paid \$1,200 USD. One who is a resident based on tax law (who has resided in the United States more than 183 days per year for the past three years) also receives \$1,200 USD. Plus, households with kids receive an extra \$500 USD per child.

Japan also announced its payment plan on 20 April, 2020 to pay 100,000 Yen per citizen based on resident registration. Since foreigners who have a residence permit and reside more than three months in Japan are obliged to register as a resident, foreigners in Japan are beneficiaries of the Japanese government's economic aid plan.

In the case of Canada, it expanded the beneficiaries to the young and immigrants in need. Canada Emergency Response Benefit (CERB) gives financial support of \$2,000 Canadian dollars for four weeks to people who are directly affected by COVID-19. This includes workers residing in Canada who are fifteen years old or over who have stopped working because of COVID-19, or are eligible for employment insurance or sickness benefits, have exhausted their employment insurance regular benefits or employment insurance fisher benefits. Those who had employment and/or self-employment income of at least \$5,000 Canadian Dollars in 2019 or in the twelve months before the date of their application are eligible. The unemployed and quarantined can be paid for a maximum of 16 weeks. For students who are not eligible for the CERB may be eligible for the Canada Emergency Student Benefit (CESB). The CESB provides a payment to eligible students of \$1,250 or \$2,000 Canadian Dollars for every four weeks for maximum of 16 weeks. Foreigners, including international students and temporary foreign workers may also be beneficiaries when they meet the condition stipulated above.

3.3 *COVID-19 Economic Relief Overseas – Local Governments*

Berlin City's decided to give economic relief on 19 March, 2020 regardless of one's nationality. Anyone who has a tax payment serial number, including artists, freelancers, self-employed and small traders can get paid. Entrepreneurs who employ no more than five people receive 5,000 Euros and entrepreneurs who employ six to ten people get 15,000 Euros. Through a special announcement, the city also strengthened the policy that "related authorities should provide information in various languages since many small business owners in Berlin have migration backgrounds." They also promised to provide translation support required for the application process.

California's decision is even more forward-looking. The government of California provided financial support to undocumented immigrants impacted by COVID-19. California's \$75 million Disaster Relief Fund supports undocumented Californians impacted by COVID-19, who are ineligible for unemployment insurance benefits and disaster relief, including the CARES Act, due to their immigration status. Approximately 150,000 undocumented adult Californians will receive a one-time cash benefit of \$500 USD per adult with a cap of \$1,000 USD per household to deal with the specific needs arising from the COVID-19 pandemic. It is the very first state attempt to help undocumented immigrants. "California is the most diverse state in the nation. Our diversity makes us stronger and more resilient. Every Californian, including our undocumented neighbors and friends, should know that California is here to support them during this crisis. We are all in this together," said Governor Newsom in a public release.

The policy was well received because undocumented workers devote themselves in many of the sectors deemed essential, and keeping the state afloat during the pandemic in areas including health care, agriculture, and food manufacturing and logistics. The governor even mentioned in his announcement that "about 10% of California's workforce is undocumented and although they paid over \$2.5 billion in local and state taxes last year, they benefit from neither unemployment insurance nor the \$2.2 trillion stimulus by the federal government."

From these examples, Korean local governments can learn a lesson on how to strengthen the importance of foreign immigrants to society so that the beneficiaries can be given with less opposition and to achieve social consensus.

3.4 *Analysis of Emergency Aid and Support Act*

According to the Emergency Aid and Support Act, Article 5 (Persons in Need of Emergency Aid) persons eligible to receive aid under this Act shall be limited to those who face critical situations and require urgent aid under

this Act. Article 5-2 (Special Cases of Foreigners) refers to foreigners. It says that foreigners specified by Presidential Decree are among those foreigners who sojourn in the Republic of Korea are eligible for emergency aid if they are under Article 5. The executive order says foreigners are those who are (i) married to a Korean citizen; (ii) one who is divorced from a Korean citizen and whose spouse is deceased and taking care of direct or lineal descendant; (iii) one who is admitted as a refugee; (iv) one who has been a victim of fire, crime, natural disaster; (v) anyone else admitted by the Minister of Health and Welfare to be in need because of an emergency is eligible to receive aid under the Act. Although, subparagraph (i) to (iii) limits the Act to foreigners who have an interrelation with a Korean citizen, subparagraph (iv) and (v) indicates that COVID-19 relief aid may apply to foreign residents.

As mentioned above, the central government of Korea excludes overseas Koreans for these reasons: (1) Emergency Relief Benefit is for the national economy while overseas Koreans' life base is outside the nation; (2) Overseas Koreans do not pay health insurance; and (3) Overseas Koreans do not pay the residence tax. Thus, it can be said that foreign residents who pay not only health insurance and residence tax, but also pay income tax should be included in as beneficiaries. Otherwise, the government's policy would be inconsistent.

4 Implications of the 2020 Decision

According to the National Human Right Commission Act, Article 25 (Recommendation of Improvement or Correction of Policies and Practices) the following should be complied with:

- (1) The Commission may, if deemed necessary to protect and improve human rights, recommend related agencies, etc., to improve or correct specific policies and practices or present opinions thereon.
- (2) The heads of related agencies, etc., receiving any recommendations under paragraph (1) shall respect and endeavor to implement the said recommendations.
- (3) The heads of related agencies, etc., who receive any recommendation under paragraph (1) shall notify the Commission of the plan to implement such recommendation within 90 days from the date on which the recommendation is received.
- (4) Where the heads of related agencies, etc., who has received any recommendation under paragraph (1) fail to implement such recommendation, they shall notify the Commission of the reasons.

Since the Commission's recommendations were made on 11 June, 2020, the heads of Seoul City and Gyeonggi Province had until 9 September, 2020 to notify the Commission of their plans to implement the recommendation. Practically, it is difficult for the cities to identify the income or household structure of foreign citizens residing in Korea. This is because, as stipulated in II, except for foreigners who are married to native foreigners, they are not included on the national resident registration certificate. Rather, they are individually registered by one's address. Hence, it is almost impossible to identify the composition of their household.

Furthermore, according to the Immigration Act, Article 31, 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. Moreover, their registration certificate gives them a registration number. Seoul City investigates the household's income level through the Social Security Information System (Haeng bok e-eum), which is based on the resident registration number. Since many foreigners do not have resident registration numbers, it is hard for cities to identify their exact income. Cases are similar in Gyeonggi Province. Therefore, it will take a significant time for the cities to establish an equal income investigation system.

There was an announcement by the mayor of Seoul city on 30 June 2020 that foreigners would be included in their 2020 Third Supplementary Budget Plan. The city revealed that they would give economic support to about 100,000 foreign households. City officials revealed their acceptance of the National Human Rights Commission's recommendation. The city government's economic support would be carried out based on the identical standards as Korean nationals. At the time, Gyeonggi Province did not reveal their acceptance of the recommendations.

5 Conclusion

According to research conducted by the National Human Rights Commission in 2020, due to the COVID-19 pandemic, Koreans' sensitivity to discrimination has increased. About 90% of Koreans who replied said that they recognized that no one is free from social discrimination during the pandemic, and even their own family members may face discrimination one day. Furthermore, the research indicated that 93.3% of Koreans believe that all people are equal. These results imply that general Korean public is against discrimination, and value the right of equality. Not only because of the National Human Rights

Commission recommendations but it is the common sense of Korean citizens to promote the right to equality and to protect foreigner residents living in Korea in the face of Covid-19. Moreover, the disproportionate effect of the relief fund on citizens may cause further problems. Nevertheless, it does seem difficult for municipal governments to grant further economic benefits for the care of foreigners. Rather, the central government should take steps to support foreigners and immigrants residing in Korea.

The Seoul metropolitan government indicated that municipal governments have already exhausted much of their funds for towards COVID-19 relief, and do not have enough resources to spare for foreigners. The financial status of local government also vary so that any relief money distributed may raise another issue of fairness among foreign residents. Therefore, the central government should be the one to carry forward the plan for foreigners. The central government has access to gather the relevant financial information including such general income tax details and foreign household information; the information need to create reasonable plans, make criteria, methods, and amounts of financial support.

In the case of the German government, they have announced a support plan through the “Emergency COVID-19 Support Program” at the end of April 2020. According to its announcement, support in seven areas including international cooperation would be implemented. The implementation of this plan was expected to require an additional 3 billion Euros in addition to the use of the existing budget of 1 billion Euros by the BMZ (Federal Economic Cooperation and Development). The U.K. government also announced it would raise about 740 million pounds of emergency funding. Not only that, the U.K. further announced that it would be funded by the International Monetary Fund (IMF) for debt relief in vulnerable countries with 150 million pounds. Meanwhile, in the case of the development of a diagnostic kit, it announced plans to produce in Senegal in a public-private partnership with a British private company and a Senegal infectious disease diagnosis laboratory. Likewise, developed countries are not only concentrating on their own pandemic issues, but they are also trying to cope with the pandemic as a global community. Korea can learn from the examples on how to approach the pandemic as a member of global society.

As UN OHCHR puts it, COVID-19 is a test of societies, governments, communities, and individuals. It is a time for solidarity and cooperation to resolve the pandemic, and to mitigate the effects. Discrimination and differentiation have no power in a universal emergency. Respect for human rights and domestic law will be important to the success of the health response and social recovery from the pandemic. In the midst of the pandemic, the Korean government's follow-up measures will raise attention from international and national society and whether Korea is ready to implement forward-looking policies will be put to the test.